



Appeal Decision

Inquiry held on 23-24 April and 29-30 July 2024

Site visit made on 23 April

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 8 August 2024

Appeal Ref: APP/N1920/C/23/3333857

Land adjacent to Romani St. Albans Road, South Mimms, POTTERS BAR, Hertfordshire, EN6 3PP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Ward against an enforcement notice issued by Hertsmere Borough Council.
 - The notice, numbered 19/0036/UCU, was issued on 27 October 2023.
 - The breach of planning control as alleged in the notice is the material change of use of the land to a construction contractors depot for uses including the storage of building materials, the parking and storage of plant, machinery and vehicles, the siting of containers for the storage of tools and equipment, the operation of plant and equipment to load and unload vehicles, the siting of a portable cabin in use for office purposes, the maintenance of vehicles together with the erection of associated fencing and the laying of hardstanding..
 - The requirements of the notice are: 1) Permanently cease the use of the land as a construction contractor's depot. 2) Permanently cease the storage of building materials on the land. 3) Permanently cease the parking and storage of plant, machinery and vehicles, the siting of containers for the storage of tools and equipment on the land. 4) Permanently cease the operation of plant and equipment to load and unload vehicles on the land. 5) Permanently remove the portable cabin in use for office purposes from the land. 6) Permanently cease maintaining vehicles on the land. 7) Permanently remove the associated fencing and hardstanding on the land from the land. 8) Permanently remove the building materials, plant, machinery, vehicles, containers, tools and equipment on the land from the land. 9) Reinstate the topsoil and vegetative cover of the land where these have been removed. 10) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. I have numbered the requirements in the notice for ease of reference.
3. At the Inquiry it became clear the appellant was also making a ground (g) appeal to extend the compliance period to 18 months. He was also making an

application for a temporary planning permission for 3 or 5 years, on the same basis as the ground (g), that relocation would take some time.

4. During the period of adjournment I ruled that rebuttal evidence from either party concerning the supply of commercial and industrial land would not be heard. I would rely on the evidence already in their representations. I also allowed a third witness statement from Mr Welsh, who, it was reported, would be well enough to attend the resumed inquiry and give evidence. As it turned out he was not. I accepted his written evidence but it remained untested.
5. Two third parties also gave evidence at the resumed inquiry and one provided photographs taken by another member of the public who did not want to appear in person. Consequently the provenance of those photographs could not be tested.

The Site

6. The site lies in the green belt fronting St Albans Road and adjacent to a house named Romani. It is mostly flat and contains a Nissan hut towards the middle of the right hand side of the land (as you look from the road), not far from the boundary with Romani. This hut has been there from at least 1964 and is probably of WWII vintage as it is sunk into the ground with steps leading down into it. There was a storage shed running diagonally from the Nissan hut towards Romani for a long time but that has now been removed.

The Previous Inquiry

7. In December 2022 an inquiry was held into an appeal against the issue of an enforcement notice on the land. The decision was issued in April 2023 and the Inspector quashed the notice. Briefly, both parties were working on the assumption the original use from the 1970s was the same use as the existing one subject to the notice. The Inspector found this not to be the case and that to continue would prejudice both parties. The only solution was to quash the notice to enable it to be re-issued with a revised allegation so that could be the subject of a fresh inquiry.
8. I was not at that inquiry and my knowledge of what went on is restricted to the Inspector's decision letter and the appellant's closing submissions which were submitted to this inquiry. At various points during this inquiry what was said at the previous one was referred to. Where there is no dispute about what was said I have taken it on board, where there is uncertainty as to people's memory or the accuracy of their notetaking I have treated it with caution.

The Inspector's Decision Letter

9. The Inspector made a number of findings in her decision letter, some of which are accepted, others disputed. Firstly she found, and it was agreed, the existing use was not for B8 storage but a sui generis contractor's depot. She distinguished this from a simple depot where materials or goods were stored awaiting distribution, but it was comparable to a builder's yard. Vehicles and plant use it as an operational base as well as using it to temporarily store materials such as sand and ballast and where other plant and vehicles are parked and also repaired.
10. I think the key here is the idea of an operational base for plant and vehicles, which inevitably also requires the other functions to support that use, such as

vehicle repairs, plant and materials storage etc. This is similar to a builder's yard, although contractor's depots are more likely to be used more intensively and may well have other ancillary uses going on that would make them materially different from a builder's yard. Both are sui generis uses and whether they are materially different would be a matter for consideration on a case-by-case basis. Despite the appellant's planning witness suggesting there was very little between them, they are both materially different from a storage and distribution use where the primary purpose of the use of the land is to store materials and goods and then distribute them.

