

APPEAL BY MR KEVIN BROAD AGAINST THE SERVING OF AN ENFORCEMENT NOTICE BY THE BOROUGH COUNCIL AGAINST AN ALLEGED BREACH OF PLANNING CONTROL RELATING TO THE CHANGE OF USE OF LAND FROM GENERAL INDUSTRIAL USE (CLASS B2) TO RESIDENTIAL PURPOSES (CLASS C3), INCLUDING THE SITING OF A CARAVAN AND INCIDENTAL DEVELOPMENT CONSISTING OF SHIPPING CONTAINER, AND WOODN STRUCTURES IN CONNECTION WITH THE UNAUTHORISED CHANGE OF USE, ON LAND OF HOLLYWOOD LANE, NEAR PEPPER STREET, KEELE.

<u>Appeal Ref. Number</u>	16/00004/ENFNOT
<u>Decision</u>	Enforcement action authorised under delegated powers
<u>Appeal Decision</u>	Dismissed and the Enforcement Notice upheld with corrections
<u>Date of Appeal Decision</u>	1 February 2017

Procedural Matters

The Appellant withdrew his Ground (c) appeal (that there has been no breach of planning control) at the Inquiry.

It was agreed at the Inquiry the current use is not a use falling within Use Class C3 and an amendment to the Enforcement Notice is therefore required. It was also agreed that the Notice needed to be amended to reflect that fencing was not on the perimeter of the Appeal site but was within the site.

Relevant Background Matters

Within the decision letter the Inspector listed all relevant information and evidence produced by the Appellant and the Council. Such information and evidence is not listed within this report, however reference is made to certain background matters where it would assist in the understanding of the conclusions that the Inspector reached.

Does the Appellant have a Right to Appeal the Enforcement Notice?

The current landowner, Keele Homes Limited, indicated that the Appellant occupies the Appeal Site without their express permission and was therefore trespassing on their land. In such circumstances the Appellant would not have a right to appeal as he doesn't have a legitimate interest in the Appeal Site.

The Appellant described his interest in the Appeal Site as a 'tenant'. Evidence he gave on oath was that he initially occupied the land with the permission of the owner of Audley Timber, Jeff Banks, who operated from the site, and the then owners and when Mr Banks's interest in the site came to an end the Appellant stated that he had the permission of the owners to continue living on the site.

Keele Homes Limited did not attend the Inquiry to give evidence. In the absence of any evidence on oath that the Appellant's claim was untrue the Inspector concluded, on the balance of probabilities, that the Appellant does have an interest in the Appeal Site and therefore he is entitled to appeal the Enforcement Notice.

Appeal on Ground (d) that at the date when the Enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control.

The appeal on Ground (d) would succeed if the Appellant could show on the balance of probabilities that he had lived in motor home or caravan on the Appeal Site on or before the 11 January 2006 (the Relevant Date) which is 10 years before the serving of the Enforcement Notice. The onus rests with the Appellant.

In the judgement of the Inspector, the Appellant failed to show, on the balance of probabilities that he was living in either a motor home or caravan on or before the Relevant Date as there

was no evidence to support such an argument. The best case for the Appellant is that he commenced living on the Appeal Site in his motor home at some point in 2006 but he was unable to confirm with any precision a date when that residential use commenced.

The Appellant called a friend who lives within two miles of the Appeal Site and who worked from time to time for the operator of the business on the site. His evidence did not provide any clarity as to when the Appellant first occupied part of the Appeal site in his residential motor home.

The Inspector therefore concluded that the Appellant failed to demonstrate that the residential use commenced on or before the Relevant Date and that accordingly the appeal on Ground (d) must fail.

Ground (g) that the period specified in the Enforcement Notice falls short of what should reasonably be allowed.

The Appellant and his partner have a pig and a dozen hens on the site which are akin to pets rather than livestock.

The Appellant explained that there are vacancies on a nearby caravan site albeit that the site is only open 10 months a year and that his pets could not be taken to this site.

There was no convincing evidence before the Inspector, however that the six month period for compliance with the Enforcement notice falls short of what time is reasonable required to make alternative arrangements for the Appellant and his partner to find alternative accommodation and it makes provision for the ongoing care of their animals. The appeal on Ground (g) therefore fails.

Recommendation

That the decision be noted.