



Appeal Decisions

Inquiry held on 3-6 September 2024

Site visit made on 4 September 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2024

Appeal A Ref: APP/J3720/C/24/3342067

Appeal B Ref: APP/J3720/C/24/3342068

Land to rear of dwelling known as Longfield, Poolhead Lane, Tanworth-in-Arden, Solihull B94 5ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr John Clayton-Wright and Appeal B is made by Mrs Dawne Clayton-Wright against an enforcement notice issued by Stratford-on-Avon District Council.
- The notice was issued on 29 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, the following development:
 - i) Material change of use of the land to a business use
 - ii) The erection of buildings (in the approximate positions shown 'C' and 'E' on the Plan)
 - iii) Creation of additional area of hardstanding (in the approximate position shaded in grey and identified as 'D' on the Plan)
 - iv) Significant alteration and extension to the former garage building (in the approximate position 'A' on the Plan) which facilitates and was part and parcel of the change of use to business use; and
 - v) The erection of new building (in the approximate position 'B' on the Plan) which facilitates and was part and parcel of the change of use to business use referred to item i) above.
- The requirements of the notice are to:
 - a) Cease the use of the land (including buildings) for business purposes.
 - b) Demolish the buildings located in the approximate locations 'C' & 'E' on the plan and remove all associated materials from the Land.
 - c) Remove the hard standing from the area identified as 'D' on the Plan and remove all associated materials from the Land.
 - d) Demolish the building located in the approximate location 'A' on the Plan and remove all associated materials from the Land.
 - e) Demolish the building located in the approximate location 'B' on the Plan and remove all associated materials from the Land.
- The period for compliance with the requirements is: 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (d), (e), (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 Decisions: The appeals are allowed and the enforcement notice is quashed.

The Notice

1. Section 173(1)(a) of the Town and Country Planning Act 1990 (the Act) states 'An enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control'. S173(2) goes on to state that 'A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.' A notice is a nullity if it is 'hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission'¹.
2. Paragraph 3iv) of the enforcement notice (the notice) alleges 'Significant alteration and extension to the former garage building (in the approximate position 'A' on the Plan) which facilitates and was part and parcel of the change of use to business use.' This building is hereafter referred to as building A.
3. Building A was a garage erected by the previous owners. Since the appellants purchased Longfield (including the appeal site) in 2005, the building has undergone various alterations and extensions. The 2010 aerial photograph clearly shows the building extended to the east compared to earlier aerial photographs. The 2013 aerial photograph shows a further extension to the east of the building. Between 2013 and 2016 alterations were made to the roof of the eastern section of the building and in 2023 alterations were made to the roof and front wall of the middle section.
4. The appellant contends the significant extensions to the building took place when it was extended in 2010 and 2013 and their initial understanding is that it was these works paragraph 3iv) of the notice is referring to. However, through the Council's statement of case and subsequently during Mr Coyne's witness testimony, the Council's understanding of paragraph 3iv) is that it refers to all of the works undertaken to the building including the works to the roof of the east section between 2013 and 2016 and those to the roof and wall of the middle section in 2023. Mr Coyne accepted that although the west section of the building could not be required to be removed as it had been used for domestic purposes prior to the alleged material change of use of the land taking place, the middle and east sections could because works had been carried out on them within 10 years of the issuing of the notice and they had only ever been used as part of the business.
5. Notwithstanding Mr Coyne's evidence, the Council's closing submissions confirmed they viewed the altered and extended building as a whole and accept it has been in situ for more than four years prior to the issuing of the notice and therefore, as operational development, is immune from enforcement action. Their argument is the building is part and parcel of the

¹ *Miller Mead v MHLG* [1963] 2 WLR 225

unauthorised material change of use and therefore can be enforced against under the '*Murfitt* principle', and the description of this part of the breach under paragraph 3iv) is accurate.

