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## Appeal Decision

Site visit made on 21 June 2021

**by Thomas Shields DipURP MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 16 September 2021**

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**Appeal Ref: APP/P1805/C/21/3268859**

**Thornborough Farm Redhill Road, Kings Norton, Birmingham, B38 9EH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
  - The appeal is made by Mr Anthony Copeland (Riverside Group) against an enforcement notice issued by the Bromsgrove District Council.
  - The enforcement notice was issued on 12 January 2021.
  - The breach of planning control as alleged in the notice is:
    - a. Without planning permission, the carrying out of a material change of use of the Land from agricultural use to a mixed use comprising residential, agriculture, dog breeding and equine use.
    - b. Without planning permission, the carrying out of operational development on the Land consisting of the erection of building (incorporating a pre-existing static caravan into structure) for residential habitation, storage, breeding of dogs, office and rest facilities in the location edged in green on the Plan in association with the mixed use identified at a. above.
    - c. Without planning permission, the carrying out of operational development on the Land consisting of the stationing of a steel container in the position marked 'Y' on the Plan. together "the unauthorised development".
  - The requirements of the notice are:
    - a. Permanently cease use of the building/caravan for the purposes of residential occupation, dog breeding;
    - b. Permanently cease use of the Land for purposes in association with the adjacent equine facility; and dog breeding;
    - c. Demolish the unauthorised building;
    - d. Remove the caravan from the Land;
    - e. Remove from the Land all resulting materials from compliance with 5.c. above.
  - The period for compliance with the requirements is:
    - i) In respect of 5.a. above; 2 months after this notice takes effect
    - ii) In respect of 5.b, c and d. above; 3 months after this notice takes effect.
  - The appeal proceeds on the grounds set out in section 174(2)(a),(d) and (g) of the Act.
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### Decision

1. It is directed that the enforcement notice is varied in Section 6(ii) by deleting the words "3 months" and substituting instead "5 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

### Appeal site and background

3. The appeal site is within the West Midlands Green Belt. It was previously a tennis court associated with the adjacent dwelling but is now in separate

ownership. Access to the site is from Redhill Road through the adjacent yard which is also owned by the appellant. Within the site is the single storey building subject of the appeal.

4. The appeal building in particular has a long planning history, but it is not necessary for me to elaborate on all of that here. I shall refer to its history where necessary in later sections.

### **Procedural matters**

5. The appellant is concerned that the enforcement notice was not properly served on him as the relevant land owner at the time of service. Since no appeal on ground (e) has been made I need not go into any detail. However, for the sake of clarity, the Council's evidence is that they served copies of the notice on 12 January 2021 on Mr Moore, and separately on the "owner/occupier" (which would include the appellant in this appeal if he was the land owner at the time). There is no convincing evidence before me that the notices were not so served.
6. The above notwithstanding, section 176(5) of the Act allows me to disregard any failure of service of a copy of an enforcement notice if a relevant person has not been substantially prejudiced by the failure. In this case the appellant has been able to lodge his appeal and make his case out on the relevant grounds of appeal. Hence, even if not properly served he would not have been substantially prejudiced. Consequently an appeal on ground (e) would have failed for these reasons.
7. The appellant's case, in part, also argues that since taking ownership and control of the land the alleged uses at section 3a. of the notice have not been occurring. While that may be the case no appeal has been made under section 174(2)(b) of the Act that "*those matters have not occurred*". It should be noted that "occurred" is past tense and hence success on ground (b) depends on the appellant demonstrating that the matters have not occurred at any time up to the date of issue of the enforcement notice. That has not been demonstrated in the appellant's evidence and hence had an appeal been made on ground (b) it would also have failed.

### **Appeal on ground (d)**

8. The appeal on ground (d) relates solely to the alleged erection of the building, previously with an integrated static caravan, since removed in April 2021 with further alterations to the building (hereafter "the building").
9. For a ground (d) appeal to succeed the onus is on an appellant to demonstrate, on the balance of probability, that at the date an enforcement notice was issued the breach of planning control (erection of the building) was immune from enforcement action due to the passage of time; being 4 years in the case of operational development. However, the enforcement notice in this appeal is the second notice issued by the Council. An earlier notice (subsequently withdrawn) in respect of the same alleged breach of planning control, requiring the removal of the building, was issued on 3 June 2020.
10. Section 171B(4)(b) of the Act provides for the taking of "further" enforcement action in respect of any breach of planning control if, during the 4 years ending with that enforcement action being taken, the Council have previously taken, or have purported to have taken, enforcement action in respect of that breach.

This applies even though the normal time-limit for such action has expired. As such, there is no doubt that the Council had purported to take enforcement action against the building by issuing the first notice, and hence the provisions of section 171B(4)(b) apply. Consequently, the relevant date for immunity purposes is 4 years prior to the issue date of the first enforcement notice, i.e. 3 June 2016 (hereafter the "relevant date").

