



Appeal Decision

Site visits made on 31 August 2021 and 14 July 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022

Appeal Ref: APP/V4630/C/21/3272996

Land to the rear of 31 Blackwood Road and forming part of Foley Wood, Egerton Road, Streetly, Sutton Coldfield B74 3PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Patrick Bannister against an enforcement notice issued by Walsall Metropolitan Borough Council.
 - The notice was issued on 17 March 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change [of] the use of the land from open space woodland to use of land as a private residential garden.
 - The requirements of the notice are: (1) Cease the use of the land for the purposes of private residential garden; (2) Permanently remove from the land all domestic paraphernalia associated with its use for private residential garden, including but not limited to composting bins, CCTV cameras, grass, all planted bulbs, planted trees, including Leylandii, and any other domestic planting, etc; (3) Permanently remove from the land all fencing panels, trellis and posts, including green metal mesh fencing and posts, and any other fencing and all means of enclosure located on the north, east and south boundaries; and (4) Permanently remove from the land all materials arising from compliance with (1) – (3) and dispose of any waste materials generated from the works to a suitable facility licensed to accept these items.
 - The period for compliance with the requirements is: 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Act. Since an 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.
-

Decision

1. The appeal is invalid and no further action will be taken.

Application for Costs

2. An application for costs was made by Mr Patrick Bannister against Walsall Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. This appeal has been considered alongside 3 others¹ against notices alleging the material change of use of other parts of Foley Wood to private residential garden in view of the similar issues.

¹ APP/V4630/C/21/3272992, 3272993 and 3273209

The Validity of the Appeal

4. Section 174(1) of the Act restricts the right of appeal against an enforcement notice to “a person having an interest in the land to which an enforcement notice relates or a relevant occupier”. Section 174(6) of the Act defines a relevant occupier as a person who occupied the land by virtue of a licence when the notice was issued and who continued to occupy it when the appeal was brought.
5. Solicitors acting for Foley Woods Residents’ Association Limited wrote to the appellant on 8 August 2022, advising that the Residents’ Association had acquired the land known as Foley Wood, including the appeal site (“the land”). The letter states the Residents’ Association is now the registered owner of the land and has given the appellant notice to cease using it and to remove all fencing, lawns, planting, cameras, domestic paraphernalia and all his possessions from it. However, and while the appellant is understood to be taking legal advice, his right of appeal must be considered on the facts that applied when the appeal was made.
6. There is no evidence of an explicit licence, either written or oral, from any owner conferring the appellant the right to occupy the land when the notice was issued or when the appeal was made. An implied licence to occupy might have existed if an owner had acquiesced to it but no evidence of that has been presented. Consequently, it has not been shown that the appellant had a right of appeal as a relevant occupier of the land when the appeal was made.
7. While the appellant does not hold title to the land, an interest in land, in the sense meant by section 174(1), may not amount to legal ownership of that land. The courts have indicated that an interest in the land includes any legal or equitable interest but cannot be constituted by trespass². However, a person without title may gain an interest in land through adverse possession if they can be shown to have factual possession of that land and the requisite intention to possess it.
8. Factual possession signifies a degree of physical control and cannot be exercised by an owner and an intruder at the same time. The green metal mesh fencing and posts that the appellant erected prevent the land being entered by anyone other than him and those whom he allows to enter through his property. The erection of the means of enclosure may therefore be read as signifying the appellant’s intention to possess the land, as well as giving him physical control of it. Furthermore, he has placed signs on the outward facing side of the fence that clearly convey his intention to exclude all others, including any legal owner.
9. Accordingly, and as a matter of fact and degree, the appellant had physical control of the land and had stated his intention to possess it when the appeal was made. However, adverse possession may not necessarily amount to an interest in land in all instances. There is no evidence that the appellant’s control of the land or his intention to possess it pre-date the erection of the green metal mesh fencing and posts in April 2020. Any factual possession of the land, and requisite intention to possess, would therefore have been exercised and demonstrated for only a year by the time the appeal was made. This is considerably short of the 12 years that would be required for an interest

² R v SSE & South Shropshire DC (ex parte Davies) [1991] JPL 540 including citations of previous decisions

in the land through adverse possession to be certified in title. Furthermore, no equitable interest in the land has been demonstrated, for example through evidence to substantiate that the land is held in trust, or the existence of a lease.

10. Therefore, it has not been demonstrated that the appellant had title to the land, or a legal or equitable interest in it, or that he was a relevant occupier when the appeal was made.
11. For these reasons, I find that the appellant did not have a right of appeal when the appeal was made. Consequently, the appeal is not valid and does not fall to be determined. I shall therefore take no further action.

Mark Harbottle

INSPECTOR