



Appeal Decision

Inquiry held on 11 March 2025, and 21 March 2025 (virtual session)

Site visit made on 11 March 2025

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2025

Appeal Ref: APP/Y2003/C/24/3355537

Land at corner of Humber Road and Town Street, South Killingholme

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Paul Carr (CSP Scaffolding Ltd) against an enforcement notice issued by North Lincolnshire Council.
 - The notice was issued on 9 October 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of agricultural land to land for storage (of scaffolding materials).
 - The requirements of the notice are:
 - i) Cease use of the land for storage purposes (including but not limited to scaffold poles, scaffold boards and other scaffold related items)
 - ii) Remove all stored materials (including but not limited to scaffold poles, scaffold boards and other scaffold related items) and all fixtures used for storing such materials).
 - The period for compliance with the requirements is: 4 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 3 the deletion of the alleged breach of planning control in its entirety and replacement with “The material change of use of the land to the storage of scaffolding materials”.
 - In section 5 the deletion of requirements i) and ii) in their entirety and replacement with “i) Cease the use of the land for the storage of scaffolding materials; and ii) Remove all scaffolding materials and all fixtures used for storing such materials from the land”.
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. A Case Management Conference (CMC) was held online on 21 January 2025 with the appellant and the Council. The CMC was held to discuss the arrangements for the Inquiry and not the merits of the appeal.
4. The Inquiry commenced on 11 March 2025 and was programmed to sit for 1 day. However, an additional sitting day was required to hear closing submissions. This was held virtually on 21 March 2025. All oral witness evidence to the Inquiry was given by sworn affirmation.

The Notice

5. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended, or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
6. The alleged breach of planning control in section 3 of the notice alleges a “change of use”. The “change of use” of land is, in itself, not development requiring planning permission. I shall therefore correct the notice to refer to a “material change of use” of the land as defined in section 55(1) of the 1990 Act. In the interests of clarity, I shall also alter the wording of the allegation so that it reads more succinctly. The requirements will also be amended so that they flow from the corrected allegation.
7. The above corrections do not alter the scope of the notice or its requirements, and therefore I am satisfied that I can undertake the corrections without causing injustice to the parties. Both parties confirmed at the Inquiry that they had no objections to the proposed corrections.

Ground (d)

8. In order for the appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late to take enforcement action. The burden of proof is on the appellant and the relevant test is the balance of probability. If the local planning authority has no evidence itself to contradict or otherwise make the appellant’s version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant’s evidence alone is sufficiently precise and unambiguous.
9. With regard to the use of land, section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful, the alleged use must have commenced at least 10 years before the date of the notice and continued without any significant interruption thereafter for at least a 10-year period of time.

Background

10. The appeal site is a broadly triangular parcel of land located on the corner of Humber Road and Town Street, with a gated vehicular access off Town Street. The land immediately to the east of the appeal site is used for the keeping of horses, which for clarity is hereafter referred to as “the blue land”. To the east of the blue land is an area of grassed land which leads up to a road which was constructed in around 2016. This land was subject of a Compulsory Purchase Order (CPO) for the highway works to be undertaken and is referred to as “the CPO land”. Historically, the appeal site, blue land, and CPO land were all under the ownership of the appellant’s mother, Wendy Carr (WC). WC remains the owner of both the appeal site and the blue land.
11. There is no dispute between the parties that the appeal site is its own planning unit. It was held in *Burdle*¹ that the planning unit is normally the unit of occupation

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

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. Three broad categories are identified for planning units, which are:

