



Appeal Decisions

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 May 2023

Appeal A Ref: APP/D3450/C/22/3297044

Appeal B Ref: APP/D3450/C/22/3297045

Appeal C Ref: APP/D3450/C/22/3297046

Lane End Farm Cowall Moor Lane, Lask Edge, Biddulph, Staffordshire, ST13 8QL

- These appeals are made under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Staffordshire County Council.
 - The notice, numbered 1070 W Lane End Farm, was issued on 15 March 2022.
 - The breach of planning control as alleged in the notice is the material change of use from agriculture to a mixed use of agriculture and the importation, depositing, screening, sorting, recycling and exporting of soil, earth, construction and demolition waste including the construction of related hardstanding, concrete wall and bays.
 - The requirements of the notice are to: a) Cease the importation and deposition, screening, sorting and recycling of any waste material on the Land. b) Remove all waste material as referred to in Paragraph 3 of this Notice from any part of the Land to a site lawfully permitted for the acceptance and/or disposal of waste. c) Remove the concrete wall, bays and hardstanding on which the waste material and associated plant are sited in the approximate location indicated in yellow on Plan 1 dated March 2022, and dispose of the materials at a site lawfully permitted for the acceptance of these materials.
 - The periods for compliance with the requirements are: 1 day for Requirement 5a), 12 weeks for Requirement 5b) and 16 weeks for Requirement 5c).
 - The appeals are proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the entirety of paragraph 6 and the substitution of 6 months as the period for compliance for requirements 5 a), 5b) and 5c).
2. Subject to the variations, the enforcement notice is upheld.

Ground (d)

3. An appeal on this ground is on the basis that, at the date that the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by the matters stated in the notice. As the notice alleges a material change of use of the land the relevant time period is 10 years beginning with the date of the breach. The appellant must therefore prove on the balance of probability that the alleged use began before 15 March 2012 and continued substantially uninterrupted thereafter.
4. The appellants have provided 3 statutory declarations (from one of the appellants and two other people) which each state that the site has been used for the importation, depositing, screening, sorting, recycling and exporting of soil, earth, construction and demolition waste since 2006. No further details regarding the specific type or extent of the use are provided.

5. Each of these declarations states that 'the area marked in red on the attached plan are yards' used in the business, but the plan does not identify specific parts of the land but shows the whole of the site as it appears on the plan attached to the notice. The aerial photographs seem to show that large parts of the site remain green, and therefore do not appear to be 'yards' as referred to in the declarations.
6. The statutory declarations state that the associated hardstanding, concrete walls and bays have been in place since 2018. Caselaw holds that an enforcement notice directed at a breach of planning control by the making of an unauthorized material change of use may lawfully require the land or building in question to be restored to its condition before that change of use took place, by the removal of associated works as well as the cessation of the use itself – provided that the works concerned are integral to or part and parcel of the unauthorized use.¹ It will depend on the circumstances of the case but it is clear from the appellant's evidence that they accept that the operational works were undertaken to facilitate the material change of use, and not for a different lawful use. The relevant time period to apply in relation to these works is therefore 10 years (as facilitating the change of use) and not 4 years as separate operational development.
7. Planning practice guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
8. Whilst the appellant has provided evidence that the alleged use commenced in 2006 these are simply bald statements regarding the use and not sufficiently detailed to prove that use on balance. The corroborating invoices and photographs (including the aerial photographs) are not clear as to the actual scale and type of use that was taking place on the land, and in any event do not show a use over the required 10 year timescale but relate to only a few isolated dates. The invoices in fact relate to a 'Plant Hire, Groundwork & Septic Tank Contracting Services' rather than a waste service, and whilst one appears to refer to the removal of soil neither record that any waste was being taken to land.
9. It is evident that there has been a long history of enforcement at the site but this in itself is not sufficient to show that the material change of use happened at a particular time or continued uninterrupted at the same level. The photographs provided by the Council do not show the use over a ten year period.
10. Overall, the appellant has not therefore proven on the balance of probabilities that the alleged use began before 15 March 2012 and continued substantially uninterrupted thereafter, and the appeal on ground (d) fails.

¹ Kestrel Hydro v SSCLG & Spelthorne BC [2016] EWCA Civ 748

Ground (g)

11. The appellant seeks an extension of the period for compliance to 6 months in order to have sufficient time to find a suitable alternative site from which to operate his business. The Council has objected to this but has not provided any supporting reasons, and I find that it is proportionate in this case to extend the time to 6 months for the reason requested.

Zoë Frank

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/D3450/C/22/3297044	Mr Ian Dowley
Appeal B	APP/D3450/C/22/3297045	Ms Linda Dowley
Appeal C	APP/D3450/C/22/3297046	Ms Anna Dowley