

EASTLEIGH BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING & COMPENSATION ACT 1991) – SECTION 174

TOWN AND COUNTRY PLANNING (ENFORCEMENT) (WRITTEN REPRESENTATIONS PROCEDURE) (ENGLAND) REGULATIONS 2002 (STATUTORY INSTRUMENT 2002/2683)

STATEMENT OF CASE

Enforcement Notice appeal against Enforcement Notice issued by Eastleigh Borough Council

Appeal by Mr Andrew Thomas Johns, Mrs Elena Johns – 14 Furley Close, Winchester, Hampshire, SO23 0PF

Site – Shop Lane, Bursledon, Southampton,

Planning Inspectorate reference: APP/W1715/C/23/3329845 , APP/W1715/C/23/3329846

Local Authority reference: *ENF/2021/168*

Eastleigh Borough Council
Eastleigh House
Upper Market Street
Eastleigh
Hampshire
SO50 9YN

22nd December 2023

INTRODUCTION

This statement is in respect of an appeal made by Mr Andrew Johns and Mrs Elena Johns, owner of Willwoods Yard, Shop Lane, Bursledon (“the Appellant”) against the decision of Eastleigh Borough Council (“the Council”) to issue an Enforcement Notice. On 4th September 2022 an Enforcement Notice was issued and served on the Appellant for a breach of planning control; specifically, the unauthorised change of use of the land at Shop Lane, known as Willwoods Yard, to B8 storage, siting of a caravan, unauthorised erection of gates, fencing in excess of 1 metre adjacent to the highway, hardstanding and placement of shipping containers.

REASONS FOR ISSUING THE ENFORCEMENT NOTICE

It appears to the Council that the unauthorised use of the land has occurred within the last 10 years and the laying of hardstanding and placement of shipping containers has occurred within the last four years.

The unauthorised material change of use of the land at Shop Lane, known as Willwoods Yard for B8 Storage, siting of a caravan, unauthorised erection of gates, fencing in excess of 1 metre adjacent to the highway, hardstanding and placement of shipping containers does not benefit from planning consent. The owners of the site have been advised that the development is unauthorised and planning permission is required however a retrospective planning application has not been submitted. The development is also contrary to saved policies S5 and DM1 of the adopted Eastleigh Borough Council Local Plan (2016-2036) and the National Planning Policy Framework.

- The development, by virtue of its siting, massing, design and layout, results in an unduly prominent and visually intrusive built form, which would be detrimental to and out of keeping with the character of the surrounding area and designated countryside.
- The development of the hardstanding does not benefit from planning consent.
- The siting of storage containers on the land does not benefit from planning consent and is out of keeping with the character of the surrounding area and designated countryside.
- The siting of the caravan on the land does not benefit from planning consent and is out of keeping with the character of the surrounding area and designated countryside.
- The erection of fencing on the land does not benefit from planning consent, does not fall within Schedule 2, Part 2, Class A of the Town and Country Planning Act General Permitted Development Order and is out of keeping with the character of the surrounding area and designated countryside.

LOCATION AND DESCRIPTION OF APPEAL SITE AND SURROUNDING AREAS

The application site is located on Shop Lane, Bursledon . The site is specifically located to the north of Shop Lane situated behind a mixture of wooden fencing and vegetation. The site is accessed via two gated entrances on shop lane, a 1 metre metal gate on the bend of shop lane and a larger gate in excess of 1 metre further up the lane, the site is currently bound by close board fencing and gates.

The gates in excess of 1 metre give access to a hardstanding area boarded by high fencing which is used for the storage of containers and other building related items, there is a gate to the rear allowing access to the perimeter track, to the left this leads to an open area of green space which is also used for the storage of various building related items and materials, there is another small fenced area which houses a caravan, containers and small outbuilding, the track continues around the site giving access to the second site entrance.

The site and surrounding area fall within designated countryside. To the north is woodland and to the south, east and west are open fields which, as well as being designated countryside, form part of the strategic gap. There are no pedestrian pathways or street lighting on Shop Lane with vegetation and open fields bordering either side of the road giving the area an open rural feeling. Towards the north-west of the site is Twin Pines Farm and two large detached residential properties all set back from the road, towards the southern end of Shop Lane are two detached bungalows.