6. However, the way in which it is worded, paragraph 3iv) suggests it is not a significantly altered and extended building which facilitates the material change of use, but it is the significant alteration and extension to the building that facilitates the material change of use. The absence of any reference to which alterations and extensions adds to the ambiguity of the allegation.
7. Moreover, paragraph 5d) of the notice requires the demolition of the entire building. It makes no reference to any particular altered or extended parts of the building. This further adds to the ambiguity of the allegation.
8. Notwithstanding the above, whichever way you read paragraph 3iv), the reference to 'facilitates the material change of use' clearly refers to the well-established '*Murfitt* principle'. From this it can be understood that the Council acknowledge that at least part of the building is immune as operational development but it is its use to facilitate the material change of use that they seek to enforce against.
9. I find therefore, whilst paragraph 3iv) is unclear and ambiguous, I do not find that it is so hopelessly ambiguous and uncertain that the appellants could not tell in what respect it was alleged that they had developed the land without permission.
10. In respect of paragraph 3i) of the notice, the alleged use is 'a business use'. This description covers a wide range of uses. This has implications on the ground (a) appeal in that if I were minded to allow it, planning permission would be granted for the matters alleged in the notice, ie a business use. Given the plethora of uses this would permit, it would cause injustice to the Council as that was not the intention of the notice. I have had regard to the imposition of a condition restricting the use to the specific use taking place. However, it would be more appropriate to vary the notice by changing the allegation. I will deal with this matter further under the ground (b) appeal as this has implications for what use is taking place.

The ground (e) appeals

11. An appeal on ground (e) is whether copies of the notice were served as required by section 172 of the Act. Section 172(2) states 'A copy of an enforcement notice shall be served— (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice'.
12. The appellants contend the notice was not served on AMSL, which is a legal entity that has an interest in the land. The Council does not dispute this.
13. However, section 176(5) of the Act states 'Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if

neither the appellant nor that person has been substantially prejudiced by the failure to serve him.'

14. Although AMSL was not served a copy of the notice, both of its managing directors, John Clayton-Wright and Dawne Clayton-Wright, were. Both of these lodged an appeal. Therefore, had AMSL been served a copy of the notice it is reasonable to conclude that the grounds of appeal it may have made would not have been any different to those its two managing directors have already made. Accordingly, it has not been demonstrated that AMSL has been substantially prejudiced by a copy of the notice not being served on it.
15. The ground (e) appeals therefore fail.

The ground (b) appeals

16. In appealing on ground (b) the burden of proof is firmly upon the appellant to demonstrate the alleged breach of planning control has not occurred as a matter of fact.
17. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) regulations 2002 states an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. There is no requirement that the red line on a plan attached to the notice must relate to a planning unit or encompass the entire planning unit to which the site forms part of.
18. Nevertheless, there is a dispute as to whether a material change of use has occurred and, if it has, what that use is. Therefore, it is first necessary to establish what the correct planning unit is. *Burdle*² established that the planning unit is the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Bridge J suggested three broad categories of distinction: 1) a single planning unit where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.
19. The Council contend the appeal site and the dwelling are occupied by different occupiers in that the dwelling is solely occupied by the appellants whereas the appeal site is solely occupied by AMSL. I acknowledge that ownership does not play a part in establishing occupation. Nevertheless, you can have more than one occupier in a planning unit. The determining factor in this instance is whether the appeal site is functionally distinct and physically separate from the dwelling and the rest of the site associated with Longfield.

² *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

20. Shortly after the appellant's purchased the property they began running their business from home. The business was operated solely from the house at first, as the only employees were the appellants. By 2010, the business had expanded and was now operating from both the house and building A with 10 staff in the house and 5 in building A, which was used as an office/workshop. By March 2014 all staff were working from the appeal site. Although the house was, and still is, available for use by the business on occasion for meetings, this is very much on an ad hoc and informal basis. Throughout this time the appeal site was used for the parking of family cars, domestic recreational activities and the storage of domestic paraphernalia.
21. There is no dispute that, prior to AMSL operating from the appeal site, it was, at least in part, used for domestic purposes associated with Longfield. When AMSL started operating from the appeal site by 2010 a material change of use of the land likely occurred to a mixed use comprising domestic and business use (Use Class E). Although in 2010 some of building A was in use for the business, a large portion of the site was being used for domestic activities such as parking family cars, domestic storage, a BBQ area and domestic recreational activities. As the business grew and expanded across the appeal site, the balance between the domestic and business uses likely shifted from being predominantly in domestic use to being predominantly in business use. The question is whether this balance shifted so much that the domestic use ceased, or was so minimal to be considered de minimis, resulting in a material change of use from the mixed use to a solely business use.
22. The appellants confirm that over the years, and to this day, they have used the site to store their own personal Mini and Land Rover. The hardstanding area is also used on occasion for the parking of family and friends' cars as well as their gardener's car. There has also been a greenhouse on the site, adjacent to building A, as can be seen in the 2020 aerial photograph, although this has since been relocated. Approximately twice a month, family gatherings take place to watch sport on the large TV. The appellants also state the site is used for the storage of domestic 'detritus', notably in buildings A and C. The Council argues that, individually and cumulatively, these domestic uses are de minimis.
23. In addition, the eastern corner of the site includes a portion of the arboretum, which is largely contained on the land to the south of the appeal site. The Council concede that the red edged boundary of the plan attached to the notice could be corrected to omit this area of land without causing injustice.
24. There is no dispute that the use of the site at the time of my site visit was not representative of what was taking place on the site at the time the notice was issued. The west section of building A was open fronted and contained a covered up Mini; a Land Rover; several small gas bottles of a type used for a gas BBQ; Christmas decorations; toys and games; various tins of paint; paintings; hand tools and power tools, including a large press drill and air compressor; and, a generator with a diesel tank to power it. There was also a large consumer unit used to supply power to the appeal site, including a convertor for the generator to operate when there is a power cut. In the

