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## Appeal Decision

Site visit made on 23 January 2023

**by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 February 2023**

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**Appeal Ref: APP/M4320/C/22/3301292**

**Orrell Hill Farm, Orrell Hill Lane, Ince Blundell, Liverpool L38 5DA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Derek Taylor against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 25 May 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last ten years, the unauthorised change of use of the land from agricultural to storage of buses, caravans and other non-agricultural vehicles.
- The requirements of the notice are to cease the use of the land for the storage of buses, caravans and other non-agricultural vehicles and remove all buses, caravans and other non-agricultural vehicles from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the 1990 Act as amended.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the use are not relevant and are not an issue for me to consider in the context of an appeal under Section 195 of the 1990 Act. I note the letters of support for the development, but I cannot take these into account since they concern the planning merits.
2. The plan attached to the enforcement notice shows the land in red, which comprises the access road, an area of tarmac and a further area of hardstanding. There were several buses stored on the land and within a large building, which adjoins the land directly to the north-east. This building is, however, excluded from the notice and is not subject to its provisions. Similarly, the Council is not seeking the removal of the hardstanding.
3. The appellant's evidence includes a lawful development certificate LDC (Ref DC/2020/00898, dated 2 September 2021) for the use of the land for parking three minibuses. This land lies outside that subject to the enforcement notice, immediately to the west of Orrell Hill farmhouse, so the LDC is of limited relevance.

4. The notice requires the removal of caravans along with the other vehicles specified. I note that planning permission was granted in 1983 for "the use of part of the land for the storage of approximately 22 caravans" (Ref S/18386). Limited details of that permission are provided and I unable to assess whether the use was instituted, nor that any relevant conditions were complied with and, hence, whether that permission remains extant.
5. I am mindful of Section 57(4) of the 1990 Act, which provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. However, it has not been shown that there is a lawful use of the land for the storage of caravans. Moreover, the Council has supplied a plan which shows the land subject to the enforcement notice is different to that on which the caravan storage use was granted. Accordingly, s57(4) could not be relied upon to permit the use of part of the land for the storage of approximately 22 caravans. It is not necessary or possible to correct the notice to protect lawful use rights, therefore.

### **The ground (d) appeal**

6. In order to succeed on ground (d), the appellant must show, on the balance of probabilities, that the matters alleged in the enforcement notice, that is the material change of use, have occurred for a continuous period of ten years or more, prior to the issue of the notice, such that it is too late for the Council to take enforcement action.
7. The appellant argues that the hardstanding has been present for more than ten years and has been used continuously for the matters alleged throughout the relevant period. Evidence includes written statements of truth from the appellant and from neighbours and local people, and other letters of support, stating that there have always been buses kept at Orrell Hill Farm since at least 2007/09, parked outside the house and on the hardstanding areas. In addition, a contractor states they repaired the track and fences at the site in 2008.
8. The statements have not been made, signed and witnessed in accordance with the Statutory Declarations Act 1835, which limits the weight I can attach to these statements. Furthermore, they are very limited in terms of their content. For example, they do not explain exactly where the vehicles were located, precise numbers and types of vehicle nor that they were stored on the land for a continuous period. This is important because, if there were breaks in the use, the Council would not have been able to take enforcement action during that period.
9. The supporting evidence is similarly limited. There are photographs of a school bus, and a coach, which appear to be located on the land. The dates (September 2011, October and December 2016) are handwritten as opposed to being embedded within the image so cannot be verified. Further images of coaches, caravans, trucks, minibuses and buses are supplied but it is unclear from the images where they were located and, again, the dates are either handwritten or the images are undated and cannot be verified.
10. Screenshots from social media have been provided, which contain embedded dates, but the vehicles shown are not on the site. The commentary indicates the vehicles were stored at Orrell Hill Farm but it is unclear where, when and

for how long. An aerial photograph dated 2009 does not assist since it does not show the land in question. Correspondence from the Parish Council, dated 2007 and 2008 concerns the development of buildings and, whilst the storage of vehicles at the site is mentioned, the details are very limited.

11. The Council has provided images from 'Google Earth Pro' with embedded dates. These suggest the large area of hardstanding was laid between 2016 and 2018, and the access road was installed between 2018 and 2019. This evidence contradicts the appellant's version of events and this has not been adequately explained.
12. Overall, the appellant's evidence is imprecise and ambiguous. It does not show, on the balance of probabilities, that a material change of use of the land for the storage of buses, caravans and other non-agricultural vehicles occurred ten or more years prior to the date of the enforcement notice, and continued as such without significant interruption, such that it is too late for the Council to take enforcement action.
13. The appeal on ground (d) fails, therefore.

### **The ground (g) appeal**

14. The ground (g) appeal is that the period for compliance falls short of what should reasonably be allowed. I accept that it may be difficult for the appellant to acquire or rent an alternative site within the three months required by the notice. However, I am mindful of the ongoing harm to the Green Belt resulting from the unauthorised development. I consider that a compliance period of six months would be appropriate. While this is less than the nine months sought, I find it to be reasonable and proportionate in this instance.
15. The ground (g) appeal succeeds to this extent.

### **Conclusion**

16. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall vary the enforcement notice prior to upholding it.

### **Formal Decision**

17. It is directed that the enforcement notice is varied by the deletion of three months and the substitution of six months as the period for compliance. Subject to the variation, the enforcement notice is upheld.

*Debbie Moore*

Inspector