11. The Inspector also found the palisade fence along the frontage of the site was not permitted development as it was adjacent to the highway and over 1m tall. This was disputed by the appellant and forms the ground (c) appeal.
12. On the ground (d) the Inspector heard all the evidence, but only reported on the period from 1963 to 1979 as at that point she had sufficient evidence to determine the use was then for B8 storage and distribution. She also found it had not been established by 1 January 1964 and therefore had not become established by virtue of the provisions of s17(1)(a) of the 1968 Town and Country Planning Act. Finally she determined that another use of part of the site by Balfour Beattie was a different use from B8 storage and distribution. She did not say what the Balfour Beattie use was but her description is of a contractor's depot with additional concrete testing laboratory and portacabin offices. In other words a sui generis use. As I do not have any direct evidence concerning Balfour Beattie from the descriptions given by the Inspector and the parties it would seem reasonable to me to conclude it was not materially different from the existing use today.
13. I did not want to re-open the issue of the use in the 1970s unless there was new evidence to suggest a different opinion to the previous Inspector. This the appellants attempted to provide. In the event Mr Welsh was too ill to attend so his evidence rested on his various statutory declarations and what was reported in the decision letter.
14. I should also mention here the claim made towards the end of the inquiry that the Inspector had fundamentally misconstrued the appellants case when she said at DL28 the appellant's case was for an original B8 use that remained unchanged throughout the period including today. The appellant now argued they had all along argued it was a sui generis contractor's depot or builder's yard and this error tainted the Inspector's later conclusions. The Council disagreed.
15. As noted above it is difficult for me to be certain what happened at the previous inquiry, but I would note that the appellant ran a ground (b) case that matters alleged "*commercial purposes with associated fencing, installation of hardstanding and storage of containers, plants and machinery*" had not occurred. It seems the appellant's witnesses described the current use of the site as both a storage use and a composite use of storage and depot. The Inspector found it was a sui generis use, best described as a "construction contractor's depot" and that the notice required correction. The Inspector then went on to consider the ground (d) evidence for Mr Welsh's occupation (1963-79) and from the decision letter it is clear the evidence pointed to a B8 storage use. The appellant's closings are of little help as they refer to the use as both a construction contractor's depot and also as a use for storing plant and

machinery. However, what is clear is that both parties thought the use had remained unchanged throughout the period and once the Inspector found the original use was B8 and the current use sui generis, then correcting the notice would be unjust as the arguments of neither party considered a material change of use during the period. In any event DL28 is factually correct as it was accepted that the appellant's opening submissions stated the use was B8, which is what the Inspector says. Even if that position changed during the inquiry it does not taint the Inspector's reasoning on the ground (d) or elsewhere.

The Appeal on Ground (d)

Mr Welsh 1962 - 1979

16. The use of the land began in the 1960s with Mr Welsh, who used it as a base for his garden and building supplies business. An advertisement from August 1962 was produced which supports this. It refers to C Welch¹, gives his home address, and advertises "*garden and building supplies – sand, ballast, crazy paving etc*" and gives his home telephone number and says to ring "after 6pm". Much was made of this not referencing the yard, but I am not surprised, if that was simply his storage base. This was 1962, so orders would have come in by phone or letter, neither of which could be directed to the yard which had no post box or telephone. The advertisement fits with the conclusion that his use of the yard was for storage and distribution.
17. Mr Rudman gave evidence at both inquiries. For this one he provided a second statutory declaration following discussions he had with Mr Welsh, who was put out that he was not believed the use had begun before 1964. It also contained evidence that Mr Welsh did snow clearing for Barnet in 1962 and for the next 2 winters. He also worked for Potters Bar council clearing fly tipping, building up the verges to prevent gypsies from pulling over and clearing out the road sweepers hut. His detailed oral evidence was that Mr Welsh had a 1 ton bucket tractor for scooping ballast and sand into his lorry. He kept red diesel in the Nissan hut along with some lorry parts to repair his vehicles a spare bucket for the loader, etc.
18. This is corroborated by Mr Welsh's most recent statutory declaration. This confirms the primary use of the site was storage and distribution of landscaping materials. He also agrees that he did snow clearance for 3 years (1962 – 1964) and some other contract work on fly tipping and securing Council land from trespass.
19. Apart from the contracting work, there is nothing to suggest the site was more than storage and distribution. Indeed Mr Welsh's business was garden and building supplies which is what the vehicles seem to have been used for. It seems the snow clearing and verge building was not before the previous Inspector and she does not mention it in her decision. In fact she says "*The vehicles and equipment on site were for loading and unloading and to facilitate the storage and distribution use. There was no reference to any other activities or uses being carried out*", so I assume it was not. She goes on to reference two contemporary documents, a planning application for a storage use and a letter from Bairstowe Eves from after Mr Welsh left the land stating it had been

