



Appeal Decision

Inquiry held on 6, 7 and 8 February 2024

Site visit made on 6 February 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22/02/2024

Appeal Ref: APP/L1765/C/23/3330757

Land at Blanchard Wells Ltd, The Meadows, Forester Road, Soberton Heath, Hampshire SO32 3QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Andrew Wells of Blanchard Wells Ltd against an enforcement notice issued by Winchester City Council.
- The notice was issued on 7 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to storage (B8); together with operational development which facilitates the change of use of the Land.
- The requirements of the notice are:
 - i. Cease the storage (B8) use of the Land.
 - ii. Remove all materials, machinery, vehicles, and items related to the unauthorised use (B8 storage) from the Land.
 - iii. Remove the fencing from the south east boundary of the Land, and any fencing within the red line on the attached plan.
 - iv. Break up and remove any hardstanding from the Land and restore the Land to its original levels.
 - v. Remove any resultant waste from the Land.
 - vi. Lay topsoil and seed with grass on the Land to reinstate the Land to its former level and condition.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended. 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.

Summary of Decision: The appeal is allowed, and the corrected enforcement notice is quashed as set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. The appellant's claim that the enforcement notice (the Notice) is a nullity was withdrawn during the Inquiry. However, it is incumbent upon me to put the enforcement notice (the Notice) in order. I find several of the requirements lack the required precision to ensure that anyone reading the Notice would know exactly what they are required to do to remedy the breach of planning control alleged.
2. Regarding 5. iii. of the Notice, the Council conceded that there was no fencing located 'within the red line [shown] on the attached plan'. These words are therefore superfluous and shall be deleted.
3. Staying with 5. iii., the plan attached to the Notice (the Plan) is an Ordnance Survey map, containing a north point. As such, anyone familiar with such maps would be able to identify the south east boundary without difficulty. However, a

person unfamiliar with such maps may find it difficult to identify which is the south east boundary and thereby the fence that needs to be removed. Precision and clarity can be achieved by amending the Plan so the south east boundary is identified with a blue line and adding points 'A' and 'B' to delineate the section of fence to be removed. Further, the wording of 5. iii. shall be varied to read "Remove the fencing from the south east boundary of the Land, highlighted in blue, and located between points A and B, as shown on the attached Plan."

4. Turning to 5. iv., there is no imprecision regarding what hard standing needs to be broken up and removed. However, in respect of restoring the land, it is unclear whether 'original' means immediately preceding the alleged breach of planning control or some other point in time. Also, the use of the word 'levels' implies the land originally had more than one level. There is nothing in the Notice to identify what those 'levels' were. Someone trying to comply with the Notice would not therefore know what level or levels of the restored land had to be achieved. I am satisfied that breaking up and removing the hardstanding would be sufficient to remedy the alleged breach. The second part of requirement 5. iv. shall therefore be deleted for clarity.
5. There is no evidence before me to show that the land was sown with grass before the alleged breach of planning control occurred. The Council conceded that requirement 5. vi. goes beyond what is required to remedy the breach of planning control and it shall be deleted.
6. The variations set out above reduce what the appellant is required to do to comply with the Notice. As such, no injustice would arise, and I shall exercise my power under s176(1)(b) of the 1990 Act¹ and vary the Notice accordingly.

Preliminary Matters

7. The appellant's ground (e) appeal and the Council's reasons for issuing the Notice relating to notable trees and noise affecting the living conditions of neighbouring occupiers were withdrawn before the Inquiry opened. Appeal reference APP/L1765/W/23/3330762 (the s78 appeal), made against the Council's refusal of planning permission for use of land as an extension to the existing builder's yard², was withdrawn during the Inquiry.
8. The Inquiry was scheduled to sit for 4 days but concluded after 3 days. An accompanied site visit took place on Day 1. Oral evidence relating to grounds (b), (c), (d), (f) and (g) was heard on Days 2 and 3 of the Inquiry. The appellant and his factual witnesses gave oral evidence to the Inquiry under affirmation. Further to hearing from the appellant's witnesses and Mr Fletcher for the Council on these grounds, the appellant's case on grounds (a), (c) and (g), and the s78 appeal were withdrawn.
9. For clarity, the matter remaining before me for determination is the enforcement appeal on grounds (b) and (d).

The appeal on ground (b)

10. An appeal on this ground is that the matter alleged has not occurred as a matter of fact. The onus is on the appellant to show, on the balance of

¹ Town and Country Planning Act 1990 as amended

² Application reference: 22/01986/FUL dated 5 September 2022 was refused on 12 June 2023

probability, that a material change of use of the land to storage (B8) has not occurred.

