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## Appeal Decision

Site visit made on 11 February 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 March 2025

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### Appeal Ref: APP/C3430/C/23/3324336

### Leighton Pools, Chillington Lane, Codsall Wood WV8 1QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Clive Evans (Maximum Projects Ltd) against an enforcement notice issued by South Staffordshire District Council.
  - The notice was issued on 19 May 2023.
  - The breach of planning control as alleged in the notice is:
    - (1) Without planning permission, the unauthorised material change of use of the land to storage purposes in the approximate position shaded blue on the plan and shown edged blue on the aerial image at Appendix 1.
    - (2) Without planning permission unauthorised development consisting of: (a) the erection of four storage buildings, in the approximate position shaded green on the Plan and identified as buildings 1 to 4 on the photographs at Appendix 2, and the erection of a wooden building and associated development including, but not exclusively, hardstanding, paving flags and walls, in the approximate position shaded pink on the Plan, (b) the erection of a wooden building and associated development including, but not exclusively, hardstanding, paving flags and walls, in the approximate position shaded pink on the plan.
  - The requirements of the notice are:
    - i) Cease the use of the land in the approximate position shaded blue on the plan and outlined in blue on the image at Appendix 1 for storage purposes.
    - ii) Remove all materials from the land in the approximate position shaded blue on the plan.
    - iii) Remove the hardstanding located within the area shaded blue on the plan from the land
    - iv) Restore the land in the approximate position shaded blue on the plan back to the condition it was in before the breach commenced.
    - v) Demolish and remove the outbuildings located in the approximate position shaded green on the plan and identified as buildings 1 to 4 at Appendix 2.
    - vi) Remove all materials and debris resulting from compliance with v) above from the land.
    - vii) Demolish and remove the wooden building located in the approximate position shaded pink on the plan and remove the surrounding hardstanding, paving flags and walls.
    - viii) Remove all materials and debris resulting from compliance with vii) above from the land
    - ix) Restore the land in the approximate position shaded pink on the plan back to the condition it was in before the development commenced.
  - The period for compliance with the requirements is: Three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) and (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 paragraph 1 of section 3, the deletion of the words “Without planning permission,” and “unauthorised”.
- In paragraph 2 of section 3, the deletion of the words “Without planning permission unauthorised” and substitute the word “operational”.

- In paragraph 2a of section 3, the deletion of the words “and the erection of a wooden building and associated development including, but not exclusively, hardstanding, paving flags and walls, in the approximate position shaded pink on the plan”.
  - In paragraph 2b of section 3, the deletion of the words “but not exclusively,”.
  - In section 5 the deletion of requirement ii) in its entirety and substitute the words “Remove all materials associated with the storage use from the land in the approximate position shaded blue on the plan”.
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

### **Preliminary Matter**

3. The appeal was made under ground (d). However, in his submissions the appellant has stated that some of the buildings constructed on site are permitted development and do not require planning permission. Those arguments are a hidden ground (c) appeal. As the Council has commented on the points raised by the appellant in their written statement of case, I have determined the appeal with the additional ground.

### **The Notice**

4. 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.
5. In section 3 of the notice the words “without planning permission” and “unauthorised” do not describe an act of development and are therefore unnecessary. In the interests of clarity, in paragraph 2 of section 3 the word “unauthorised” should also be replaced with the words “operational development”. Similarly, the words “but not exclusively” in paragraph 2b are unnecessary due to the preceding word being “including”.
6. It is clear from both the plan attached to the notice and the requirements set out in section 5 that there is one wooden building in the approximate position shown pink on the plan. However, the building is referred to in both paragraphs 2a and 2b of section 3 of the notice. To remove this duplication, I shall delete the reference to the wooden building from paragraph 2a.
7. Finally, requirement ii) in section 5 would be clearer and more precise if it specified that all materials associated with the storage use should be removed from the land. The above corrections do not fundamentally change the notice or its requirements. Consequently, they do not cause injustice to either party.

### **Ground (c)**

8. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test is on the balance of probabilities.

9. The appellant contends that buildings 2, 3, and 4 are permitted development, presumably with reference to permitted development rights afforded under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”).
10. No reference is made to any specific Part or Class of the GPDO, although the appellant refers to the buildings being used in conjunction with their agricultural business. Class A of Part 6 of the GPDO permits, amongst other things, the erection of agricultural buildings which are reasonably necessary for the purposes of agriculture within that unit.
11. Whether the buildings would meet all the relevant conditions and limitations under Class A of Part 6 is unclear. In any event, to benefit from such rights, before beginning the development the developer must first apply to the local planning authority for a determination as to whether the prior approval of the authority will be required. The development must not begin before receipt from the local planning authority of either confirmation that prior approval was not required, the giving of such prior approval, or the expiry of 28 days following the date on which the application was received. I have been provided with no evidence to suggest that any application for prior approval was made.
12. Consequently, the erection of buildings 2, 3, and 4 would not be permitted under Class A of Part 6 of the GPDO. From the evidence before me I am also satisfied that the buildings would not be permitted development under any other Class of the GPDO.
13. The appellant has therefore failed to demonstrate that there has been no breach of planning control. Accordingly, the appeal on ground (c) fails.