event of a power cut, the generator also powers the internet connections in the main house that supply the internet connection to the appeal site.

25. Although this section of the building was used for storing items clearly associated with the business, including the generator, diesel tank and consumer unit, the majority of the items were likely for domestic purposes. I acknowledge the decorations could perhaps be for decorating the business offices. However, the toys and games; Mini and Land Rover, paintings and gas bottles are more than likely used for domestic purposes. Furthermore, given the nature of the tools and their location away from where the business products are assembled and tested it is likely they are also used for domestic purposes rather than part of the business use. The assembly element of the business simply involves the clicking of components together by hand. This adds further support to the hand and power tools not being used as part of the business.
26. The middle section of building A was the clean room, used for the assembly of the access controls for the control gates. This room contained 4 work stations and various small components and stationery on shelving. The east section of building A contained a large meeting table; a large TV for virtual meetings; and, a podcast table.
27. Building C contained various items, including 2 turnstile gates wrapped in plastic; glass panel gates; various components and cables used as part of the business; a workbench; and, a pump truck. In addition, the building was also used for storing a suitcase; a large pile of clothing; an ornate privacy screen; a step ladder and a large amount of tools. The appellants stated that the tools and clothing items belonged to their son.
28. Overall, the amount of items for domestic purposes stored in buildings A and C, including the parking of the Mini and Land Rover, go beyond what would reasonably be considered to be de minimis. A large proportion of both of these buildings is used for such storage. Although the balance between the business use and domestic use across the appeal site is tilted heavily towards the business use, the domestic use is nevertheless material. I find therefore the site is in a mixed use.
29. I shall now turn to the question of what is the planning unit. In terms of whether or not there is a physical link between the appeal site and the wider site, there is a high hedge along the rear boundary of the garden with the appeal site. In addition, the appeal site has a commercial appearance which is in contrast to the residential appearance of the dwelling, its rear garden and the arboretum, making them visually distinctive from each other. The two driveways provide access between the two sites and therefore provide a physical link to some extent. Nevertheless, they are read as two physically separate sites.
30. With regard to a functional link, given I have found there is a mixed use taking place on the appeal site, this supports the contention that the appeal site and the wider site is a single planning unit. The domestic use element of the mixed use is undertaken in association with the residential use of Longfield by the appellants. Therefore, there is a functional relationship between the two areas of land.

31. In addition, the access and egress driveways serve both the appeal site and the dwelling. When parking to the front of the dwelling, as the appellants and visitors to the house most often do, there is only a small section of the driveway towards the entrance of the site that is used. Nevertheless, I noted during the site visit that there are several pedestrian accesses off both driveways into the rear garden area of the dwelling. Moreover, the arboretum is only accessed via the appeal site. Therefore, the interconnectivity between the driveways and the appeal site with the garden area and arboretum further supports the functional link between the two areas of land.
32. The nature of the business is dependant on internet access. Without it, it cannot operate. The internet connection for the business is fed off the thicknet cable supply contained in the dwelling, which is powered by the generator in Building A in the event of a power cut to ensure internet connection is not lost. Without this link between the dwelling and the business on the appeal site, the business would not be able to operate as there would be no internet connection. Consequently, this functional link between the two is vital for the business.
33. Having regard to the approach set out in *Burdle* I have found the two areas are physically distinct. However, there is a material functional link between them and therefore I find they are a single planning unit in a mixed use and it is not possible to say that one is incidental to another. In terms of occupation, whilst AMSL is a legal entity in its own right, it's two managing directors are the appellants. It is not uncommon for someone who has their own limited company to operate the business from their own home and therefore both the person and the business can be joint occupiers. That is the situation here.
34. Whilst I have found there is a single planning unit that is in a mixed use, that is not to say the red edged plan attached to the notice needs to encompass the whole of the site to reflect the planning unit.