- a. A single unit of occupation with a single primary use with ancillary and incidental activities;
 - b. A single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use); and
 - c. A unit of occupation with two or more physically separate areas which are occupied for different and unrelated purposes. Each area in this scenario forms a separate planning unit.
12. Given that the land owned by WC clearly comprises two physically separate areas, namely the appeal site and the blue land, which are used for two different and unrelated purposes, I agree that the appeal site is its own planning unit. It is also common ground that a material change of use of the appeal site to the storage of scaffolding materials has occurred and is continuing to date. The matter in dispute is whether or not the material change of use commenced more than 10 years prior to the issue of the enforcement notice. As the notice was issued on 9 October 2024, the relevant date is therefore 9 October 2014.
13. The appellant has submitted two previous applications for a Lawful Development Certificate (LDC) for an existing use of the land for storage (Use Class B8). The first LDC application² was refused by the Council on 3 March 2022 (“the 2022 LDC application”), with a subsequent appeal against that decision being withdrawn. The second LDC application³ was also refused by the Council on 14 February 2023 (“the 2023 LDC application”) with no appeal being lodged against the refusal. Both LDC applications related to the entirety of the land owned by WC, which is made up by the appeal site and the blue land.

The evidence

14. In summary, the appellant Paul Carr’s (PC) written and oral evidence to the Inquiry was that he started trading as CSP Scaffolding in late 2010, with scaffolding materials being stored on his parent’s land from around spring 2011. PC’s evidence to the Inquiry was that from 2011 materials were stored on what he described as “*the front and back of the site*”, which he confirmed to be the appeal site and the CPO land.
15. Further written and oral evidence in support of the appellant’s case was given to the Inquiry by WC, Kirsty Ross (KC) who kept her horse on the blue land from around 2009 to 2012, Barry Bee (BB) who also runs a scaffolding business and has known PC since 2011 with his first visit to the appeal site being in 2013, and Darren Ash (DA) who has known and worked with PC since around 2016. The evidence from WC and KR was that the appeal site had been used for the storage of scaffolding materials since 2011, whilst BB stated he had knowledge of the appeal site being used for that purpose since 2013, with DA having knowledge of the site’s use since 2016.

² Council Ref: PA/2022/2096

³ Council Ref: PA/2023/1814

16. Documentary evidence presented to support the appellant's claim that the use of the appeal site for the storage of scaffolding materials had commenced prior to 9 October 2014 included:
- Copies of invoices relating to CSP Scaffolding dating between December 2010 and February 2013
 - HM Land Registry Title Plan for the appeal site and adjacent land
 - Site plans submitted as part of the 2022 and 2023 LDC applications
 - Get Mapping Aerial Imagery dated 27 September 2014, 21 April 2016, and 19 September 2019
 - HM Land Registry Documents relating to the transfer of part of WC's land (the CPO land) to Highways England dated February and August 2016
 - Various Google Earth Imagery dated 2 June 2009, 27 April 2015, 18 June 2017, 13 May 2019, 26 August 2019, 21 September 2019, 22 April 2021, and 16 June 2021
 - Google Street View Imagery dated August 2016, June 2021, October 2021, and July 2022
 - Various photographs of the appeal site taken in 2023 and 2024
 - Other documentation and evidence in relation to the 2023 LDC application including decision notice, signed affidavits of PC, WC, DA, and David Jolly (DJ), and witness statements of KR and William King (WK).

Assessment of the evidence

17. The Council has not put forward any evidence that contradicts the version of events put forward by the appellant. Instead, the Council's case is simply that the evidence provided in support of the appeal is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the alleged material change of use of the appeal site commenced by the relevant date.
18. I shall turn firstly to the invoices relating to CSP Scaffolding that were provided by the appellant in relation to both this appeal and the 2023 LDC application. Whilst I accept that these invoices help demonstrate that the appellant's business was trading from at least December 2010, they cannot be relied upon to demonstrate what activities, if any, were taking place at the appeal site during that period. The invoices make no reference to the appeal site whatsoever, and PC accepted in cross examination that although they showed he was in business they did not help show any use of the appeal site. They are therefore of very little assistance to the appellant's case.
19. Similarly, the HM Land Registry Title documents relating to the land owned by WC and the documents which detail the transfer of part of the land ("the CPO land") to Highways England do not show any use of the appeal site. Beyond demonstrating that WC owns the appeal site and adjacent blue land, and the date on which the CPO land was transferred to Highways England, they do not aid the appellant's case in terms of demonstrating the use of the appeal site before the relevant date.

