



Appeal Decision

Site visit made on 5 June 2007

by **David Baldock** MA DipTP DMS MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
14th June 2007

Appeal Ref: APP/B3410/C/06/2017623

Land at Belmont Gate on the south side of Belmont Road, Tutbury, Burton upon Trent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Michael Bloor against an enforcement notice issued by East Staffordshire Borough Council.
- The Council's reference is EN/19615/016.
- The notice was issued on 2nd May 2006.
- The breach of planning control as alleged in the notice is change of use of the land from use for agriculture to use for agriculture and for the storage of demolition waste, road planings, scrap metal, building materials, contractor's plant, commercial vehicles and Harris fencing without planning permission.
- The requirement of the notice is to remove from the land all demolition waste, road planings, scrap metal, building materials, contractor's plant, commercial vehicles and Harris fencing.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Procedural matters

1. Ground (c) was not pleaded at the outset but was added following correspondence from the Inspectorate.

Site and surroundings

2. The notice affects the single field owned and occupied by the appellant. In the south-west corner is an open-sided livestock building which was permitted in September 2000. There is a dwelling, Belmont Gate, adjoining the north-west corner of the site. The nearest land to this within the appeal site is substantially above the dwelling by in the region of 1.8m. An access track surfaced in tarmac scalplings leads around the edge of the field to the building. Near the southern end of the track there is a pile of excavation spoil, some steelwork, and a small quantity of scalplings. Harris fencing and supports are stored behind the building. The building is used for general storage and items present included a dumper truck and an excavator with blade and bucket.
3. Beyond the site to the south-west is a group of buildings converted to industrial/storage units.

Ground (e)

4. This ground of appeal is that the copy of the notice was not served as required by section 172.
5. Section 176(1) provides that where it would otherwise be a ground for determining an appeal 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 there had not been substantial prejudice as a result.
6. The Council has explained the steps it took to serve the copy of the notice, which accord with the requirements in section 329. Thus the available evidence is that the appellant was served appropriately. Even where this not so, the fact that he has been able to make and progress his appeal demonstrates that there has been no substantial prejudice. Thus ground (e) fails.

Ground (c)

7. This ground is that the matters alleged in the notice do not constitute a breach of planning control. This would be the case if these were not a material change of use or were ancillary to the use of the land for agriculture.
8. This ground of appeal is determined on the balance of probability with the onus of proof on the appellant. It is also decided on the basis of circumstances at the date the notice was issued. Activities prior to May 2006 may be relevant but changes since that date would not be grounds to set aside the notice.
9. The evidence about activities on the land consists mainly of a variety of photographs from various sources. Part of the appellant's case is that much of the material present was being used to construct the access track. This is referred to in condition 6 of the planning permission, which required the details of surfacing to be approved. The Council claims that formal agreement was never given and that correspondence in 2002 suggests that the track had been completed by that date. An explanation for the later photographs showing considerable quantities of demolition waste and scalplings on site may be that the appellant incorporated substantially more material in the track than the Council had expected.
10. Photographs do demonstrate use for the storage of Harris fencing and I am unconvinced that all the vehicles and plant present have been/are required for the agricultural use. Photographs also show some building materials unconnected with the permitted building and there was also some steelwork on the land at the time of my site visit. These conclusions are consistent with the appellant's representations, which acknowledge that materials and vehicles on the land unconnected with the agricultural use have been removed.
11. Overall I am satisfied that there has been a material change of use and the use of the land has not been solely for agriculture. It seems very possible that material now incorporated in the access track was stored for a long period and in that respect the Council was justified in issuing the notice. On the evidence available there is not clear justification to vary the terms of the allegation nor is the appeal on this ground substantiated, so that ground (c) fails accordingly.

Ground (a) and the deemed application

12. The Council has referred to the policies in the Structure Plan (SP) and the East Staffordshire Local Plan (LP) adopted in July 2006, which has superseded the 1999 plan. Policy NC1 of the SP states that the countryside will be protected for its own sake. Policy NE1 of the LP resists development outside settlement boundaries unless defined circumstances apply.
13. The appeal on this ground is pursued in relation to a small part of the site only, which was the subject of a previous planning application for the storage of fencing panels. In my view such a use would be contrary to the aims of policies to protect the countryside and has not been shown to be either necessary or appropriate in the countryside, as required to be acceptable under policy NE1. There would also be an adverse effect on the amenities of the occupiers of Belmont Gate, both as a result of disturbance and visual impact. Although the appellant cites the adjoining industrial/storage units and I also looked at another small area of land to which he drew my attention, neither constitutes a precedent for the appeal use. In particular, there are different policy considerations applicable to the conversion of buildings in the countryside and there is no evidence that the Council has been inconsistent. Thus the appeal on ground (a) fails and planning permission will not be granted on the deemed application.

Ground (f)

14. This ground is that the activities required by the notice to cease exceed what is necessary to remedy any breach of planning control.
15. In support the appellant mentions a number of items that are being removed. Some are also said to be present to construct the building or access track. The use of the term "contractor's plant" is queried and in response the Council has stated that this refers to all plant, machinery and tools typically used by a groundworks contractor which are being stored on site and have nothing to do with agriculture.
16. In so far as items are appropriately on the land in connection with the implementation of a planning permission or the use of the land for agriculture, they should not be affected by the notice. However the building seems to have been complete for some time and little further work is needed to the track. These matters do not in my view necessitate an amendment to the notice. It would be a matter for evidence in the future whether items are genuinely on the land for a lawful purpose. Those rights are not removed by the notice, as the Council has recognised in its definition of "contractor's plant". Thus I do not accept that the notice is excessive and ground (f) therefore fails.
17. For the avoidance of doubt I shall add a requirement to cease the use, which although implicit in the obligation to remove all features of the use should be formally stated. This would not extend the impact of the notice and would not therefore cause injustice.

Formal Decision

18. I direct that the enforcement notice be varied by adding a new requirement 1 in paragraph 5 "what you are required to do" and numbering the original as "requirement 2":

Requirement 1. Cease the use of the land for the storage of demolition waste, road planings, scrap metal, building materials, contractor's plant, commercial vehicles and Harris fencing.

19. Subject to this variation I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Baldock

INSPECTOR