¹ Mr Welsh does seem to have used both spellings of Welch and Welsh, but I am satisfied they are the same person and I shall call him Welsh unless quoting from a different spelling.

used as a "haulage contractor's yard". She concludes both point to a B8 use. The Bairstowe Eve letter as it points to a yard used for transporting materials.

20. Given all this there needs to be convincing evidence that more was going on at a sufficient intensity to conclude there was more than a B8 use. I do not think 3 years of snow clearing (in a 16 year period) and some occasional litter clearance, verge mounding and clearing out a hut, suggests a fully-fledged contractors depot. At best these seem to have been occasional and ancillary uses, so I have no need to reconsider the Inspector's B8 conclusion.
21. The issue of the date of the establishment of the use is important, because if it was in 1962 then it benefits from the established use procedure introduced by the 1968 Act² and could therefore act as a fallback position. The new evidence I now have seems clear the use was begun in 1962 and there is nothing to suggest it wasn't. In my view therefore the land benefitted from an established use for B8 storage and distribution.

Balfour Beattie 1973-1975

22. Mr Welsh's occupation was interrupted in the early 70's by Balfour Beattie. There seems to be no dispute that Balfour Beattie was a contractor's depot and so a sui generis use that was materially different from a B8 use. The previous Inspector decided there was insufficient evidence to determine whether it formed a separate planning unit or was part of a mixed use. She does add "*or if the site remained in a storage use*", but from the evidence in the decision letter and that I heard it seems clear it was not a storage use. It also seemed, from the evidence of the intermingling of uses on the site and Balfour Beattie using the site as an access to the land beyond that a mixed use had been created and so there was a material change of use during the Balfour Beattie years, 1973-1975. If that use was as a result of a temporary planning permission granted by the GPDO then there is a right to revert to the previous lawful use³, however there is no evidence for that, nor for what the legal position was regarding reversion to previous uses back in 1975. Nevertheless, Mr Welsh resumed his B8 use afterwards.

Mr Beech 1979-2018

23. The next chapter in the history of the site involves occupation by Mr Beech, from 1979 to his death in 2015. What Mr Beech was doing is somewhat uncertain. It seems he was a builder by trade and had bought Romani, the house that is immediately adjacent to the site, sometime before Mr Welsh moved from the site. Once the site was vacated Mr Beech seems to have begun to use it. It is the nature of this use that is in dispute.
24. Mr Rudman was convinced Mr Beech was a builder. Mr Rudman went by the site regularly and stopped to speak to Mr Beech on occasions so he could see what was going on. Mr Beech had a 6 wheeler tipper truck and at least one other vehicle, a van. The site was used to store building materials, including scaffolding, piles of bricks and tons of waste. Mr Welsh, after semi-retiring to Northamptonshire in 1982, carried on delivering sand and ballast to Mr Beech for his building work until 2005 and this corroborated by Mr Welsh's latest statutory declaration. Mr Rudman assumed, from the size of the piles of

² Town & Country Planning Act 1968 S17(1)(a), stated that a use begun before 1964 and continued thereafter was established.

³ S57(2) of the 1990 Act

bricks, that Mr Beech was mostly working on small scale jobs such as extensions. He also agreed that Mr Beech didn't access the yard from the road (as Mr Welsh had done, and as it is accessed today) but from Romani. The boundary between the site and Romani was not as clearly defined by conifers as it is today. He parked his large lorry both at Romani and also on the site. Now, access to the site from Romani is through a garden gate.