11. Where a material change of use is alleged and whether it has occurred is disputed, it is necessary to identify the extent of the planning unit. The appellant clarified for the Inquiry that while the lawful builder's yard and the appeal land are registered under two Land Registry Titles, in two different company names, he is the sole director of both companies. The appellant went on to confirm both the lawful builder's yard and the appeal land have only been occupied and used by the appellant's business since their purchase in 2002.
12. Having regard to *Burdle*³, the principal authority on identifying the planning unit, I find there is a single main purpose to the occupier's use of his land to which secondary activities are incidental or ancillary. As such, the builder's yard and appeal land forms a single planning unit. The agreed Statement of Common Ground confirms the appellant and Council concur with my finding on the planning unit.
13. The appellant's witnesses of fact, in conjunction with their Witness Statements, and photographic evidence contained in Mr Green's Proof of Evidence show the appeal land has been used in conjunction with the builder's yard since before it was purchased. They also show that the appeal land has been used only for purposes ancillary and incidental to the use of the adjoining builder's yard. Based on this evidence the Council conceded that the appellant has shown, on the balance of probability, that the storage (B8) use had not occurred as a matter of fact and I see no reason to disagree.
14. The appellant's case turns on the fact the land has been used as an extension of the builder's yard since before it was purchased. While the Council's written case does not address the use as an extension to the builder's yard, based on the witness evidence and the photographic imagery available, they conceded the land was being used as an extension to the builder's yard before the Notice was issued. The main appeal parties agree that a material change of use of the land to use as an extension of the builder's yard had occurred as a matter of fact. Both confirmed my correction of the allegation to this affect would not cause them injustice.
15. Interested parties' evidence does not relate directly to the matter being alleged. Furthermore, statements made at the Inquiry confirm that the land has only been used by the appellant's business. Interested parties would not therefore be prejudiced by my correction of the notice in the terms described above.
16. The appeal succeeds on ground (b) to the limited extent that the allegation shall be corrected.

The appeal on ground (d)

17. An appeal on this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the corrected breach of planning control which may be constituted by those matters. It is for the appellant to show, on the balance of probability, that the use as an extension to the builder's yard had occurred on or before 7 September 2013 (the material

³ *Burdle v SSE* [1972] 1 WLR 1207 (Div Court)

date) and continued for a period of at least 10 years without significant interruption. Any 10-year period is relevant.

18. The witness statements and oral evidence given to the Inquiry by Mr Wells, Mr Thomas, Mr Snelgrove, Mr Lemington and Mr Pearson is consistent in confirming the use of the appeal land for incidental and ancillary purposes to the builder's yard throughout the times they have either worked or been a regular visitor to the property. The witnesses' personal knowledge of the appeal land dates to 2002, just before the property was purchased. I give this evidence significant weight.
19. As mentioned above, a raft of aerial imagery and site photographs has been provided. There is no dispute that the earliest of the aerial images is dated 26 June 1999 and shows the appeal site hard surfaced, with a storage building and items stored within it. While the extent of the overgrowth of the hard surfacing changes over time, due to fluctuating usage, subsequent aerial imagery continues to show the land used for incidental and ancillary purposes to the builder's yard. These images also add credibility to evidence provided by the appellant's witnesses. Photographic images may only provide a snapshot in time, however in this case the content of the images is sufficiently consistent with other evidence for me to attribute significant weight to them.
20. Interested parties have provided no evidence to show that the appeal site was being used otherwise as described by the corrected allegation. Furthermore, the Council has no evidence of its own to contradict the appellant's version of events. The Council conceded that the appeal land has been used as an extension to the builder's yard for more than 10 years, without significant interruption. For the reasons set out above, I see no reason to disagree.
21. The appeal on ground (d) succeeds and the corrected notice shall be quashed.

Formal Decision

22. It is directed that the enforcement notice is corrected and varied by:

In section 3. THE BREACH OF PLANNING CONTROL ALLEGED, delete all the words and substitute the words "Without planning permission, the material change of use of the Land to use as an extension of the builder's yard."

In section 5. WHAT YOU ARE REQUIRED TO DO, in iii. delete all the words and substitute the words "Remove the fencing from the south east boundary of the Land, highlighted in blue, and located between points A and B, as shown on the attached Plan." In iv. delete the words "and restore the Land to its original levels." And delete "vi. Lay topsoil and seed with grass on the Land to reinstate the Land to its former level and condition." in its entirety.

The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

Subject to the corrections and variations, the appeal is allowed, and the enforcement notice is quashed.