11. In an appeal Decision against a refusal of a LDC<sup>1</sup> my colleague Inspector concluded that the building had been a single operation and had not been substantially completed before 2 March 2016 (4 years before the date of the LDC application - the relevant date for lawfulness at that time) and having reviewed the evidence before me I concur with that conclusion. Additionally, submitted photographic evidence dated 20 April 2016 appears to show that the building had not yet had all of its roof or timber cladding in place on that date.
12. Thus, for immunity purposes the appellant needs to demonstrate that the building was completed between 20 April 2016 and 3 June 2016, a period of approximately 6 weeks. In this regard, although it is not clear whether the cladding was in place, the appellant's aerial photograph<sup>2</sup> indicates the roof had been completed by 26 March 2017. However, that is well after the relevant date of 3 June 2016. There is no other precise and unambiguous evidence before me to indicate that the building was substantially completed before the relevant date.
13. For these reasons, the appellant has failed to establish, on the balance of probability, that the building is immune from enforcement action.
14. The appeal on ground (d) therefore fails.

### **Appeal on ground (a)/deemed application for planning permission (DPA)**

15. An appeal on this ground is that planning permission should be granted for any breach of planning control alleged at Section 3 the notice. Additionally, section 177(1) of the Act provides that planning permission may be granted "in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates", hence a "split decision" on ground (a)/DPA is possible. However, it is not possible to grant planning permission for development that does not form part of an alleged breach of planning control.
16. The appellant's case is two-fold<sup>3</sup> in seeking to retain the building on site. His primary case is that planning permission should be granted for its "intended use" or, if that is not accepted, his secondary case is that it should be granted purely for agricultural use.
17. I turn to his primary case first. The intended use as detailed in the appellant's evidence relates to a mixed use for agriculture and also as a base and learning facilities for students, summarised as a "quasi-agricultural/educational use". From all the evidence before me, and from what I observed on site, it appears that this is the current single mixed use of the land. However, such a single mixed use of agriculture and education does not form any part of the breaches alleged in the notice. Therefore, there is no scope for granting planning permission for such a mixed use for the reasons I have set out in paragraph 15

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<sup>1</sup> Lawful Development Certificate Appeal Ref APP/P1805/X/20/3252434

<sup>2</sup> Appellant's Appendix C

<sup>3</sup> Appellant Statement of Case, paras. 2.33-2.51

above. Consequently, the appellant's primary case on this ground of appeal must fail.

18. Turning next to the appellant's secondary case, that the building should be permitted purely for agricultural use, it should be noted first that the building by itself, and agricultural use, form part of the alleged breaches at Section 3 of the notice. Thus, as set out above in paragraph 15, there is scope for granting planning permission for these parts of the alleged breaches (noting that agricultural *use of land*<sup>4</sup> and buildings would be lawful in any event).
19. I note the Council's concerns if planning permission were to be granted on this basis in respect of potential unauthorised future use of the building. However, any future unauthorised use of the building would be susceptible to further enforcement action by the Council if it considered such action were necessary. Hence, I attach no weight to these concerns.
20. With regard to the building being used solely for agriculture, it would not constitute inappropriate development in the Green Belt, as set out in Policy BDP4 of the Bromsgrove District Plan (2017) (LP).
21. However, there is very little detailed information before me in respect of whether the appeal building's design, size, internal layout, and position on the land are justified in the context of the scale and nature of any future agricultural activities on the site. The level of agricultural use I observed currently on site does not seem to me to justify a building of such a size. Moreover, no quantifiable details of any proposed agricultural activities are before me, for example in terms of throughput of livestock or crops, such that an assessment of whether the design and size of the building would be functionally justified for its purposes can be properly made. The lack of such justification conflicts with the requirements of LP Policies BDP15 and BDP19.
22. The appellant's comparison with the provisions of Schedule 2, Part 6 of the GPDO<sup>5</sup> for agricultural buildings is of little weight in support of allowing the appeal given that such buildings are only permitted development if they are also demonstrated to be "reasonably necessary" for the purposes of agriculture within the relevant agricultural unit. As set out above, I am not satisfied that the appeal building has been justified as being reasonably necessary for the purposes of agriculture.
23. For these reasons the appeal on ground (a)/deemed application fails.

### **Appeal on ground (g)**

24. With regard to the enforcement notice requirements for demolition of the building and the removal of resulting materials from the land, the ground of appeal is that the period of time for compliance falls short of what should reasonably be allowed. The notice requires compliance within a total of 3 months, the appellant seeks a period of 9 months.
25. I note the Council's arguments regarding the time that has passed since the breaches of planning control first occurred. However, since any appeal might be successful, either on its merits or legal grounds, an appellant is entitled to wait for the outcome of their appeal before taking steps towards compliance

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<sup>4</sup> By virtue of section 55(2)(e) Town and Country Planning Act 1990 (as amended)

<sup>5</sup> Town and Country Planning (General Permitted Development) (England) Order 2015

with the notice. Therefore, while I am mindful that the breach of planning control should be remedied as soon as possible. I shall not take account of the passage of time to date.

26. The appellant suggests that time should be allowed to facilitate pre-application enquiries and planning permissions as may be necessary for alternative buildings. However, remedying the breach of planning control by complying with the notice does not require such actions. In this regard the suggested period of 9 months is not justified and excessive. Nevertheless, I acknowledge that it may take some time for other arrangements to be put in place elsewhere for essential storage and office facilities, and scheduling contractors to carry out the required remedial works.
27. Having regard to all the circumstances I consider that 5 months would be more reasonable.
28. The appeal on ground (g) therefore succeeds to this extent and I will vary the notice accordingly.

*Thomas Shields*

INSPECTOR