The Planning Inspectorate

Appeal Decisions

Inquiry held on 21-22 May 2024

Site visit made on 22 May 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Appeal A Ref: APP/N0410/X/23/3334371
Gladwins Wood, Pinstone Way, Denham, Buckinghamshire., SL9 7BJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Gladwins Storage Limited against Buckinghamshire Council - South Area (South Bucks).
- The application ref PL/22/3700/EU is dated 28 November 2022.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is to confirm the erection of buildings (operational development) on the site for in excess of 4 years.

Appeal B Ref: APP/N0410/C/21/3285729
Land at and around Gladwins Wood, Pinstone Way, Tatlin End , Denham, Bucks, SL9 7BJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr James Turner against an enforcement notice issued by Buckinghamshire Council - South Area (South Bucks).
- The notice was issued on 20 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change in use of the Land to a Sui Generis mixed use comprising:
  a. The storage of building materials and builders' waste;
  b. The deposition of mixed non-inert and inert waste materials,
  c. The stationing of assorted storage containers for sorting, storage and export of assorted salvaged waste materials comprising timber, wood, white goods, electrical goods, building materials, porcelain, metal and tyres;
  d. The stationing of assorted shipping containers, containers and vehicle bodies for storage;
  e. The storage and distribution of scaffolding materials;
  f. The parking, storage and repair of heavy good vehicles and cranes in association with haulage operators;
  g. The storage, renting and leasing of construction and civil engineering machinery and equipment;
  h. The storage of vehicles and caravans;
  i. The storage of tyres;
  j. The breaking of vehicles and storage of vehicle parts in the open and in storage containers;
  k. A builder's yard comprising the storage of plant, vehicles, machinery, builders' materials and portable toilets, and;
  l. The laying of hardstanding, concrete bases, fencing, walls and bunding associated with the unauthorised mixed use.
- The requirements of the notice are:

5.1 Save for the areas shaded grey and crossed as shown on Plan 1, attached to this Notice, cease the use of the Land for:

i) The storage of building materials and builders' waste
ii) The deposition and disposal of mixed non-inert and inert waste materials
iii) The stationing of assorted shipping containers, containers and vehicle bodies for storage
iv) The storage and distribution of scaffolding materials
v) The parking, storage and repair of heavy goods vehicles and cranes in association with haulage operators
vi) The storage, renting and leasing of construction and civil engineering machinery and equipment
vii) The storage of vehicles and caravans
viii) The storage of tyres
ix) The breaking of vehicles and storage of vehicle parts in the open and in storage containers
x) A builder's yard comprising the storage of plant, vehicles, machinery, builders' materials and portable toilets;

5.2 Save for the areas shaded grey and crossed as shown on the Plan 1, attached to this Notice, remove from the Land:

i) All deposited building materials and builders waste
ii) All deposited mixed non-inert and inert waste materials
iii) All general waste, including but not limited to timber, wood, white goods, electrical goods, insulation materials, porcelain, boards, scrap metal, plastics, tyres and vegetation
iv) All shipping containers, storage containers and vehicles
v) All lorry bodies & caravans
vi) All scaffolding materials and scaffold structures
vii) All portable toilets
viii) All plant, heavy goods vehicles, trailers, cranes, construction and civil engineering machinery and equipment
ix) All tyres stored on the Land
x) All vehicles and vehicle parts stored on the Land
xi) All hardstanding, concrete bases fencing, bunds, and walls which facilitate the unauthorised mixed use, specifically within the red hatched areas indicated on the attached Plan 2.

- The periods for compliance with the requirements are: In relation to requirements 5.1 i) & ii) these uses should cease within 1 month after this Notice takes effect. In relation to the requirements 5.1iii) – x) these uses should cease within 3 months after this Notice takes effect. In relation to the requirements 5.2 iii) – x) the removal of all items should be carried out within 6 months after this Notice takes effect. In relation to the requirements 5.2 i), ii) & xi) the removal of all items should be carried out within 12 months after this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (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.

