
Appeal Decision

Site visit made on 2 March 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 7 March 2022

Appeal ref: APP/C3240/C/21/3284225

Ray Bow, Wren's Nest Lane, Ketley, Telford TF1 5HL

- The appeal is made by Mr John Perry under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Telford and Wrekin Council.
- The notice was issued on 13 September 2021 under reference No. ENF/2020/0686.
- The breach of planning control was: Without planning permission, the material change of use of the land from a mixed use of haulage yard, commercial garage, builders yard and the storage of plant/machinery, to a mixed use of storage and distribution of aggregates in connection with concrete pumping business, the storage and hire of plant and machinery and the siting of a residential mobile home; and the siting of 2 no. concrete silos.
- The requirements of the notice are:
 1. Cease the use of the land for storage and distribution of aggregates in connection with the concrete pumping business.
 2. Permanently remove from the land all vehicles, aggregate, plant, materials and the other items associated with the concrete pumping business.
 3. Permanently remove from the land the 2 no. concrete silos.
 4. Permanently remove from the land the residential mobile home.
- The period for compliance with the requirements is three months.
- The appeal was made on grounds (a), (c) and (g). Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of decision: The enforcement notice is quashed. The application for planning permission deemed to have been made is not considered.

Appeal site

1. The enforcement notice appeal site is located in Ketley, 2.6km south-east of Wellington and 2.8km north-west of Telford Town Centre.
2. The notice site forms part of the land associated with the dwelling, Ray Bow. Access to Ray Bow passes over land to the side of The Woodlands, a house fronting Wren's Nest Lane.

Appeal site uses

3. The Appellant, Mr John Perry, said an Established Use Certificate was issued in 1997 for the use of the site as a haulage depot and repair of in-house vehicles. Since his acquisition of the site in 2015 it had been used for the

haulage of aggregates, some of which were stored on the site. His current use was haulage of mixed aggregates for concrete production. Concrete was mixed off site in transport vehicles and at various development sites.

4. Mr Perry said the caravan had been on site since 2015. It was currently occupied by his son who provided on-site security to the premises. Ray Bow was a residential property that facilitated security within the site.

Planning unit

5. In my view, the enforcement notice plan fails to correctly show the extent of the appeal site planning unit. The Courts use the concept of the planning unit to determine the area of land to be considered when identifying the primary use of land, (and its ancillary uses), and whether any material change of use has occurred. In the case of *William Newland v SSCLG and Waverley BC QBD 22 December 2008*, HHJ Hickinbottom said the identification of the relevant planning unit was quintessentially a matter of fact and degree for the primary decision maker, (also see *Johnstone v Secretary of State for the Environment (1974) 28 P&CR 424* and *Church Commissioners for England v Secretary of State for the Environment [1995] 2 PLR 99*).
6. In the case of *Burdle v SSE [1972] 1 WLR 1207*, Bridge J. determined that there were three criteria to determine the planning unit:
 1. When occupier uses for single main purpose to which secondary activities are incidental, the unit of occupation to be taken as the planning unit.
 2. When a variety of activities none incidental or ancillary to the other, again consider the entire unit.
 3. When two or more areas occupied for substantially different purposes. Each area so used is a separate planning unit.

Bridge J. said: "*It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*".

7. I consider that the dwelling Ray Bow and its curtilage forms an integral part of the appeal planning unit. It is part of the same unit of occupation, used for the same mixed purpose. Also, access to the site passes alongside The Woodlands, over land that, in my view, should also have been included as part of the planning unit. In both cases, the land appears to have been used for the alleged mixed use; that is the storage and distribution of aggregates in connection with concrete pumping business, the storage and hire of plant and machinery and the siting of a residential mobile home, the siting of 2 no. concrete silos and the residential use of the Ray Bow dwelling.
8. I cannot add the dwelling, its curtilage and the affected The Woodlands land area to the enforcement notice plan. Especially where there is a ground (a) appeal to consider, where the cases for and against the development may be substantially different. Such a change to the notice would be likely to cause injustice to parties to the appeal. To incorporate the dwelling Ray Bow, its curtilage and part of The Woodlands land, would also considerably increase the area of affected land. The power to correct the notice cannot be used to

change the planning unit, where that could involve different arguments from those made as to the materiality or merits of a change of use.

9. I will therefore quash the enforcement notice. The appeal on grounds (a), (c) and (g) do not fall to be considered.

N.B. As I am quashing the enforcement notice, a problem with the description "siting of a residential mobile home" is not directly pertinent. But the term "siting of a residential mobile home" lacks precision. It could allege the unlawful storage on the land of a mobile home designed for residential occupation - a storage use. Or, as appears to be the case from the notice's first requirement and the representations made, the mobile home is used for residential purposes and for ancillary security purposes. It is not possible to know whether the stationing of the mobile home amounts to a material change of use without knowing the purpose for which it was used, and whether that purpose fitted in with the existing use of the land, (Restormel BC v SSE and Rabey [1982] JPL 785).

10. Whilst there is a duty on me to get the notice in order if I can, (*Hammersmith and Fulham LBC v SSE & Sandral* [1975] 30 P&CR 19), I consider the failure to correctly define the planning unit fatal to the notice. I therefore quash the enforcement notice.

FORMAL DECISION

11. The enforcement notice is quashed. The planning application by Mr John Perry deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out has not been considered.

John Whalley

INSPECTOR