#### **Ground (d)**

14. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken due to the passage of time. The notice alleges both a material change of use of the land and operational development, with the relevant periods being ten years and four years respectively. As the notice was issued on 19 May 2023 it is for the appellant to show, on the balance of probability, that the alleged use occurred on or before 19 May 2013 and continued after the date of change without significant interruption. In relation to the operational development, it is necessary to show that the works were substantially completed on or before 19 May 2019.
15. The appellant’s evidence does not have to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant’s version of events less than probable, there is no good reason to dismiss the appeal. The appellant’s evidence would however have to be sufficiently precise and unambiguous.
16. Turning firstly to the operational development attacked by the notice, the appellant contends that buildings 1, 3, and 4 have been on the site since 2011 and were initially used to store furniture and private possessions. The appellant has provided photographic evidence (photographs A1 – A5) that show containers adjacent to a barn which has since been converted into a bungalow. These containers now form part of buildings 1, 3, and 4.

17. The appellant's own evidence is that the containers were moved from by the barn to their current location in around September/October 2020. This is further supported by letters from BDC Roofing Ltd and D. Norton who both confirmed that they helped the appellant move the containers in September/October 2020. The Council has provided several aerial images from Google Earth, and it is clear from the image dated April 2020 that Buildings 1, 3, and 4 are not present in their current location.
18. In terms of building 2, the appellant contends that this structure was a direct replacement for the "boathouse" which was located some distance away adjacent to "Leighton Pool". Whilst that may be the case, the appellant has provided no evidence to suggest that building 2 was substantially completed by 19 May 2019. Indeed, the letter from D. Norton states that a new shed was built to replace the boathouse which had collapsed just before the Covid pandemic, which of course occurred after 19 May 2019. The aerial image produced by the Council dated April 2020 also shows that building 2 was not present in its current location at that time.
19. I acknowledge that the containers used in the construction of buildings 1, 3, and 4 have been on the wider site for more than the requisite four years. However, the containers have since been physically moved from one part of the site to another and modified to form the existing buildings. The modifications include the containers being incorporated into much larger structures (building 1), being clad in timber, and having new roofs added. The re-locating of the containers and their subsequent modification into the buildings that exist today comprised a new act of operational development.
20. As a matter of fact and degree, the size, permanence, and physical attachment of buildings 1, 2, 3, and 4 leave me in little doubt that they should be regarded as operational development (i.e. buildings). It is also apparent from both the appellant's own evidence, along with that of the Council, that the erection of those buildings took place within the four years prior to the issue of the enforcement notice.
21. With regards to the wooden building ("the lodge") and associated development that is shown marked pink on the notice, the appellant provides no evidence which demonstrates that the development was substantially complete by the relevant date. Letters from Mr Brodie and Mr Westwood state that they have stayed in the lodge at various times over the last three years. This though is of little assistance to the appellant's case.
22. The Council has produced aerial imagery dated 14 May 2019 which clearly shows the land to be clear and the lodge not present on the site. The lodge though appears to be substantially completed in the aerial image dated 21 April 2020. These images therefore indicate that the development was undertaken at some point between 14 May 2019 and 21 April 2020. Whilst it is not impossible that the works could have been completed between 14 May 2019 and 19 May 2019, given the nature and scale of the works involved I find it highly improbable that they were substantially completed within this incredibly short window.
23. In terms of the material change of use of the land, the appellant contends that the site has been used for storage since 1986 and is therefore immune from enforcement action. Whilst the Council does not dispute that barns and parts of the wider site have been used for storage for more than ten years, they contend that

the area has been extended into the adjoining agricultural land. It is the Council's position that the approximate area shown blue on the notice has been laid with hardstanding and used for storage purposes within the last ten years.

24. In support of the appellant's case photographs (H1 – H3) have been provided which are purported to demonstrate that the hardstanding was existing and covered by grass. These photographs though have very little resemblance to the area of hardstanding that I observed on my site visit, and to my mind do not demonstrate that the area of hardstanding concerned was existing underneath the grassed land.
25. Additionally, the various aerial images provided by the Council which are dated from December 2003 to April 2021 indicate that the hardstanding area has been extended northwards onto previously grassed agricultural land. In particular, the most recent aerial images dated April 2021, April 2020, and May 2019 all appear to show the site delineated by a fence running roughly north-west to south-east in a straight line. Any hardstanding, structures, and items are located to the south of the fence, with the land to the north of the fence seemingly free from hardstanding or any items.
26. It was clear from my site visit that the area of hardstanding that now exists is not "square" and does not finish in a straight line along where the fence previously existed. Instead, the hardstanding area extends further northwards. Consequently, I find the appellant's evidence relation to the material change of use of the land to be imprecise and ambiguous, and contradicted by the Council's evidence.
27. The appellant has therefore failed to show, on the balance of probability, that the operational development was substantially complete over four years prior to the issue of the notice, and that the material change of use occurred more than ten years prior to the issue of the notice. Accordingly, the ground (d) appeal fails.

### **Other Matters**

28. The appellant claims that the buildings are lesser in height than existing barns on the site, the buildings have now been painted green to make them more aesthetically pleasing, the wooden lodge building is well screened by tall hedges and trees, and that care has been taken to protect biodiversity on the site. However, these arguments relate to planning merits and as no appeal has been made on ground (a), I am unable to address the planning merits of the development.

### **Conclusion**

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

*David Jones*

INSPECTOR