RELEVANT PLANNING POLICY

(I), Policy DM1, General criteria for new development

All new development should (as relevant):

- a. not have an unacceptable impact on, and where possible should enhance: i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast; ii. biodiversity (avoiding significant adverse impacts); and iii. the significance of heritage assets;
- b. make efficient use of the site, maximise opportunities to increase density and have regard to potential development opportunities on adjoining land;
- c. take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, density, design and siting, both in itself and in relation to adjoining buildings,

spaces and views. Where adjoining development is poor in urban design terms, new development should contribute to improving the character of the area;

d. not involve the loss of or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);

e. include a landscape scheme covering the design and layout of external space;

f. protect and enhance public rights of way and National Trails and provide fully connected green infrastructure that interlaces the development and connects into the wider network;

g. provide satisfactory management arrangements for all landscape, green infrastructure and biodiversity enhancement;

h. incorporate provision for people with disabilities and create accessible communities that cater for all;

i. incorporate design measures to inhibit criminal and anti-social behaviour;

j. incorporate provision for on-site waste management; and

k. include provision for public art associated with new large scale development in accordance with the Council's adopted Public Art Strategy.

ii) Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is, therefore, the starting point for the consideration and determination of this application. As noted above, this comprises the Saved Policies within the DM1 (General Development) of the Eastleigh Borough Local Plan 2016 – 2036 and the application must be assessed against those that are relevant to the proposals.

In particular, the Council draws the attention of the Inspector to paragraph 130 which states that development should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area, and paragraph 127 which, *inter alia*, requires that planning decisions should ensure that developments function well and add to the overall quality of an area, are visually attractive as a result of good architecture, layout and appropriate landscaping, and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

The application site also falls within designated countryside protected by Policy S5. This Policy sets out that new development in the countryside is generally restricted and notes (1) compatible usages for which new development in the countryside is appropriate. 1(a) and (b) of this Policy sets out that existing buildings in the countryside can be altered subject to stipulation of relevant Policies. Policy DM18 sets out that the extension or replacement of non-residential buildings in the

countryside should not have an urbanising effect on the countryside in terms of its density, scale, massing, layout and height, amongst other matters. Policy S5 also goes on to stipulate (2) that new development in the countryside will seek to avoid adverse impacts upon the intrinsic character of the landscape.

GROUNDS OF APPEAL

The appellant has appealed against the Enforcement Notice on the following ground of appeal:

- (b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact set out below:
 - *Three quarters of the alleged hardstanding within the Alysha Farm compound is actually bare earth.*
 - *The high fencing as it applies to Alysha Farm was replaced by 1m fencing before the enforcement notice was received.*
 - *As far as Alysha Farm is concerned the gateway on to Shop Lane is at least 10 years old.*
- (d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
- (e) The notice was not properly served on everyone with an interest in the land.
- (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The facts are set out below: *Concerning Alysha Farm the only item which has been in place less than 4 years is the small container in the southwestern corner of our compound. This is a replacement for a steel shed which has been there since 2013. This shed was badly damaged in an arson attack and needed to be replaced. The overall length, breadth and height are similar to the recycled container shed which has replaced it and the security of a container for storing equipment and supplies is very necessary here. The caravan and garage have been broken in to many times but not the container.*

ENFORCEMENT INVESTIGATION HISTORY

- 28th April 2020 – Complaint received concerning unauthorised development at the site on Shop Lane, Bursledon.
- 23 June 2020 – Site visit conducted and photographic evidence gathered of hard standing, caravans, containers and building materials on site (Appendix 1).
- 23 June 2020 – Letter sent to Mr and Mrs Johns concerning a breach of planning control and request to contact the Enforcement Team (Appendix 2).