Decisions

Appeal A: 3334371 – The LDC

1. The appeal is dismissed.

Appeal B: 3285729 – the Enforcement Notice

2. It is directed that the enforcement notice is varied by: the deletion of the words "and walls" from requirement 5.2(xi); and the deletion of "3 months" from the time for compliance in relation to the requirements 5.1iii) – x) and

their substitution with the words "6 months". Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Applications for costs

3. Applications were made by both parties and are dealt with in a separate letter.

Preliminary Matters

4. The ground (a) appeal was withdrawn from the enforcement notice appeal which proceeded only on grounds (e), (b) and (g).

Background to the Appeals

5. The appellant and his brother have been operating a business from Gladwins Wood for many years. The wood itself is protected by a TPO and is a registered ancient woodland and sits along the east side of the M25 between Gerrards Cross and Denham within the green belt.

6. There is a considerable history of enforcement action and I shall rehearse the relevant elements here. Originally it was a nursery and in 2000 various enforcement notices were issued concerning the use of a building as a dwelling, its extension and erection of polytunnels. These were appealed and the appeal decision notes that any horticultural activity was low key and upheld all the notices. The dwelling on site today is the same dwelling, and its use for residential purposes is therefore unlawful as the 2000 enforcement notices are still in force.

7. Between 2000 and 2009 various applications for horticultural uses were refused and in 2009 an LDC for vehicle and container storage was also refused. This led to an enforcement notice being issued in 2013 as the container use had intensified. This was upheld on appeal, but the appeal decision was quashed in the High Court. Before it could be redetermined the appellant came to an agreement with the Council who amended the notice and the appeal was withdrawn. The amended notice allowed the use of two areas of the site close to the current entrance, an area edged in yellow and one in green, for the stationing of containers, motor vehicles, builder's materials and waste. These are very small areas as can be seen from a s106 that was also entered into that described exactly what could be done in these areas. The yellow area could be used for 4 large or 8 small containers or 9 lorries while the green area could be used for 6 large or 12 small containers or 14 lorries.

8. The current site is huge and contains dozens if not 100s of containers as well as compounds for plant hire, builder's yards and many scaffolding companies. It has expanded massively from the very limited lawful use allowed by the 2013 notice which is still in force. This huge mixed use site was attacked in 2020 by another enforcement notice which was then withdrawn as it had not been served with the correct plan. The follow-up notice was issued in September 2021 and is subject to this appeal. In 2022 an application for an LDC for various buildings (called scaffold towers) was made and an appeal lodged against non-determination, which is also being dealt with today.

Main Issues

9. I shall deal first with LDC appeal and then the enforcement notice. For the latter I shall deal first with the nullity argument. Then the ground (e) appeal

and finally the grounds (b) and (g). There is also the question of whether the scaffold towers are included within the requirements of the notice and this depends on the correct application of the Murfitt Principle.

Appeal A – The LDC

10. It is agreed between the parties that the scaffold towers are buildings. This is not necessarily a finding I agree with, as I shall make clear, but it is the basis on which I have considered the appeal. Therefore the relevant date is 4 years prior to the date of the application, which is November 2018.

Contrary to the 2013 notice

11. Various reasons why a certificate cannot be issued are put forward by the Council. Firstly that the scaffold towers are prohibited by the requirements of the still in force 2013 enforcement notice. The amended requirements of the notice were "*save for The Areas shaded grey and crossed as shown on the Plan, cease the use of the Land for the storage of and remove from the Land motor vehicles, containers, building materials, waste and equipment and other non-horticultural and/or forestry materials*". The areas shaded grey and crossed are the same as the yellow and green land from the s106.

