



Appeal Decisions

Hearing Held on 18 September 2018

Site visit made on 26 November 2018

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 8 July 2019

Appeal A Ref: APP/E2205/C/17/3189683

Oldbury, Brissenden Green Lane, Bethersden, Ashford, Kent TN26 3BJ

- 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 Tony Button against an enforcement notice issued by Ashford Borough Council.
- The enforcement notice, numbered CO/17/00256, was issued on 19 October 2017.
- The breach of planning control as alleged in the notice is:

On 24 July 1964 Kent County Council granted outline planning permission (Ref:WE/9/64/111)('the 1964 planning permission') for the erection of the original 'Oldbury' farmhouse. The 1964 planning permission contains four separate conditions and the details required to be submitted by condition (i) were formally approved by Kent County Council on 28 October 1964 (ref:WE/9/64/111a).

On 20 September 1974, the Council granted planning permission (Ref:AS/74/1036)('the 1974 planning permission') for the 'provision of living accommodation for elderly person by adding lounge, hall, kitchen and bathroom and using existing bedroom' ('the extension') to the original farmhouse.

Condition (ii) contained in the 1974 planning permission states that:
The extension hereby permitted shall not be sold, let or otherwise occupied as a dwelling separate from the property at present known as "Oldbury".

Therefore, the original farmhouse and its extension (together with some minor alterations to the footprint of the dwelling which are now lawful due to the passage of time) constitute what is referred to herein as 'the dwelling'.

Condition (iv) contained in the 1964 planning permission (which applies to the dwelling) states that:
The occupation of the dwelling shall be limited to a person employed or last employed locally in agriculture as defined in Section 22(1) of the Town and Country Planning Act 1962 or forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).

Reason: the site of the dwelling is in an 'uncoloured' area in the Kent Development Plan in which the Plan proposes that existing uses are intended to remain for the most part undisturbed and the development proposed would not have been permitted had it not been shown to be essential in the interest of agriculture or forestry.

It appears to the Council that condition (iv) contained in the 1964 planning permission has not been complied with because the dwelling is being occupied by person(s) other than a person(s) employed, or last employed, locally in agriculture as defined in Section 22(1) of the Town and Country Planning Act, 1962 or forestry, or the dependent(s) of such person(s) residing with him (but including a widow or widower of such a person(s)).
- The requirements of the notice are to cease permanently the occupation by person(s) other than a person(s) employed, or last employed, locally in agriculture as defined in Section 22(1) of the Town and Country Planning Act, 1962 or forestry, or the dependent(s) of such person(s) residing with him (but including a widow or widower of such a person(s)).

- The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a)(b) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/E2205/C/17/3189715

Oldbury, Brissenden Green Lane, Bethersden, Ashford, Kent TN26 3BJ

- 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 Tony Button against an enforcement notice issued by Ashford Borough Council.
 - The enforcement notice, numbered CO/17/00256, was issued on 19 October 2017.
 - The breach of planning control as alleged in the notice is:
On 24 July 1964 Kent County Council granted outline planning permission (Ref:WE/9/64/111)('the 1964 planning permission') for the erection of the original 'Oldbury' farmhouse. The 1964 planning permission contains four separate conditions and the details required to be submitted by condition (i) were formally approved by Kent County Council on 28 October 1964 (ref:WE/9/64/111a).
On 20 September 1974, the Council granted planning permission (Ref:AS/74/1036)('the 1974 planning permission') for the 'provision of living accommodation for elderly person by adding lounge, hall, kitchen and bathroom and using existing bedroom' ('the extension') to the original farmhouse.
Condition (ii) contained in the 1974 planning permission states that:
The extension hereby permitted shall not be sold, let or otherwise occupied as a dwelling separate from the property at present known as "Oldbury".
Therefore, the original farmhouse and its extension (together with some minor alterations to the footprint of the dwelling which are now lawful due to the passage of time) constitute what is referred to herein as 'the dwelling'.
It appears to the Council that condition (ii) contained in the 1974 planning permission has not been complied with because the dwelling is being occupied as a separate dwellinghouse.
Furthermore having regard to the provisions of section 55(3)(a) of the Town and Country Planning Act 1990 (as amended) the use as two separate dwellinghouse of the dwelling previously used as a single dwellinghouse involves a material change in the use of the dwelling and of each part of it which is so used.
 - The requirements of the notice are to cease permanently the use of the extension (shown marked hatched in the approximate position on the attached plan) as a separate dwellinghouse.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a)(b) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/E2205/C/17/3182876