- 10th July 2020 - Letters sent to Mr S Williams and Mr Johns requesting a retrospective planning application is submitted to retain the unauthorised development at the site (*Appendix 3*).
- 21st October 2020 – Retrospective planning application sent to the planning team by Mr Willaims for *Storage containers and workshop* under reference F/20/89100.
- 12th March 2021 – Retrospective application F/20/89100 withdrawn as none of the supporting evidence required to support the application was provided (*Appendix 4*).
- 24th May 2021 – Mr Johns and Mr Williams contacted to submit a retrospective planning application as planning permission is required, no further applications were submitted (*Appendix 5*).
- 20th January 2022 - A site inspection was conducted, photographic evidence of the unauthorised fencing, gates, hardstanding, containers, caravans and use of the site was gathered. All unauthorised development in situ and uses being undertaken (*Appendix 6*).
- 26th January 2022 - A letter was sent to Mr Williams and Mr Johns advising that Retrospective Permission was still outstanding and permission was required for the development. (*Appendix 7*)
- 28th January 2022 – Call with Mr Williams agent who advised a retrospective application was being put together for submission.
- 9th March 2022 – Mr Williams agent advised they were still working on a planning application and awaiting revised land registry details.
- 26th April 2022 - Mr Williams agent advised they were still working on a planning application.
- 2nd September 2022 – Following a number of e-mails no further responses from Mr Williams or his agent on the status of the retrospective planning application. E-mail to owner and agent chasing again. Mr Williams contacted and advised he would get an update from the agent on the ongoing application.
- 3rd March – Site visit conducted, the unauthorised breaches of planning control were ongoing.
- 13th April 2023 – PCN Served on Mr Williams (*Appendix 8*).
- 12th May 2023 – No response to PCN from Mr Williams.
- 17th July 2023 – Site visit conducted – site was locked but could see through the fence that all of the unauthorised development was still in place and the unauthorised use was still ongoing.
- 1st August 2023 - Site visit conducted – site was locked but could see through the fence that all of the unauthorised development was still in place and the unauthorised use was still ongoing.
- 4th September – Enforcement Notice served on Andrew Johns and Elena Johns at 14 Furley Close, Winchester, SO23 0PF and Mr Sheldon Williams at 31 Gort Cresnet, Sholing, SO19 8LH (*Appendix 9*)

SUMMARY AND CONCLUSION

- (I) There has been hardstanding (*Appendix 10*) laid within the site on the areas highlighted on the attached plan. Entering through the gates in excess of 1 metre, the hardstanding has been laid within the gated and fenced area, this extends out of the gate to the back of the site where a hardstanding perimeter track has been laid around to the second entrance as highlighted on the attached plan. The operational development has occurred within the last 4 years therefore is not immune from planning control and requires planning consent, despite a request made to the owners to submit a retrospective planning application to retain the development an application has not been received. The development has an intrusive and urbanising effect on the countryside therefore out of keeping with the character of the surrounding area and designated countryside.
- (II) The gates and fencing (*Appendix 11*) situated adjacent to the highway, highlighted on the plan attached to the Enforcement Notice, exceed 1 metre in height and have been in situ for less than 4 years therefore do not fall within Schedule 2, Part 2 of the Town and Country Planning Act (General Permitted Development Order) (England) Order 2015. Neither the 1 metre high gated entrance to the site located on the bend of Shop Lane, or the fencing directly adjacent to this entrance has been highlighted for removal on the plan attached to the Enforcement notice. Despite a request for a retrospective planning application to retain the unauthorised development a valid application has not been submitted. The development, by virtue of its siting, massing, design and layout, results in an unduly prominent and visually intrusive build form, which would be detrimental to and out of keeping with the character of the surrounding area and designated countryside.
- (III) There has been no evidence put forward by the appellant that the site has been used for B8 purposes in excess of 10 years, as evidenced in an e-mail with South Coast Containers the first enquiry was made with a container provider in 2018. Although there is no evidence provided to confirm delivery of the container Google images provided confirm that the containers were brought onto the site within a ten year period. These containers are not outbuildings but can be considered as such due to the size, weight and scale giving a level of permanence however they facilitate the use of the land for B8 storage and have not been in situ for more than 10 years therefore require removal from the site in

order to comply with the notice. The siting of storage containers on the land does not benefit from planning consent and is out of keeping with the character of the surrounding area and designated countryside.