25. When Mr Beech died in 2015 the land remained unused until sold to Mr Ward, the appellant, in 2018. During this period the site was visited by a surveyor, Mr Wilson, acting for Gladwish, the owners of the land. He has provided a statutory declaration which records what he saw. There was an electricity cable running from Romani to the Nissan hut which was padlocked shut. He looked in the windows of the Nissan hut and saw various items, including lorry tyres, car parts and some boxes. Outside the hut he saw some building materials on the ground, bricks, scaffolding bars and more lorry tyres and parts. He concludes, because of the electricity cable and ease of access, the owner of Romani was using the shed as his own, the shed and land were being used for storage and the shed was not abandoned.
26. The odd thing about this statutory declaration is that Mr Wilson doesn't give any qualifications and neither does the solicitor who witnessed it nor does he say when he visited the site. Despite being a surveyor Mr Wilson makes categorical statements concerning use and abandonment, neither of which he is qualified to be so certain about. He also makes no mention of what would seem to me to be the most obvious fact, that the site was completely overgrown. So we do not know whether his visit was before or after the site was cleared. What he does say is that the land and shed were being used for storage not as a builder's yard. He also says the door to the Nissan hut was securely locked, but in the 2018 photographs from the Council taken just after Mr Ward took over the land, and presumably just after Mr Wilson's visit, there is no door to the hut.
27. When Mr Ward took over the land in 2018 the Nissan hut was being used as described by the surveyor. Mr Ward wanted the items, that included, on closer inspection, boxes of receipts and other paperwork with Mr Beech's name on them and lorry wheels with tyres fitted, to be removed. He went in search of Mr Beech's relatives and tracked down one to a fire station in Biggleswade and a son to a house in Luton. Neither were in and he left notes asking them to come and pick up their stuff. In his statutory declaration he then says a week later one of his workers mentioned that a man had turned up and taken the boxes away in his car. In oral testimony he said most of the stuff was gone by October, although I note that removing spare lorry wheels with tyres from a partially underground building would not have been an easy task and no-one seems to have witnessed this?
28. Everyone accepts that as Mr Beech got older he worked less and his last years were blighted by illness. The intensity of the use thus diminished over time.
29. A rather different picture was painted by Ms Curran and Ms McCaffrey who knew Mr Beech and who live locally. They described him as more of an odd-job handyman, not a builder, who pootled about in a small van. He stopped work at least 5 years before his death due to illness by which time the site was overgrown. Ms McCaffrey recalls that he used the Nissan hut for chickens. This is partly confirmed by Mrs Papaphilippou who lives next door to Romani

and knew Mr Beech well. Although she didn't go onto the site she regularly visited Mr Beech who gave her eggs from chickens that she saw, through the gate, on the site by the Nissan hut. Perhaps more importantly she says all Mr Beech's storage was in the garden of Romani, not on the site.

30. I'm not entirely convinced by the chicken argument, not least because the surveyor didn't see any, although it is entirely possible they could have lived side by side with some storage. But I don't think that is important. What is, is the view that his activities were very low key and he didn't use the site.
31. This is clearly not the evidence from the appellant's side, but it does fit with the various aerial and streetview photographs that we have. The oldest is from 1971 and shows the site mostly cleared of vegetation, the Nissan hut and what appears to be a track leading from it to the road. This was during Mr Welsh's time and is consistent with the evidence about his use. The next one is 1999, so 20 years after Mr Beech took over. Part of the roof of Nissan hut is visible, plus the remains of the storage shed but the whole of the site is covered by dense vegetation, including numerous trees. Next to Romani, where the gate between the two is located the vegetation might be a little trampled down, but there is clearly outside storage going on in Romani and various vehicles are parked on the drive. The 2000 aerial is similar and by 2005 it is even more overgrown, except for a small patch by the gate where some debris seems to be scattered on the ground which could be storage. By now the boundary between Romani and the site also seems to be firmly established by hedges and trees. The photographs from 2006, 2011, 2012, 2013 and 2015 are all rather out of focus so no details are discernible. However, what is abundantly clear is the site has become thickly wooded. This is shown more clearly in 2016, 2017 and 2018.
32. The only exception to this is a much clearer photograph from 2010 which appears to be from spring and shows quite clearly a mass of trees and bushes, many of which appear to be in flower, but there is an open patch by the gate into Romani which looks like some waste has been spread on the ground. There is still clearly storage within the garden of Romani and vehicles in the drive. No access onto the road from the site is visible in any of the photographs.
33. The Google streetview photographs from 2008, 2012, 2015 and 2017 all show the same thing. The road frontage up to Romani is completely overgrown with trees and shrubs. Various people suggested one could see the vestiges of the old entrance from the road but that was a heroic effort of the imagination.
34. The appellant suggested the dates could not be relied on but provided no evidence for that. In fact the one photograph they had from Bluesky, which was definitely correct, was the same photograph and same date as the Council's from Google Earth. It was also suggested the blurry photographs were worthless, but they do show, clearly, the extent of vegetative cover, which was virtually total. I find the objective evidence of the photographs to be compelling.
35. Mr Ward agreed there were trees on the site but they were easily removed. The rest of the land was covered in leaves, which when scraped back revealed the original hardstanding from Mr Welsh's day in, it would seem, pristine condition. The photograph provided to the inquiry shows a perfectly smooth unbroken hardstanding. He said the builders yard activity had gone on

