



Case No: AC-2024-LON-002992

Neutral Citation Number: [2025] EWHC 34 (Admin)

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13 January 2025

Before :

**KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE**

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Between :

**MR JOHN WARD**  
- and -

**Appellant**

**(1) THE SECRETARY OF STATE FOR  
COMMUNITIES AND LOCAL  
GOVERNMENT**

**Respondents**

**(2) HERTSMERE BOROUGH COUNCIL**

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**Alan Masters** (instructed by **Brilliance Solicitors**) for the **Applicant**  
**Nicholas Grant** (instructed by **Government Legal Department**) for the **First Respondent**  
**Shemuel Sheikh** (instructed by **Hertsmere BC Legal Services**) for the **Second Respondent**

Hearing date: 28 November 2024

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**APPROVED JUDGMENT**

## **Deputy High Court Judge Karen Ridge:**

### **Introduction**

1. This is an application under s. 289 Town and Country Planning Act 1990 for permission to appeal the decision of the First Respondent's appointed Inspector to dismiss the Appellant's appeal against an enforcement notice issued by the Second Respondent. That enforcement notice was issued on 27 October 2023 in relation to land adjacent to Romani Street, St Albans Road, South Mimms, Potters Bar, Hertfordshire EN6 3PP (the land). The Inspector's Decision Letter (DL) was dated 8 August 2024.
2. There is a long and complex planning history to the land the subject of the enforcement notice which is fully set out in the three skeleton arguments before me and other documents. The DL sets out the history of the site going back to 1962, the various uses which have taken place on the land and what happened to those uses to date. The land is a flat piece of land adjacent to a house named Romani and it contains a Nissen Hut which has been in situ since at least 1964. The periods over which the Inspector examined the land uses run from the 1960s and, by common consensus, that period was subdivided into the "Welsh Period" from 1962 to 1979 and the "Beech Period" running from 1979 to 2018.

### **Events leading to the Enforcement Notice Appeal**

3. The case is a little unusual in that a previous enforcement notice had been appealed and been subject to a Public Inquiry process. Within that process the first Inspector had arrived at a different view to that which had been agreed by both parties. At the first inquiry the parties had agreed that the use which was being enforced against was the same as the original 1970s use. The Inspector disagreed with that proposition, and concluded that, to continue to determine the appeal, would lead to prejudice to both parties. In the circumstances the original enforcement notice was quashed and a revised notice issued.
4. The enforcement notice which is the subject of this appeal alleged a material change of use of the land to a construction contractor's depot for various ancillary activities. The Appellant appealed against the notice on grounds set out within section 174(2) (a), (c), (d), (f) and (g) of the 1990 Act, namely that planning permission should be granted; that there had been no breach of planning control; that at the date of issue, no enforcement action could be taken; that the steps required to comply with the notice were excessive and that the period for compliance was too short.
5. The appeal against the enforcement notice was by public inquiry at which the Inspector was provided with statutory declarations and evidence from the previous appeal, as well as new witness statements from Mr. Rudman and Mr. Welsh and other professional witnesses. Other evidence included photographs from both parties, a series of google earth images from 1999 to 2022, aerial photographs from 2010 and 2015, photographs supplied by local residents and photographs from the local planning authority site visits. Mr. Welsh and Mr. Wilson did not attend to give oral evidence. Mr. Rudman did attend and his evidence was subject to cross-examination.

### **The Decision Letter**

6. The DL was issued on 8 August 2024. In his DL the Inspector made a series of findings based on his assessment of the evidence. His conclusions were then predicated upon his application of the legal tests to that evidence and those findings. The Inspector concluded that, during Mr. Welsh's period of ownership, the primary use of the site was storage and distribution of landscaping materials (DL18). The Inspector further concluded that the use changed between 1973-1975 by virtue of the intervening possession by Balfour Beattie and their use of the land as a contractor's depot, which was sui generis (DL22). Thereafter the use of the site reverted back to storage from 1979 with the arrival of Mr. Beech (DL42) who appeared to operate a builder's yard for "some time" but that use had ceased by 1999.
7. At DL44-DL47 the Inspector considers the question of the abandonment of uses and after analysing the evidence he concludes that there was a period of non-use for 20 years (DL46). As a result of those conclusions, the Inspector concluded that the site was in nil use at the time that Mr. Ward took over the site and that the use alleged in the enforcement notice had only been undertaken for a few years and did not attract immunity from enforcement action.