12. The Council suggest that the scaffold towers are 'building equipment', and so fall within the ambit of the requirement. I accept that scaffolding is part of the equipment used by a builder to help erect a building but the requirement needs to be read as part of the enforcement notice as a whole which deals with, amongst other things, "*the storage of builders/building materials, waste and equipment*". Ordinarily a builder's yard would have some scaffolding lying around which would come within the ambit of this notice. But a scaffolding business is a different entity and a different sui generis use. I think it would be stretching the meaning of the words in the requirement to include the scaffolding being stored within a scaffolders' compound. Consequently it is an even further stretch for it to include the building within which the scaffolding is stored, even though that building is made up of scaffolding.

Contrary to Section 191(2)

13. The second point made by the Council is that the LDC was applied for after the issue of the enforcement notice. Even though the notice itself is 'not in force' because of the appeal, the second bite provisions mean that a notice can still be issued and so an LDC cannot be granted. In this I agree they are correct and an LDC cannot be issued. The legal position is summed up neatly in a recent appeal decision[1] provided by the Council. A Certificate can only be issued for uses or operations if both limbs of s191(2) are satisfied. 191(2)(a) is that "*no enforcement action may be taken in respect of them*". Although the current enforcement notice is not in force due to the appeal, the second bite provisions enable a Council to issue a further enforcement notice, not least to prevent them running out of time as the 4 year clock ticks away. Thus enforcement can be taken in respect of the scaffold towers and the requirements of s191(2)(a) are not met. It doesn't matter how likely this chain of events is, it is simply a fact of the way the Act is drafted.

14. The appellant argues that even if this is the case, the current notice – which could be re-issued under the second-bite provisions – does not bite on the

[1] APP/X1118/X/20/3255935 Issued 1 December 2020

scaffold towers in any event. For reasons given below, I disagree and consider that the requirements of the notice do lawfully mean the removal of the scaffold towers as well as the scaffolding items stored within them. It doesn't matter that the scaffold towers are not specifically part of the allegation, they are included within the notice via the requirements and so enforcement action can still be taken against them.

Substantial completion

15. However, if I am wrong on this, the final point concerns substantial completion. The scaffold towers need to have been substantially complete by November 2018. The Council argue they were not. There are a number of different scaffolding compounds within the site but not all are covered by roofs. Of those that are seven are subject to the LDC application labelled I, K, L, M, N, O and P. I was informed at the inquiry that when a scaffold company takes up a lease at the site they will, if they so desire, construct a roofed shelter out of scaffold materials. This can be extended if the business grows or be reduced in size accordingly. When they leave the site they will usually sell the shelter to the next company moving in. These can be substantial structures and take many days to erect. However, from the aerial photographs and evidence from witnesses at the Inquiry it is clear they do change in size and position sometimes quite markedly. The Council argue they are in fact never substantially complete and I have some sympathy with this view. The difficulty of pinning down exactly what any individual structure looked like across its 4 years suggests to me it may not actually be a building at all. Especially as they do not appear to be fixed to the ground. Nevertheless, treated as buildings it is difficult to say when they were complete.

16. The Council provided two detailed aerial photographs from 2019 and 2022, both within the 4 year period. In 2019 building I didn't exist, but there was a smaller roofed shelter to the north. In 2022 the latter shelter had gone and building I was in place. Incidentally taking the place of several trees. Building P was in existence in 2019 but about half the size it was in 2022. Building L didn't exist at all in 2019 and half of it was there in 2022. Buildings K and M didn't exist in 2019 but were there in 2022. Building O is a substantial 'L' shaped structure. One leg of the 'L' was in place in 2019 but not the second. Of that first leg it had increased in length by about a quarter in 2022. Finally to building N where a small structure is visible in 2019, but this has been incorporated into a much larger building by 2022. Although the LDC is for the small structure only, it cannot be said to have continued to exist independently through the 4 years as it was subsumed within the larger 2022 building.