M Madge

INSPECTOR



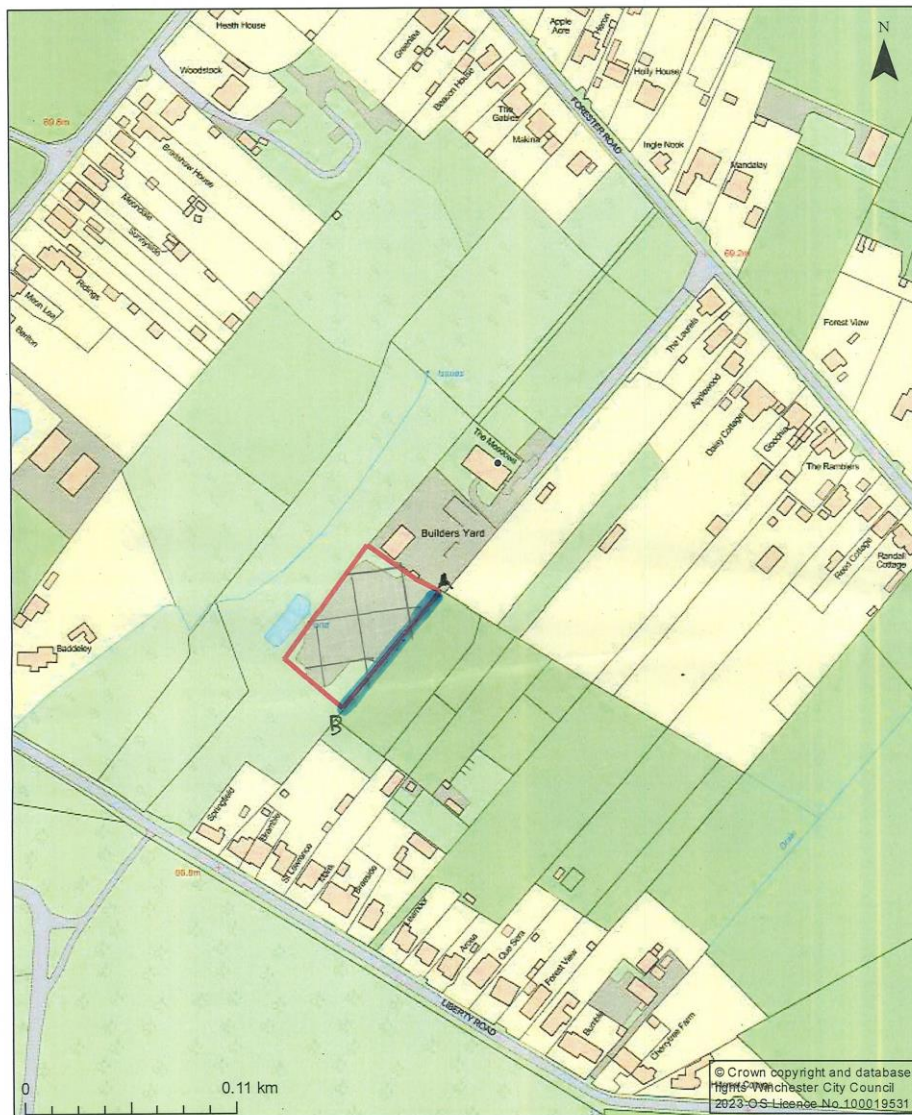
Amended Plan – February 2024

This is the plan referred to in my decision.

by **M Madge Dip TP MA MRTPI**

**Land at: Blanchard Wells Ltd, The Meadows, Forester Road, Soberton Heath,
Hampshire SO32 3QG**

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd Counsel, instructed by Green Planning Studios Ltd (GPS)

He called:

Mr Mark Wells Appellant

Mr Matthew Thomas Factual Witness

Mr Kevin Snelgrove Factual Witness

Mr Jamie Lewington Factual Witness

Mr James Pearson Factual Witness

Mr Matthew Green Director, GPS

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Barber Counsel, instructed by Winchester City Council (WCC)

He called:

Mr Mark Fletcher Principal Enforcement Officer, WCC

He did not call:

Ms Rose Chapman Principal Planning Officer, WCC

Ms Zoe Kee Principal Ecologist/Biodiversity Officer, WCC

INTERESTED PARTIES:

Mr Neil Findlay Soberton Parish Council

Mrs Rosanne Walmsley

Mr Andrew Wisniewski

Mr Peter Hewitt

Mrs Carol Hewitt

Mr Jonty Sherwill

DOCUMENTS – Submitted during the Inquiry

- ID1 Suggested Conditions
- ID2 Mr Neil Findlay's Statement on Behalf of Soberton Parish Council
- ID3 Mrs Carol's Photographs
- ID4 Appeal Decision APP/L1765/A/10/2136749, C/10/2140425, A/10/2142569 & A/10/2142564
- ID5 Agreed & Signed Statement of Common Ground
- ID6 Amended Enforcement Notice Plan