20. An array of aerial and street view images, as well as photographs taken within the site itself, were produced by both the appellant and the Council. The bulk of these images though were taken on dates post 9 October 2014 and hence do not provide evidence in support of the appellant's case that the use had occurred at least 10 years prior to the issue of the notice. Of the images that do pre-date 9 October 2014 only one aerial image, dated 27 September 2014, is relied on to show the alleged use of the appeal site for the storage of scaffolding materials. I shall return to the substance of this image later.
21. As a result, the vast majority of the evidence in respect of any use of the site from pre-9 October 2014 is that of the respective witnesses. This comprises the oral and written evidence provided by the various witnesses at the Inquiry, as well as the written evidence provided by some of the same witnesses in relation to the 2023 LDC application. The 2023 LDC application also included additional written evidence from DJ and WK who did not give evidence to the Inquiry.
22. PC, WC, and DA all provided affirmations, and KR a signed statement of truth, as evidence in support of the 2023 LDC application. The affidavit of DA provided very little in terms of specific dates that he had witnessed the appeal site being used for the storage of scaffolding materials. Indeed, in cross examination DA accepted that he had no knowledge of the appeal site prior to 2016 having first visited the site in that year to collect equipment. Whilst I accept that his evidence assists in demonstrating that the use of the appeal site has continued from 2016 to date, the continuity of the use over that period is not disputed by the Council. His evidence though is of no assistance in respect of whether the use commenced prior to the relevant date.
23. In his affidavit, PC stated that *"When the title was split, I had to move my equipment and materials from the east part of the field (to) the west part where I now store my equipment and materials"*. In paragraph 7 of his affidavit PC further explained that *"My parents have allowed me the use of their land to store materials and equipment associated with the running of my company since 2011, although I have moved from the east side of the field to the west, I have remained within their title at all times"*.
24. WC stated in her affidavit that her son (PC) had been using her land for the storage of scaffolding materials since spring 2011, and that the triangular part of the land (the appeal site) was being used. At paragraph 7 she specified that *"He had previously stored all of his equipment at the most northerly point of our field however one acre of that field was subject to a compulsory purchase order to allow a new access road known as Town Street and, since that time he has stored all of his materials at the front end of my field clearly shown on the attached aerial photograph"*. WC confirmed to the inquiry that the *"northerly point of our field"* was the CPO land.
25. KR also set out in her statement of truth that *"Initially all of the scaffolding equipment was at the far most end of the field furthest away from the road, however over time that has moved to the front of the field and that is where it has remained"*. Similarly, DJ stated in his affidavit that *"I am aware that Paul's materials have been stored at the front of this field for a considerable amount of time, following the new slip road and the compulsory purchase by the local authority..."*.

26. Finally, WK said in his statement of truth that *“Prior to the new road, and access bridge from the A160 across the easterly side of the field and down towards Town Street, I was aware of a number of materials which I would describe as construction scaffolding materials being placed upon the easterly side of the field during my visits to the area”*. At paragraph 8 WK further set out that *“Since the installation of the bridge and new road, I have noticed those materials now being stored at the entrance to the field from Town Street and again I would reiterate that those appear, to me, to be scaffolding materials and equipment”*.
27. Drawing these points together, all the witness evidence provided in support of the 2023 LDC application set out that the scaffolding materials had initially been stored on land at the eastern part of the field, which is referred to for the purposes of this appeal as the CPO land. They further set out that those scaffolding materials subsequently moved from the CPO land to the western part of the field, the appeal site, with the evidence strongly suggesting that this took place following the CPO land being purchased and the new bridge and road constructed.
28. However, the evidence presented to the Inquiry by both PC and KR is markedly different from that which was presented in their previous affidavit and statement of truth. In summary, both PC and KR said that both the appeal site and the CPO land had been used for the storage of scaffolding materials from 2011. In the case of PC, he further stated in his proof of evidence that by 2013 all scaffolding materials had been removed from the CPO land to the appeal site.
29. In seeking to explain why his written and oral evidence to the Inquiry differed to that set out in his previous affidavit, PC said in examination in chief that *“I had moved from one side....it doesn’t mean I didn’t store materials on the appeal site as well”*. When questioned in cross examination about why his affidavit had said the materials had been moved from the east to the west of the appeal site, PC responded, *“It doesn’t say there were no materials on the appeal site”* and that *“My understanding is that it is one field. I just moved my equipment from one part to another”*.
30. When questioned why her evidence had now changed, KR struggled to provide any convincing explanation. On one hand KR confirmed that she had read her affidavit and had signed it as being a true statement. This included that all of the appellant’s scaffolding materials had been stored on the CPO land before moving to the appeal site. KR now said that PC would *“leave stuff at the front of the site if I wasn’t there as he couldn’t get to the back because of the horses”*. When asked why that wasn’t included in the affidavit KR simply replied, *“I should have re-worded it”*. KR was also unable to provide any firm dates on which all the scaffolding materials were moved from the CPO land to the appeal site.
31. It was put to me that PC and KR had signed affidavits which they thought to accurately describe the use of the land and had simply failed to include details which would later be important. Furthermore, it was also argued that, particularly to lay people, the concept of planning units are complex and therefore PC and KR did not understand the importance of precise wording and outlining exactly where materials were stored on the site.
32. Whilst I accept that the concept of planning units can be complex, there is no mention of planning units in any of the affidavits or statements of truths provided in the 2023 LDC application. In reality they are far simpler than that, and they just