Oldbury, Brissenden Green Lane, Bethersden, Ashford, Kent TN26 3BJ

- 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 Tony Button against an enforcement notice issued by Ashford Borough Council.
 - The enforcement notice, numbered EN/15/00110, was issued on 28 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a use for the operation of a utility installation business and for the operation of a business manufacturing, servicing and repairing cylinders for hydraulic rams and for the storage, repair and maintenance of vehicles and equipment associated with those business uses.
 - The requirements of the notice are:
 - (i) Cease permanently the use of the land for the operation of a utility installation business.
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- (ii) Cease permanently the use of the land for the operation of a business manufacturing and servicing and repairing cylinders for hydraulic rams.
 - (iii) Remove permanently from the land all vehicles, equipment and materials brought onto the land in association with the uses referred to in steps 5(i) and 5(ii) above.
 - The period for compliance with the requirements is six months in respect of 5(i) and (ii) and seven months in respect of 5(iii).
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal D Ref: APP/E2205/W/17/3187279

Oldbury, Brissenden Green Lane, Bethersden, Ashford, Kent TN26 3BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Tony Button against the decision of Ashford Borough Council.
 - The application Ref 16/01804/AS, dated 7 December 2016, was refused by notice dated 26 May 2017.
 - The development proposed is described as the subdivision of property from one dwelling to two dwellings (retrospective).
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

3. It is directed that the enforcement notice be corrected by the deletion of the words 'situate at and' in section 2 of the notice and the replacement therefor with the words 'situated at land'. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

4. The appeal is allowed and planning permission is granted for the subdivision of the property from one dwelling to two dwellings at Oldbury, Brissenden Green Lane, Bethersden, Ashford, Kent TN26 3BJ in accordance with the terms of the application, Ref 16/01804/AS, dated 7 December 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The occupation of the two dwellings hereby permitted shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - 2) Unless within two months of the date of this decision, the cesspit system on the land has been inspected by a suitably qualified drainage engineer and a scheme for the whatever remedial works may be required, is

submitted in writing to the local planning authority for approval, and unless the approved scheme (if required) is implemented within six months of the local planning authority's approval, the occupation of the dwellinghouses shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the occupation of the dwellinghouses shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary matters

5. It was confirmed at the Hearing that the appellant had only submitted one appeal form in respect of Appeals A & B and had dealt with Notices A & B in effect as two parts of one notice. Nevertheless, the Planning Inspectorate registered two appeals and all parties have treated them as such. In that light the lack of an appeal form has not prejudiced any party and the appellant has subsequently completed an appeal form in respect of Notice B. However, that error has inevitably had an impact on the way the appeals on grounds (b), (f) and (g) have been couched. I have taken that into account and where it has an effect upon what is being considered I have set it out below in my reasoning. Again, no prejudice has occurred given all of the arguments put forward have been considered.
6. As set out at the Hearing, Enforcement Notice B has been served under both s171(a) and s171 (b) of the Act. The first being development without consent and the latter a breach of condition. I see nothing wrong in that approach as its clear what the notice seeks to achieve and what the appellant needs to do to meet its requirements. However, it's usual in these cases to serve two notices because, as in this case, when considering the ground (a) appeal for Appeal B I am in fact being asked to consider two different developments.
7. Success on the first part (the breach of condition) would not allow the property to be used as two separate dwellinghouses, it would simply result in a permission for the original development without complying with the condition; namely a dwelling with an annex. Not two separate dwellinghouses as the last part of section 3 of Notice B is set out. Nevertheless, it was agreed at the Hearing that the s78 appeal in effect covered both matters and if that were successful reliance could be placed upon S180 of the Act to override the notices, so far as they would be inconsistent with the permission, which will be taken to have been granted subsequently. Furthermore, that would not lead to any prejudice.
8. At the Hearing it was established that local residents had not had the opportunity to comment on the noise evidence of the appellant due to an administrative error. In that light the Hearing remained open until completion

of the site visit on the 26 November 2018 where arrangements for that consultation were confirmed. I have taken those comments and the final comments of the appellant into account.