17. The appellant suggested that as some of the scaffold towers were constructed around a tree, and others were next to trees, the leaf canopy may have hidden them from view. This is clutching at straws. The aerial photograph for 2022 is taken in March when there is little leaf cover and with a low sun the shadows of the tree trunks can be clearly seen on the roofs of the buildings. In 2019 it is June but even then, there are clear gaps between the trees where the buildings are alleged to stand and either ground or vehicles and other materials can be seen. I have no doubt the aerial photographs provide a clear picture of what was happening on the site.

18. This evidence on its own is sufficient to suggest to me that on the balance of probabilities none of these buildings have been in place for 4 years. It

supports the Council's argument that it is difficult if not impossible to pin down when such a building is completed as they are subject to significant fluctuations in size and position, presumably depending on the needs of whoever occupies them at that time. Despite their seeming size and permanence when viewed from the ground, it is clear they are neither permanent nor difficult to erect, re-erect or remove entirely. Consequently, for this reason also, the certificate as applied for cannot be issued. I shall dismiss Appeal A.

Appeal B – The Enforcement Notice

Nullity Arguments

19. The appellant argues that the plans provided with the current notice were incorrectly labelled and to correct them would be an injustice to the appellant. It was never explained why the appellant would suffer an injustice sufficient to render the notice a nullity, as he was at the inquiry and clearly had no trouble working out which plan was which. In fact the labelling problem was limited to the omission of the number '1' from plan 1. Two plans were attached to the notice one was labelled "plan" and the other "plan 2". In opening I suggested it did not take a genius to work out which was meant to be plan 1 but the appellant pursued this argument and the professional agent claimed to have no idea what 'plan 1' referred to. This is clearly a nonsense, not least because plan 1 was simply the outline of the site in black (which is what was shown on "plan") and plan 2 was crosshatched in red (referring back to a requirement on the red hatched land) and showed the two, small 2013 green and yellow areas as either crossed or shaded in grey.

20. The second plan, correctly labelled 'plan 2' is thus the only important plan, plan 1 merely outlining the site, which was repeated on plan 2 in any case. I think the omission of the number 1 from the plan is so minor and of so little importance I do not even need to 'correct' the notice. It is perfectly explicable as it stands.

The Appeal on Ground (e)

21. This ground is that the notice was not served on the occupiers of the site, who were thus denied the opportunity to make their own appeals and have suffered injustice as a result. Consequently the notice should be quashed and re-issued.

22. It was never clear how many persons or companies occupied the site. More than 56 the appellant claimed, but there were also dozens of people renting containers. A PCN was, belatedly, issued by the Council to find out and a plan was attached to the response, but this is completely unclear. As a lot of the occupiers do not have a tenancy agreement and Mr Turner, by his own admission, has as little to do with the occupiers as possible, I'm not sure that even the Turners know exactly who and where the occupiers are.

23. The Council issued the notice in 2021 and, in addition to the appellant and various member of his family who are also involved in the business, sent copies to 29 different companies who they believed occupied the site. Once the appeal had been lodged and the ground (e) made the Council contacted the appellant twice, asking for an up to date list of occupiers. Mr Rowe explained that the appellant instructed him to ignore those letters. Eventually a PCN was issued and responded to in April 2024 with a list of 90 companies, many of

whom seemed to be the same (such as Invest Scaffolding , Invest Construction and Invest Brickwork for example) plus a further 65 who it seems rented containers on the site. Many of these latter names were just 'Sam' or 'Ardit'.

24. Of the 90 main companies 57 were listed as being in occupation when the notice was served but who did not receive a copy of the notice. 12 were listed as being in occupation who did receive a copy of the notice and 19 were not in occupation and did not receive a copy of the notice and 2 have no information by their names.