underneath the canopy of the trees. This too was Mr Rudman's evidence. The tree canopy hid the materials and vehicles from view. As evidence for this it was pointed out how the Nissan hut had become invisible after 2005 – anything could be going on out of site under the trees.

36. This was a brave attempt to explain away the photographic evidence, but it ignores the simple fact that there were not just a few trees on the land, but it was entirely covered. The hardstanding was originally a type of clinker, that was porous and provided good drainage. Only where Balfour Beattie had their compound was any concrete poured. Oddly no-one recounts seeing this surviving later and the appellant argues the whole site was clinker covered. In my experience, when such hardstanding is left to decay weeds and shrubs begin to push up through it in remarkably quick time. Before long it can be completely overgrown and trees and larger bushes begin to establish themselves, completely breaking up and ruining the hardstanding and making it impossible to work on the land until they are cleared. Aerial photographs show that some of the site was already wooded during Mr Welsh's occupation and this quickly spread. A particularly revealing aerial photograph was taken in 2003 and supplied by the appellant. It was taken in winter and shows only a part of the site, but clearly dozens of trees are shown crammed up next to each other as one would expect for land that had been left untended. There really is no room for storage of pallets of bricks or a 6 wheeler lorry and why bother when there seems to be plenty of space at Romani, which seems to be being used for just such storage purposes?
37. Mr Rudman may well be remembering his visits before 1999 when perhaps the activities he describes were happening on the site. After all Mr Beech had been there since 1979 so may well have begun using the land as a builder's yard, a use that then petered out or Mr Rudman may have been confusing the site with Romani itself. It was many years ago and we are all capable of convincing ourselves we have seen something that is somewhat different to what it actually was. His statement that Mr Beech was still working in 2012 maybe the case, but from Romani not the appeal site. Also, as Mr Rudman stated Mr Beech did not access the site from the road but from Romani, which again begs the question why he would, apparently, spread random piles of materials beneath the trees when he had plenty of space at Romani itself. I am even less convinced by Mr Ward's story about clearing the leaves. There may well have been some bricks and scaffolding spread about under the trees but it is hard to imagine they were part of a recently ongoing use.
38. A further twist is that the Council and local residents say that when the site was cleared of vegetation it was bare earth, not hardstanding. Given the hardstanding had been breaking down for 20 or 30 years this is not surprising but it is contrary to Mr Ward's evidence that he revealed a site covered entirely in hardstanding. When Mr Dennis, from the Council, visited in 2018 his photographs and his evidence is that parts of the site were bare earth and the rest was being covered in a thick layer of inert waste. A lorry delivering waste turned up during his visit and this is supported by his photographs from the visit which show to me bare earth being covered in new hardstanding. The third-party photographs mentioned above, also dated 2018, show the same thing. The appellant's witnesses suggested this was not earth but some form of clinker, or granular hardstanding. But this is hardly likely given my view on the destruction of the original clinker hardstanding by the trees. It is much more likely the photos show the earth, flattened and scraped after the removal

of the trees and bushes to provide a level base for the new hardstanding on top.