9. Since the appeals were made the revised National Planning Policy Framework (the Framework) came into force on 24 July 2018. The parties had the opportunity to comment on the revisions at the Hearing and I have taken those comments into account in my deliberations. In addition, the Ashford Local Plan 2030 (the Local Plan) was adopted and the Framework was revised again after the closure of the Hearing. The main parties have had the opportunity to comment on those changes and I have also taken those comments into account.
10. There are some minor typos on the enforcement notice subject of Appeal C which I will use my powers to correct. I am satisfied these were clerical errors and to correct them will not lead to any prejudice.

Appeals A & B the appeal on ground (b)

11. Given the way the appeals have been made, as set out above, in effect the ground (b) appeals only embrace Appeal A. The breach in respect of Appeal B (the use as two separate dwellinghouses) has not formed part of the ground (b) appeal. It does not therefore form part of my considerations under this ground.
12. An appeal on ground (b) is that the breach of control alleged has not occurred as a matter of fact. The alleged breach in this case, which these appeals have been made against, is non-compliance with the agricultural occupancy condition. To that end the appellant, in the first instance, points to the wording of the condition as set out in the last sentence of my fourth bullet above and the opinion of the Council's Rural Planning Consultant in response to the s78 appeal determination.
13. I accept that the wording of the 1964 condition is different to that commonly used now, referring to occupation being limited to 'a person employed, or last employed, locally in agriculture' as opposed to being 'solely or mainly' employed in agriculture. However, I do not accept the Rural Planning Consultant's view that the current condition could be fulfilled by even a low degree of agricultural employment. There is nothing before me to say what that view was founded upon, what a 'low degree' of employment would be, or that it follows any legal precedent.
14. Moreover, even if I were to accept that a low level of employment was acceptable there is no dispute that the main means of income for the occupants of both properties is from the two businesses that operate on the adjacent site. I am informed that those businesses make a significant positive contribution to local agriculture albeit there is scant, if any, evidence to corroborate the view that both businesses serve a number of agricultural customers. Be that as it may, it would not, on any reasonable reading mean that the businesses are agricultural. In the same way for instance that a builder adding an extension to a retail premises could not claim to be a retailer. Therefore, any reliance on any relationship those businesses have with agriculture cannot form the basis of an argument that adds any weight to an agricultural occupancy condition being currently complied with.

15. Furthermore, I say that in the context of how the condition should be read and interpreted. The courts have held that planning conditions need to be construed in the context of the planning permission as a whole and in a common-sense way. Not by what parties may or may not have intended at the time, but by what a reasonable reader, construing the condition in the context of the planning permission as a whole, would understand. In addition, a condition is to be construed in conjunction with the reason for its imposition so that its purpose and meaning can be properly understood.
16. In this case the reason given for the condition¹ sets out that the original dwelling would not have been allowed had it not been demonstrated to be essential in the interests of agriculture and forestry. It seems to me that any reasonable reader would come to the view, when looking at the situation as a whole, that the dwelling was to be occupied by a person employed locally in agriculture.
17. I now turn to the oral evidence given at the Hearing against which that judgement should also be made. I heard some detail around the current occupiers of the dwellings being engaged in some agricultural activities. Although there was no confirmation of how long that has been going on, what it involves in any detail, or whether such activities were a permanent arrangement or the basis of that employment. What is clear is prior to the Hearing the employment of the two occupiers was focussed on the activities at the adjacent yard, which I have established is not agricultural. Whilst the appellant's statement did suggest that some or part of the current occupiers' income was derived from agriculture it is not clear what that is; there is simply no detail.
18. In addition, the verbal evidence, as given at the Hearing, was not tested under cross examination nor was it given on oath which inevitably reduces the weight I can give to it. Furthermore, it is not corroborated by any documentary evidence whatsoever. That is when the appellant has had more than ample time to make his case. It seems to me if these activities amounted to something that could be regarded as being consistent with being 'employed in agriculture' then there would be some documentation to back those claims up. Moreover, I am not satisfied that what I heard was sufficient to discharge the onus of proof which lies firmly with the appellant on an appeal under ground (b).
19. For these reasons, and as a matter of fact and degree, I find that the occupants of the dwellings are not persons employed, or last employed, locally in agriculture and the appeals on ground (b) fail. I heard at the Hearing that such a decision may mean the current occupiers having to leave their family homes and they have my sympathy in that regard. Further, the decision here does not prevent a further application being made under s191 or s192 of the Act, with further evidence, to establish any lawful claims they may have under the terms of the agricultural occupancy condition.