### **The legal framework**

8. The law is set out in full in the three skeleton arguments and I do not repeat it here save only to highlight key legal principles at the heart of this challenge. Firstly, this is an appeal against the decision of the Inspector and as such the test in CPR rule 52.6 applies, namely permission to appeal may be given only where—
  - (a) the court considers that the appeal would have a real prospect of success; or
  - (b) there is some other compelling reason for the appeal to be heard.
9. In enforcement notice appeals the burden lies on the Appellant to demonstrate that a breach of planning control has become lawful to the civil standard of proof.
10. The Appellant relies on the reported case of *Gabbitas v SSE and Newham LBC 1985 JPL 630* to challenge this Inspector's consideration of the evidence before him. That case concerned a claim regarding the Inspector's treatment of unchallenged evidence within an enforcement notice appeal. In *Gabbitas* the Inspector disregarded the unchallenged evidence, or rejected it, without giving good reason for doing so. The Court found that the Inspector had concluded that a pre-1973 use had no material impact on residential amenity because no complaints had been received and further that there was no independent evidence to corroborate the appellant's account. The Court held that the Inspector was entitled to reject the appellant's evidence for a good reason and the decision would have been unchallenged in that event, but in the *Gabbitas* case the Court found that the Inspector had given no reasons for rejecting uncontradicted evidence. That was the failing.

### **Procedural matters**

11. Before setting out the grounds of challenge, I must deal with a short evidential point. The Appellant has submitted a further statutory declaration from Mr. Wilson. I am not going to take any account of the contents of the statutory declaration for two reasons: firstly, it contains new information which was not before the Inspector and

secondly there has been no application to the Court to admit it. It is not therefore in accordance with the overriding objective to admit such evidence into this claim.

### **Grounds**

12. There are five grounds of challenge but there is some repetition within the grounds which can be distilled into the following complaints: a failure to properly consider the evidence; a failure to apply the correct test to the evidence; and a failure to set out reasons.

### **The Inspector's consideration of the evidence**

13. The Inspector's consideration of the evidence was detailed and thorough. He systematically went through each of the relevant periods, considered the evidence and gave clear reasons for either rejecting or taking account of that evidence and where there were concerns about the quality of the evidence, he gave reasons for his views of that evidence and the weight he was going to attach to that evidence.
14. The DL properly sets out where evidence had been untested and where the Inspector had evidence which pointed in different directions, he weighed the evidence and came to a view as to the evidence to be preferred. The DL is to be distinguished therefore from the situation in *Gabbitas* where that Inspector discounted evidence without providing reasons for doing so. By contrast this Inspector has undertaken a careful analytical exercise in relation to each piece of evidence, looked at it individually, and then looked at it in the context of contradictory evidence.
15. The Appellant alleges that his evidence before the Inspector was unchallenged but that is not the case. Whilst some of the evidence was not subject to cross examination, there were contradictory pieces of evidence before the Inspector and the evidence was considered in its entirety. Where the Appellant's evidence was contradicted by other evidence, the Inspector compares and contrasts that differing evidence and gives a clear reason for preferring the evidence he did.

### **The Welsh Period 1962-1979 (DL 16-21)**

16. The Appellant contends that the evidence of Mr. Welsh and Mr. Rudman was independent and it was uncontested by the Council, that the evidence was clear and should not have been rejected.
17. The Inspector considered the evidence of Mr. Welsh and Mr. Rudman which he sets out in DL16-18. At DL19 he analyses what that evidence means in terms of the use and concludes that, apart from the contracting work, there was nothing to suggest that the site was more than storage and distribution. He goes on to set out the previous Inspector's conclusions on this period and sets out that the Bairstowe Eve letter points to a yard used for transporting materials.
18. At DL20 the Inspector explains that, after considering all of that evidence, he found that there needed to be convincing evidence that more was going on, at a sufficient intensity, to conclude that there was more than a B8 use. That is an entirely rational approach. He has clearly considered the evidence of sub-contracting at DL20 but

does not believe that that suggests a fully-fledged contractors' depot. That is an entirely logical assessment of the evidence before him.

19. These were all reasonable and cogent findings on the basis of the evidence before him as to the use during this period. He went on to conclude that the B8 use had been established by virtue of its commencement in 1962.