39. The fact that the Nissan hut had some items in it is hardly suggestive of deliberate storage and the electric cable that was run out to it from Romani tells us no more than at some point someone wanted electricity there. The first mention of it is by the surveyor in 2018. Mr Rudman heard about it and assumed Mr Beech had run it across for his own use. Scott Larby bought Romani after Mr Beech's death and Mr Ward reports that Mr Larby told him Mr Beech installed the cable although whether Mr Larby knew that or it was speculation is unclear. Either way it seems extraordinary that Mr Beech would bother to electrify the Nissan hut when the entire site had been allowed to get completely overgrown. Perhaps he did keep chickens there? Who knows? Very little of the oral evidence makes sense in the light of the aerial photographs.
40. I need to reach a conclusion on Mr Beech's activities. I think at best it can be argued there might have been a builder's yard in operation in the early years after 1979. This use had clearly ceased by 1999 and I find it difficult to believe the land was being used for any purposes at all, except perhaps dumping some materials from Romani that Mr Beech no longer needed. There is no physical evidence of any storage of materials or vehicles on the land or any deliveries to it. The photographs clearly show from 2005 at least there was a clear boundary between the site and Romani that was thickly overgrown. The only way into the site would be to force your way from the road across the old exit or through the gate at Romani, so if Mr Welsh did deliver sand there in 2005 it was most likely to Romani and not the site.
41. I note that the statutory declarations from the surveyor and Mr Ward claim no more than there was an established storage use on the site in 2018. Taking Mr Rudman's evidence at face value it sounds like there is no more than storage going on even in the early years. Nevertheless I shall take the evidence at face value that Mr Beech began a builder's yard use in 1979. I find the aerial photographs to be compelling that nothing of any material substance was going on after 1999. The Nissan hut may well have had some stuff in it, but it seems to have been left there rather than stored. This is borne out by Mr Ward's efforts to find someone to take them away. No-one was looking for it and no-one seemed to know that Mr Beech had anything there at all. It seems to have come as a complete surprise to his relatives.
42. Thus the pattern of uses would seem to be firstly storage by Mr Welsh, interrupted by Balfour Beattie, who created a mixed use which reverted back to storage once they left. Then Mr Beech may have operated a builder's yard for some time but this had ceased by the 1990s, when there may just have been some storage on the site, but that too ceased as a use by 1999. Finally Mr Ward has introduced a contractor's depot, a wholly different use to any of the previous uses, except possibly that by Balfour Beattie. The site has therefore gone through a series of uses. The first B8 was established by virtue of the 1968 Act, but there was possibly a material change of use to a mixed use with Balfour Beattie and definitely a further material change of use to Mr Beech's builder's yard. This superseded the old B8 use which, even if it survived the Balfour Beattie intervention was now lost. The yard, a sui generis use, possibly turned back to storage but even that petered out. There is insufficient evidence that any of the uses after Mr Welsh were ever carried on long enough

to become established, but even if they were that becomes irrelevant once the site is abandoned. If there never was a builder's yard, but only ever storage on the land then it could be argued that use became established during the 1990s. But this also would have been subsequently lost due to abandonment.

43. A side issue is the operation of s57(4) of the Act. This is not a general right to revert to a previous lawful use, but only in the event that an enforcement notice is issued. Then, if the notice is upheld there is a right to revert to the previous lawful use that has been affected by the unlawful use subject to the notice. If, because of a chain of changes of use there is no longer a previous lawful use, then s57(4) is not helpful.

Abandonment

44. Hartley⁴ and Castell-Y-Mynach⁵ judgements set out the basis for considering abandonment. Hartley held that where the site remains unused for a time and in such circumstances that a reasonable man might conclude that the previous use had been abandoned, it may be found to be abandoned. Where a use ceases with no view to resumption, it is abandoned, and Castell-Y-Mynach introduced four factors to consider, physical condition of the land, the period of non-use, any other uses and the owner's intentions.
45. We do not know the owner's intentions and obviously nothing was going on for the last few years as he had died. However, the apparent lack of activity and the abandoned tyres and boxes in the Nissan hut, which itself, despite Mr Wilson's statement to the contrary, in 2018 was seriously dilapidated, do not suggest a desire to continue the use. Indeed all parties agree that as he got older Mr Beech did less and less. This is not to suggest that he intended to give up his building work completely, as he still took a delivery in 2005, but I think that was to his house not the appeal site and it is the use of the site that is important.
46. No other uses appear to have intervened but the period of non-use looks as if it was 20 years and the physical condition of the land was overgrown with trees and bushes such that the operation of a builder's yard would have been impossible. If there were some remaining items of building material on the land by 2015, they had either been left there or were de minimis storage, ancillary to the use of the land at Romani for the operation of what was left of Mr Beech's building business.
47. A further clue is that Gladwish sold the land to Mr Ward for the bargain price of £9000. Clearly, they didn't believe there was a valid builder's yard use or even a B8 use (again despite their surveyor's testimony to the contrary), or the land would have been considerably more expensive. In my view, a reasonable person, looking at the site, completely overgrown, with thick hedges along the roadside and no separate access, would consider the builder's yard use had been abandoned and no other use had taken its place.