describe what the authors are said to have seen at the time, which in all cases was the storage of scaffolding materials on the eastern side of the field.

33. In my view, the appellant's argument that because he had specified that materials were stored on the eastern (CPO land) side of the field did not mean that materials were not also stored on the appeal site is simply not credible. I find it highly unlikely that when seeking to describe the use of an area of land, or areas where materials were stored, that the author would specify one area and not another. Alternatively, if materials were stored on several parts of the land, or they were transitory within it, then it would simply be set out that materials were stored on the land. To my mind, the highlighting of the eastern area of the field specifically identifies the area being used, and the failure to identify any other areas being used would be a glaring omission. For the same omission to occur on several separate affidavits and statements of truth is highly improbable.
34. Both PC and KR also confirmed that they had read their affidavit and statement of truth, and that they were happy that the contents were correct. An affidavit and statement of truth are of equivalent status to giving oral evidence on oath, and anyone who wilfully makes a statement which they know to be false, or does not believe to be true, shall be guilty of perjury as set out in the Perjury Act 1911. I therefore do not agree with the assertion that the affidavits and statements of truths should be afforded less or no weight. I also acknowledge that DJ and WK did not give evidence to the Inquiry, but nevertheless, their testaments further corroborate the other evidence presented in the 2023 LDC application.
35. In addition, there is also the oral evidence given to the Inquiry by WC. WC is the appellant's mother, the landowner, and lives opposite the appeal site. WC confirmed in cross examination that all of the scaffolding materials were originally stored on the CPO land, and that all his materials were moved to the appeal site in 2016 after the CPO land was purchased by Highways England. This is entirely consistent with her affidavit provided in the 2023 LDC application.
36. The appellant accepts that the evidence given by WC was not helpful to his case. It has been claimed that WC was nervous when giving evidence, which along with her age, led to her becoming overwhelmed. Whilst I accept that, as can be the case with many witnesses, WC may have been nervous when giving her evidence, there is nothing before me to suggest that she was in anyway impaired or overwhelmed. She attended the Inquiry voluntarily and was able to answer the questions put to her clearly. There is therefore no reason why her evidence should be attributed any less weight.
37. With regards to the aerial image dated 27 September 2014, referred to by the appellant in both his previous affidavit and in his evidence to this Inquiry, PC said in his evidence that the photograph showed scaffolding items including boards, tubes, and fittings on the appeal site. Although some items can be seen on the appeal site, the image is not clear, and it is very difficult to ascertain with any certainty what those items might be. PC also highlighted that there were no items visible on the CPO land in the image.
38. Although the aerial image shows what appears to be a small number of "items" on the appeal site, it is not clear what those items are. Particularly given the nature of the scaffolding business, where the number of items stored may fluctuate greatly depending on whether they are being used on a job elsewhere or not, one aerial

photograph on a single day in September 2014 is not conclusive evidence. For example, the majority of items usually stored on the CPO land may have been being used on a site elsewhere on that day, and other items may have been up against the boundary hedging and hence not visible in the aerial photograph. Equally, the items on the appeal site may have been placed there temporarily or had been moved from the CPO land to await collection. Overall, the aerial image is therefore little more than a snapshot in time.