#### The Beech Period

20. The Appellant suggests that the Inspector wrongly rejects what is described as the "independent" evidence of Mr. Wright, Mr. Welsh and Mr. Rudman in favour of 'his own interpretation of the aerial photographs' but that is a mischaracterisation of the exercise undertaken. At DL24 the Inspector considers and records Mr. Rudman's evidence - noting that Mr. Rudman believed that Mr. Welsh was a builder and that the site was used to store building materials and that Mr. Beech did not access the site from the road but from the residential property Romani.
21. The Inspector then considered Mr. Wilson's evidence. Mr. Wilson did not give oral evidence, and the Inspector considered his statutory declaration noting that Mr. Wilson did not provide evidence of his qualifications. Whilst the Inspector may have wrongly recorded that Mr. Wilson had not provided a date when he visited the site, that does not detract from the Inspector's other more major criticisms and concerns regarding his evidence. Any error regarding the date was not a material one in that the Inspector had concluded that there was contradictory evidence in the form of the photographic evidence of the site.
22. The Inspector expressed his views about Mr. Wilson's ability to comment on the use and abandonment, he also noted that Mr. Wilson made no mention of the site being overgrown and he pointed to other parts of Mr. Wilson's evidence which were contradicted by other pieces of evidence before the Inquiry. At DL29 the Inspector considers pieces of evidence from local neighbours, Ms. Curran and Ms. McCaffrey which presented a 'rather different picture'. Importantly Mrs. Papaphilippou's evidence pointed to the storage being in the garden of Romani and not on the site.
23. The various aerial and Streetview photographs were also analysed at DL31 when the Inspector undertakes a careful evaluation of the information that can be gleaned from these photographs from 1971 up to 2018. The Google Streetview photographs are also considered at DL33 and they are noted to show the same thing, namely an overgrown road frontage. For the reasons given in DL34 the Inspector explains why he finds the objective evidence of the photographs compelling. Again this is a careful analytical and necessary exercise considering the evaluation of all of the evidence. Such an exercise is necessary to weigh the evidence and come to rational conclusions as to the activities on the land.
24. With regard to the importance attached by the Inspector to the photographic evidence DL31 deals with the Streetview and aerial photographs. These photographs are objective evidence submitted by the Council to contradict the Appellant's evidence. All of those photographs are given careful consideration, they are not elevated above the other evidence, but all evidence is considered in the round, and the Inspector goes through each of the photographs describing what is shown and how it compares with the evidence of witnesses. There is nothing in the complaint that there is an over

reliance on the photographs. They are part and parcel of the evidential jigsaw, from which the Inspector draws reasonable conclusions.

25. The analysis of the evidence of Mr. Wilson was careful and was done having regard to all of the other available evidence, looking at all of that evidence in the round and coming to a view as to which evidence to prefer. The Inspector referred to the evidence of Mr. Rudman at DL24. He set that evidence in context. He was not obliged to record every detail of the evidence but to analyse those parts of the evidence which went to key issues.
26. It was not irrational of the Inspector, having considered all of the evidence, to come to the view that both Mr. Rudman and Mr. Welsh might be mistaken as to the timings of what they saw or that they confused the site with the adjacent Romani residence which was associated with the site.
27. Neither was the Inspector obliged to alert the Appellant to his thinking as the evidence progressed. Indeed the Inspector would have needed to have heard the whole of the evidence and submissions before coming to his final view.
28. There were clear inconsistencies in the evidence. It was the Inspector's job to evaluate those inconsistencies and to come to clear findings on any differences leading to his conclusions.

#### Abandonment

29. The Inspector correctly identified and applied the tests on abandonment. DL44 summarises the cases on abandonment and the Inspector is clearly aware of those tests. Part of the Appellant's challenge to the conclusions on abandonment is predicated on the earlier criticisms of the Inspector's findings in relation to the evidence. I have already concluded that those criticisms of the Inspector's treatment and analysis of the evidence are not substantiated.
30. At DL45 to 47 the Inspector again summarises the evidence, makes reasonable findings and concludes that a reasonable person would consider that the use had been abandoned. Those conclusions were open to the Inspector and are based on sound foundations following a careful application of the correct legal tests. Whilst the Inspector made previous comments about a reduction in the intensity of the use, he concludes at DL40 that the builder's use had clearly ceased by 1999. At DL46 the Inspector finds that no other uses have intervened, and the period of non-use was 20 years.
31. The Inspector properly understood and applied the relevant legal tests after a careful analysis of the evidence. He was properly entitled, indeed expected to form his own judgment on the evidence and he undertook a thorough evaluation of all of the evidence. There can be no criticism of the manner in which the task was undertaken. That the Appellant has taken issue with the outcome of the Inspector's judgment and evaluations does not mean that his decision was irrational. The reasons given are cogent and rational.
32. I am satisfied that the grounds of appeal in relation to abandonment disclose no realistic prospect of success. Since the challenge in relation to s57(4) is parasitic on

this ground, any challenge in relation to s57(4) also falls away.

33. For these reasons, none of the grounds are arguable or have a realistic prospect of success and I refuse permission to appeal on all grounds.
34. I would ask Counsel to draw up an agreed Order for my approval.