25. I agree with the appellant had the Council issued a PCN before issuing the notice this argument could have been avoided. The Council point out the appellant had ignored a PCN in the past and has been obstructive and unhelpful all through the process, but at least had they tried they could not be blamed for later missing people out. Nevertheless, it seems it would have been very difficult to pin down exactly who was in occupation on the date the notice was issued as the occupiers are constantly changing. The Council thus relied also on attaching a copy of the notice to the entrance gates of the site. They have photographic evidence of having done so. The appellant says that gypsies from the nearby site always remove planning documents from the site within an hour of them being put up. Why they should do so is unclear and there is no evidence for this. Particularly as the second entrance gate is down a long track through the woods.

26. The appellant monitors both gates with CCTV and claimed he had a look on the day the notices were posted and couldn't see them. He suggested they were never put up. However, the evidence is clear that they were. Equally he had no CCTV evidence of the gypsies taking them down.

27. Two occupiers have written in to say they didn't receive a copy of the notice. One, from MJL Contracts, says if they had known they would definitely have appealed, and one from a person renting a shipping container simply saying he didn't know about the notice. How confusing this is, is shown by the separate list taken from the appellant's statement of case of 56 companies who were present in 2021 and didn't receive a copy of the notice which doesn't include MJL Contracts, although they say they arrived in September 2021 and are included in the PCN list.

28. Finally the Council did send letters to as many of the 57 occupiers listed on the 2024 PCN as they could find. They noted that none of them showed the site as their address. 17 could not be found at all, two did not exist in 2021 and two had been dissolved before the notice was issued. Again this suggests the lists of occupiers provided in response to the PCN or to the Inquiry have never been fully accurate and supports my view that the appellant himself has difficulty in keeping track of what is going on.

29. The argument is solely about the 'occupiers' of the site. There is no dispute the appellant knew about the notice and there are no other persons with an interest in the land. I agree that those renting containers are not occupiers of the land but more akin to clients of a storage company. This leaves the 57 larger entities who, presumably, rent compounds of various sizes. Some of them were directly sent copies of the notice and so knew about the enforcement action. Those who were not directly sent were, according to the Council, covered by s329(2) of the Act which provides for service to those whose names are unknown. A notice is taken to be duly served if

s329(2)(b)(ii) "*it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises*". In my view, and given the difficulties of ascertaining who was on the site, the occupiers were duly served by fixing the notice to the entrance gate. I have no reason to doubt this was done by the Council and given the number of vehicles passing in and out as I saw on my site visit and when walking the public footpath close to the gates on a different occasion, I find it hard to accept that gypsies could sneak up and remove the documents, even if they wanted to, without being seen.

30. The appellant argues that fixing the notice to the gate is not the same as fixing it to the occupiers' premises. I assume he is arguing the Council should have entered the site and fixed a notice outside every compound. Setting aside the fact the appellant would have been unlikely to give permission for the Council to enter the site unless required to do so by law, in my view that is not what is required. The premises are the appeal site which is a single planning unit. Within it are numerous compounds but they do not comprise individual 'premises' in terms of the Act. It is quite normal for an enforcement notice to be fixed to the gates of a large site in mixed use so this argument has no weight.

31. However, if I came to a different view, the question still remains as to whether the occupiers were substantially prejudiced. MJL Contracts did say they would appeal, but they didn't provide any representations to the current appeal or explain what they would have appealed about. In fact not one of the very many 'occupiers' provided any representations or turned up at the inquiry, despite the fact that, eventually, they all did know about the Inquiry. An appeal was made by the appellant which up until the last minute included a ground (a). The appellant withdrew that without explanation, and the explanation they did give as part of the Council's costs claim suggested they decided, wisely in my view, they did not stand a chance of success. It is difficult to see what prejudice therefore any of the occupiers suffered. The appeal on ground (e) fails.

The Appeal on Ground (b)

32. The notice contains a lengthy allegation divided into 12 parts. The appellant argues that some of those matters alleged have never taken place, some have taken place but prior to the issue of the notice and there are other uses that should have been included but weren't. The appellant's initial stance was that there were so many deductions and additions that they could not be made without causing an injustice to the appellant. However, his planning agent accepted in cross-examination that neither the removal of some items or the addition of others would cause an injustice. The latter as they were being advanced for inclusion by the appellant himself. I am a little less sanguine about adding to the notice, but I shall consider these 'additions' later.