Conclusion on the ground (b) appeals

35. I conclude from the evidence before me and on the balance of probability that the alleged breach of planning control comprising the material change of use of the land to a business use had not occurred. As a consequence of this, the allegations set out in paragraph 3iv) and 3v) have also not occurred as they are alleged to have facilitated the business use. The appeal on ground (b) succeeds in respect of these matters.
36. I have considered correcting the matters alleged in the notice to reflect the mixed use. However, by doing so I would also have to vary the requirements of the notice to reflect the alleged matters. If I were to do this, I would have to consider whether the requirements would seek the cessation of the whole of the mixed use, ie the domestic use and the business use. This would cause injustice to the appellant because the requirements of the notice would be more onerous. Alternatively, if the requirements only sought to cease the business use element of the mixed use, this could cause injustice to interested parties as they would not have had the opportunity to make representation on whether planning permission

should be granted for the domestic use. Accordingly, I could correct the notice by removing paragraph 3(i), (iv) and (v).

37. As a consequence, what would remain of the alleged matters is paragraph 3(ii) and (iii). The ground (d) appeal only relates to the use of the land and buildings A and B. As these are no longer included in the alleged matters, following my finding on the ground (b) appeals, the ground (d) appeal falls away.
38. In the event I allow the ground (b) appeal and delete paragraphs 3(i), (iv) and (v), the Council contend that the notice need not be quashed as I can still determine the grounds (a), (f) and (g) appeals in relation to buildings C and E and the hardstanding (identified as 'D' on the plan attached to the notice). However, the appellants' ground (a) appeal is predicated on my finding that the site has a lawful business use. Similarly, the Council's reasons for issuing the notice state 'The unauthorised change of use of the land to business purposes, and the operational development (including buildings and hardstanding) associated with that change of use, does not fall within any of the acceptable types of development in the countryside.' Therefore, the Council's case is also predicated on the assumption that the buildings and hardstanding are in sole use for the business use.
39. Therefore, both of the parties' cases in respect of the ground (a) appeal are made on the basis the site is in a sole business use. However, I have found this is incorrect as there is a mixed use taking place. Given there is no longer a ground (d) appeal in respect of the use of the land, I cannot determine what the lawful use of the land is. Accordingly, my consideration of the ground (a) appeal in respect of buildings C and E and the hardstanding and their use as part of the mixed use of the site would cause injustice to the appellant because they may have made a different case in respect of the mixed use of the buildings and hardstanding, particularly with regard to the whether they would be inappropriate development in the Green Belt.
40. Given the above, in light of my finding on the ground (b) appeals, I cannot correct the notice without causing injustice to one party or the other, the notice is quashed.

Conclusion

41. For the reasons given above, I conclude that the appeals should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a), (d), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

42. The appeals are allowed and the enforcement notice is quashed.

A Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Hunter, counsel for the appellant.

They called:

John Clayton-Wright	Appellant, Director of AMSL
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Jonathon Adams	Senior Director, Tetlow King Planning
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FOR THE LOCAL PLANNING AUTHORITY:

Piers Riley-Smith, counsel for Stratford-on-Avon District Council.

They called:

Matthew Coyne	Senior Planner, Stratford-on-Avon District Council
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INQUIRY DOCUMENTS:

1. 13 August 2024 appeal notification letter and circulation list, submitted by the Council
2. Copy of plan attached to Appendix 2 of Matthew Coyne's proof of evidence (PCN response dated 18 August 2023), submitted by the Council
3. Copy of plan attached to Appendix 5 of Matthew Coyne's proof of evidence (PCN response dated 17 January 2008), submitted by the Council
4. Copy of plan attached to Appendix 6 of Matthew Coyne's proof of evidence (PCN response dated 17 January 2008), submitted by the Council
5. Tanworth Neighbourhood Development Plan 2021-2031, submitted by the appellant
6. Enforcement Plan Options A, B and C, submitted by the Council