39. BB did not provide any evidence as part of the 2023 LDC application. His evidence to the Inquiry was that he had visited the site regularly since 2013. In his oral evidence he set out that materials had originally been on the appeal site, the adjacent blue land, and CPO land, with the items on the CPO land all being moved to the appeal site in 2016 when the new road was getting built. BB was unable though, with any certainty, to set out how much of the scaffolding materials had been stored on the appeal site and how much had been stored on the CPO land.
40. The evidence that the appeal site has been used for the storage of scaffolding supplies since before 9 October 2014 is far from convincing. In any event, even if materials were stored on the appeal site prior to that date, for there to have been a breach of planning control the level of activity will have had to have been such that a material change of use of the land had taken place.
41. PC's oral evidence was that in the early years of the business he used both the appeal site and the CPO land, with around 70% of the equipment being stored on the CPO land and the remaining 30% stored on the appeal site. KR stated similar, estimating that 75% was stored on the CPO land and the remaining 25% on the appeal site.
42. By the appellant's own admission when he started his business in 2011 he had equipment and materials amounting only to £100's, rather than the circa £500,000 worth that he has today. During my site visit I saw that a variety of items were now stored on the appeal site, both externally and within a steel storage container, which included scaffold tubes, boards, fittings, heras fencing, and trailers. Consequently, in the first few years of the business there will have been significantly less items to be stored on the site than I saw during my visit.
43. Even when also taking into account vehicle movements and other associated activities, I am not satisfied that 30% of what started out as only "£100s" of equipment and materials would have amounted to a material change of use. As a result, even if I was to accept that materials had been stored on the appeal site pre-October 2014, it has not been demonstrated that this would have amounted to a material change of use of the land.
44. Notwithstanding whether there is evidence to contradict the appellant's version of events or make it less than probable, the appellant must provide evidence which is sufficiently precise and unambiguous. In this case I find that the appellant's evidence is riddled with inconsistencies and contradictions. One thing that can be said with certainty is that the appellant's evidence is not precise and unambiguous.
45. Overall, the evidence in support of the appellant's case was far from being precise and unambiguous. There were clear inconsistencies between what the same witnesses had said in previous affidavits and statements of truths to the oral evidence that they presented to the inquiry, as well as inconsistencies between individual witnesses' evidence. The reasons put forward to explain those

inconsistencies and contradictions were neither credible nor convincing. The documentary evidence was also limited and did little to quell any concerns over the accuracy of the witness evidence provided and demonstrate that the use of the appeal site for the storage of scaffolding materials had commenced prior to 9 October 2014.

46. Even if taking the alternative view and accepting that the site had, to some extent, been used to store scaffolding materials prior to the relevant date, the evidence before me is not sufficient to demonstrate that any such use would have amounted to a material change of use of the land at that stage.
47. In conclusion, the appellant has failed to demonstrate, on the balance of probability, that the development subject of the enforcement notice was immune from enforcement action at the date the notice was issued. Accordingly, the appeal on ground (d) fails.

Conclusion

48. For the reasons given above, I conclude that the appeal fails. I have therefore upheld the enforcement notice as corrected.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anna Stein	Counsel
She called:	
Paul Carr	Appellant
Wendy Carr	Owner of the appeal site
Kirsty Ross	Factual Witness
Darren Ash	Factual Witness
Barry Bee	Factual Witness
Chris Creighton	Peacock and Smith, Town Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Shemuel Sheikh	Counsel
He called:	
Martin Wilson	Planning Enforcement Officer, North Lincolnshire Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Appellant's opening statement
2. Opening submissions on behalf of North Lincolnshire Council
3. Rebuttal Proof of Evidence of North Lincolnshire Council
4. Appellant's Closing Statement
5. Closing submissions on behalf of North Lincolnshire Council