33. Before considering the individual allegations there is a general point that the appellant argues if some of the uses or activities had ceased before the issue of the notice they could not be included. This is wrong as a mater of commonsense. Ground (b) is couched in the past tense that "*those matters [alleged] have not occurred*", not that they are not occurring. For example allegation (b) "*the deposition of mixed non-inert and inert waste materials*" clearly happened in the past. If a notice could only deal with ongoing matters then lots of unlawful activities would be impossible to enforce against.

34. The second thing to bear in mind is the huge size of the site, the large number of different companies involved and the wide range of activities carried out. Pinning down exactly what was going on and when is a Sisyphean task. That said the Council seem to have made a decent attempt to do.

35. Allegation (a) is "*the storage of building materials and builders' waste*". There is no dispute about the materials but the appellant says they have never stored builder's waste. The Council's representative Mr Whittaker visited the site in March 2024 and his photographs show builder's waste, and I saw builder's waste being stored on my site visit. I have no reason therefore to doubt builder's waste was also being stored in 2021.

36. Allegation (b) I have already commented on. The fact the deposition ceased before the date of the notice is irrelevant. There is no dispute it did take place. On my site visit I saw most of the ground was made up of dumped materials including what appeared to be newly dumped rubbish. I have no doubt this is an on-going process.

37. Allegation (c) concerns the use of containers for sorting, storing and export of various items. It is argued this ceased before the notice was issued. The appellant suggested this was restricted to various skip companies who were required to leave the site. Mr Turner said he had no idea when they left but then he was sure it was before the notice was issued. Mr Johal, who gave evidence, was an employee of one of the skip companies and he said they were on site after the notice was issued. Given the large number of containers on site and the lack of interest in what the owners are doing, I 'm surprised Mr Turner can be so certain there was no salvage work going on in 2021, or even now? I do not think this needs to be removed from the notice.

38. Allegation (d) concerns the stationing of containers generally. The appellant argues some of these are already lawful. That is correct but only on the very small area of the yellow and green land. All the rest of the containers and lorry bodies (that is nearly all of them) are unlawful.

39. Allegation (e) is not in dispute, but (f) is the "*parking, storage and repair of heavy good vehicles and cranes in association with haulage operators*". The appellant argues repairs never took place, although this was disputed by Mr Johal. Also it was accepted that some running repairs did take place. Council officers must have seen some repair work going on when they visited in 2021 prior to issuing the notice in order to include it. In my experience haulage operators, lease companies etc will usually be carrying out repairs to their vehicles as far as they are able on site. I am satisfied it was likely some repair work was being carried out in 2021 and this need not be removed from the allegation. Parking and storage of heavy goods vehicles is lawful, but only on the very small area of the yellow and green land.

40. Allegation (g) is not in dispute but for (h), which is the storage of vehicles and caravans, the appellant argues some of this lawful, but again only on the very small area of the yellow and green land.

41. Allegations (i), (j) and (k) are not in dispute and it as agreed that as far as allegation (l) is concerned no walls have been built and I shall correct the allegation accordingly.

42. Of the new elements that need to be added into the allegation, I have no evidence concerning the residential use of the dwelling, but in any event this is covered by the extant 2013 notice. The vehicle repair workshop is a small unit close to the entrance that it was said is for the personal use of the appellant. Given the overall scale of the other uses on the site I would consider this tiny garage to be either de minimis or ancillary to the appellants' day to day operation of the site. Similarly the site office and toilets are clearly ancillary and do not require their own allegation.