- (IV) In evidence the appellant has referenced that the caravan has been on site for more than four years. The Google image provided from 2018 shows a caravan in situ however later Google images from May 2020 evidence that the caravan has been relocated, within 4 years, to another position on the site (*Appendix 12*). No evidence has been provided to confirm that the caravan has been stored on the land in excess of 10 years. The siting of the caravan and use of the land to store caravans does not benefit from planning consent and has an adverse effect on the character of the surrounding area and designated countryside.
- (V) Mr Johns advised that he had sold a parcel of the land at Shop Lane to Mr Sheldon Williams, unfortunately no evidence of sale or how much of the land was sold to Mr Williams was ever provided. No valid retrospective planning applications were submitted by either Mr and Mrs Johns or Mr Williams for each parcel of land with supporting plans as requested nor was land registry updated with details of the new land ownership prior to service of the notice (*Appendix 13*). There was also no clear partition of the site with more than one fenced enclosure and fence line within the plot (*as evidenced in Appendix 6*). As we had been advised that Mr Williams was a new land owner we served a Planning Contravention Notice on Mr Williams to establish the details of his land ownership and the nature of the use of the site however we did not receive a response from Mr Williams. As there was no evidence to confirm how much of the plot was owned by Andrew Johns, Elena Johns and Sheldon Williams and the whole of the area (outlined in red on the plan attached to the Enforcement Notice) was evidenced to be in use for B8 storage with a mix of fenced enclosures, containers, caravans and building materials stored throughout without any parcels of land within the site being blocked from access the notice was served on the plot as one planning unit. To summarise, without any evidence of a change in ownership or partition of the plot sold, the site area highlighted in red on the enforcement plan compromises the same B8 uses with a pathway linking the site from one side to the other and freedom of movement throughout, the notice was served on the land as one planning unit.
- (VI) The appellant has referenced a small shed which had been on the plot since 2013 but was replaced with a container within the last four years. The evidence provided to support this is a google street view image from May 2014. When considering operational development the demolition of a structure and replacement with a new storage structure would be new development therefore have no immunity from planning

control if undertaken within the last four years. When considering the unauthorised change of use to B8 storage, there has been no evidence provided to suggest that the shed was on the land more than ten years ago or that it was continually used for storage for more than ten years.

- (VII) The Council considers that there has been a clear breach of planning control as the B8 use of the site has not been ongoing for more than ten years and the operational development undertaken within four years. The B8 use of the site and operational development undertaken are both contrary to policies DM1 and S5 of the adopted Eastleigh Borough Council Local Plan (2016-2036) and the National Planning Policy Framework. The B8 use and operational development at the site have a detrimental and urbanising effect on the plot of land (outlined in red on the Enforcement Notice) which is designated countryside, and the surrounding area, which to the north is designated countryside and to the south, east and west both designated countryside and strategic gap. The Council considers that the only way to rectify the breach of planning control and retain the integrity, character and rural feel of the plot and surrounding area is to comply with the steps set out in the Enforcement Notice.

APPENDICES

Appendix 1: Photographic evidence gathered of hard standing, caravans, containers and building materials on site.

Appendix 2: Letter sent to Mr and Mrs Johns concerning a breach of planning control and request to contact the Enforcement Team.

Appendix 3: Letters sent to Mr S Williams and Mr Johns requesting a retrospective planning application is submitted to retain the unauthorised development at the site.

Appendix 4: Letter sent to Mr Williams confirming Planning Application F/20/89100 was withdrawn as no supporting documentation was provided.

Appendix 5: Letters sent to Mr S Williams and Mr Johns requesting a retrospective planning application is submitted to retain the unauthorised development at the site.

Appendix 6: Photographic evidence of the unauthorised fencing, gates, hardstanding, containers, caravans and use of the site gathered on 20th January 2022.

Appendix 7: Letters sent to Mr S Williams and Mr Johns requesting a retrospective planning application is submitted to retain the unauthorised development at the site.

Appendix 8: PCN served on Mr Williams.

Appendix 9: Enforcement Notice served on Andrew Johns and Elena Johns at 14 Furley Close, Winchester, SO23 0PF and Mr Sheldon Williams at 31 Gort Crescent, Sholing, SO19 8LH

Appendix 10: Images of the hardstanding.

Appendix 11: Images of the gates and fencing.

Appendix 12: Google Image of a relocated Caravan from May 2020.

Appendix 13: Land Registry information.