Conclusions

48. It follows from the above therefore that at the time Mr Ward took over the site it had a nil use. Mr Beech's use had superseded Mr Welsh and then been abandoned. The new use, as described in the allegation has only been going

⁴ Hartley v MHLG [1970] 2 WLR 1

⁵ Trustees of Castell-Y-Mynach Estate v SSW [1985] JPL 40

for a few years so there is no immunity from enforcement and the ground (d) must fail.

The Appeal on Ground (c)

49. Ground (c) concerns the fence alongside the main road and whether this benefits from permitted development rights as it is not adjacent to the highway. It is set back from the edge of the road by nearly 3m and was separated from the road by a hedge and a low trellis fence. Adjacent does not necessarily mean next to, but a boundary can be somewhat back from the road and still be adjacent. The hedge is higher and thicker now than when the previous Inspector saw it, but nevertheless I have no reason to come to a different view that it still forms the boundary to the site and is adjacent to the highway. It therefore exceeds the permitted 1m height and planning permission is required for it.

The Appeal on Ground (a)

50. It was accepted during the inquiry that the ground (a) appeal was for a temporary planning permission. No specific time period was suggested but 5 years was discussed. The basis of the appeal is that Mr Teaca will find it very difficult to relocate his business as there is a dire shortage of industrial/commercial land in the borough so it is likely he will have to cease trading along with the loss of some 50 jobs. The evidence for this is Mr Teaca's statement that he had looked for several years before finding the site and kept a casual look out ever since.

51. The Council were able to show that, as at 2019, there was no shortage of industrial land. I have no doubt finding space for a dirty and bad-neighbour use such as a contractor's depot is not easy, especially as much of the land is green belt, but that is not the same as providing evidence that it would be very difficult. The use is not only inappropriate development in the green belt but also seriously harms openness. In addition I heard evidence as to its impact on neighbours' amenities by way of dust, noise and disturbance.

52. The lack of seriousness of the appellant's case was shown when we discussed conditions. They opposed a noise condition as they did not know what a noise survey would reveal and it might make it impossible to operate the business. There was also no analysis of any of the Council's policies or the NPPF. However, setting that aside, the potential loss of 50 jobs does not outweigh the serious harm to the green belt and to neighbours' amenities. A temporary planning permission is not acceptable.

The Appeal on Ground (f)

53. This relates to the hardstanding that was in place before Mr Ward took over the site and is therefore immune from enforcement. As I have argued above, I do not think there was any hardstanding in place at that time, at least none that was serviceable or recognisable as such so there is nowhere for this ground to go.

54. For the avoidance of doubt, the Statement of Common Ground noted that one area of disagreement was the fence surrounding the compound other than that adjacent to the road. This was clearly erected in order to secure the compound. Mr Teaca agreed he needed a security fence because of thefts. It

is therefore part and parcel of the unlawful use and can be removed (as in requirement 7) under the Murfitt principle.

The Appeal on Ground (g)

55. This ground is linked to the ground (a) arguments, which I have found to be entirely deficient. The Council have given a generous 6 months, which is ample time to cease the use and remove the hardstanding and fences. It should also give time to find another location for the business. I have been provided with no evidence to suggest otherwise. The appeal on ground (g) fails.

Overall Conclusion

56. I shall uphold the notice and dismiss the appeal.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters – counsel
he called:
Danny Rudman
Vasile Teaca
John Ward
Philip Brown BA (Hons)

FOR THE LOCAL PLANNING AUTHORITY:

Shemuel Sheikh – counsel
He called:
Matthew Dennis MA

INTERESTED PARTIES:

Natalie Curran
Catherine McCaffrey
Alexander Hedison
Stella Papaphillipou

DOCUMENTS

1. Statement of Common Ground
2. LPA Opening
3. Appellant's closing submissions for the previous Inquiry
4. Photographs provided by a third-party
5. List of suggested conditions
6. LPA closings
7. Appellant's closings