43. The final 'new' elements are the scaffold towers. I consider that if these are a primary use of the land then to add them to the notice would be an injustice to the appellant. However, I agree with the Council that in the areas where they are located they are actually ancillary to the primary use which is the storage of scaffolding. Requirement 5.2(vi) requires the removal of "*all scaffolding material and scaffold structures*". This includes the scaffold towers. It was argued for the appellant that this offends the Murfitt principle as recently considered in the Court of Appeal judgement on Caldwell[2]. The Murfitt principle is that buildings that are lawful in their own right, or structures that do not require planning permission can be required to be removed or demolished as part of a notice dealing only with a material change of use as long as they are linked to the use. In Caldwell an Inspector required a dwelling to be demolished as he found the use was not immune from enforcement. The Court of Appeal, agreeing with the High Court felt this was taking Murfitt too far. Reliance could only be placed on the Murfitt principle if the building was secondary, ancillary, associated with or facilitative only. It could not apply to a building that was a separate development in its own right, which was fundamental to or causative of the change of use.

44. In this case I consider the scaffold towers are not separate developments in their own right but are ancillary to the storage use. They are certainly not fundamental to or causative of the use as a number of storage compounds exist without scaffold towers. They are simply an ancillary structure that facilitates the associated storage use. Consequently, they are not a new item to be included as they are already in the notice as ancillary to the storage use at allegation (e).

45. Consequently, ground (b) succeeds only insofar as it relates to the walls in allegation (l).

The Appeal on Ground (g)

46. The appellant argues that 5 years is required as many of the tenants are on 5 year leases. However, from the examples of tenancies that were submitted they all had a clause enabling either party to cancel the tenancy with 1 month's notice so a longer period is not necessary. However, I agree that it might well be difficult for the occupiers to find alternative premises so I shall extend the requirement for 5.1 (iii)-(x) to 6 months so those occupiers would have more time.

Other Matters

47. From the appellant's representations it seems there is some confusion about the requirements of the notice. 5.1(i) and (ii) deal with the uses that are the

[2] SSLUHC v Ian Caldwell, Timberstore ltd [2024] EWCA Civ 467

storage of builders' materials, waste and deposition of general waste. This should cease within 1 month. 5.1(iii)-(x) deal with all the other uses on the site and these should cease within 6 months (once the notice is varied as discussed above). 5.2 (iii)-(x) deals with the materials, debris, vehicles, containers, scaffolding etc that are related to the uses that are dealt with in 5.1 except for builder's waste, materials, general waste, hardstanding, bunds fences etc. All of them, other than those exceptions just listed, need to be removed from the land within 6 months. 5.2 (i), (ii) and (xi) deals with the exceptions, builder's waste, materials, general waste, hardstanding, bunds fences etc, and these should be removed within 12 months.

48. All of 5.1 and 5.2 excludes the two small areas I have referred to as the yellow and green land, but which are either shaded grey or cross hatched on plan 2 attached to the notice. In addition 5.2(xi) allows concrete hardstanding etc to remain within the small central area of the site that is not hatched in red on plan 2.

Conclusions

49. I shall vary the requirement 5.2(xi) to remove the reference to "walls" and vary the time for compliance for requirements 5.1(iii)-(x) from 3 to 6 months. Otherwise the appeals fail and I shall uphold the notice as varied and refuse to issue an LDC as applied for.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale – Counsel

He called:

Jonathan Turner (appellant)

Phil Rowe (planning agent

FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams – Counsel

He called:

Neill Whittaker (planner)

INTERESTED PARTIES:

Mr A Johal

DOCUMENTS

1. Council's opening
2. Appellant's opening
3. Photographs from Mr Johal
4. Appellant's costs application and rebuttal of Council's application
5. Council's rebuttal of appellants application
6. Transcript of SSLUHC v Caldwell, Timberstore Ltd, [2024] EWCA Civ 467
7. Transcript of Sage v SSETR [2003] UKHL 22
8. Council's closings
9. Appellant's closings