¹ The site of the dwelling is in an 'uncoloured' area in the Kent Development Plan in which the Plan proposes the existing uses are intended to remain for the most part undisturbed and the development proposed would not have been permitted had it not been shown to be essential in the interests of agriculture and forestry.

Appeals A, B & D – the appeals on ground (a) and the s78 appeal

Main Issues

20. As set out in the preliminary matters the appeals on ground (a) and the s78 appeal when combined cover both development and breach of conditions. However, the arguments put forward under all the appeals cover similar ground. In that light I shall consider the appeals together. The main issues are therefore; the effect on the character and appearance of the area with regards to the availability of dwellings for agricultural workers and the creation of a new dwelling in the countryside.

Reasons

21. The current use of the site is as two dwellings; one three-bedroom house and one two bedroom house. I heard at the Hearing that both properties are occupied by a family unit. Prior to the current situation there was one dwellinghouse with an extension to accommodate an elderly relative, as set out in the enforcement notices. There is no dispute that the current arrangements afford a reasonable standard of living to the occupiers of both properties.
22. The properties have separate accesses along with front gardens/drives and vehicular access onto the road. Whilst I recognise the new access is nearer to the adjacent dwelling Clover Ley Farm and parking of vehicles is nearer to that mutual boundary, it seems to me that could have occurred in any event. There is also no dispute that other extensions to the property have become lawful overtime.
23. The site lies within the Bethersden Mixed Farms Landscape, Landscape Character Area and is outside of the built confines. Policy RE14 of the Ashford Borough Local Plan 2000 set out that the removal of agricultural occupancy conditions would not be permitted unless a strong and well researched case can be made that there is no likely long term need for housing by people in the locality employed or last employed in agriculture. The supporting text sets out that there should be an assessment of long term need and that the property has been advertised for sale for at least six months at a price which reflects the occupancy restriction. Whilst the policy and text is now superseded/deleted by adoption of the Local Plan, there is nothing before me to suggest that the recent changes in policy context has changed the approach of either party in that regard.
24. At the time the appeal submissions were made the Council set out that there was a shortfall of deliverable housing supply. As agreed at the Hearing that situation has changed and it was accepted that was no longer the case. On the information before me I see no reason to disagree. That being so the thrust of the appellant's argument, that the requirement for the property to be accommodated by those employed for agricultural purposes not being a material consideration, falls away.
25. Against that background it seems to me, from all that I have heard and read, that the first part of that assessment is not disputed. There is broad agreement that there remains a need to provide affordable accommodation for workers engaged in agriculture in an isolated countryside location such as Berthersden. Indeed the appellant sets out that the subdivision of the dwelling does not

- preclude the occupation by agricultural workers and that planning permission could have been granted with a suitably worded condition, to which he would not object.
26. Therefore, the only consideration under this part of the main issue is, in effect, whether the property was marketed with sufficient clarity. There is no dispute that the property was marketed for a sufficient period of time; the appellant sets out that the property was marketed from July 2012 to October 2013 at a price of £525,000 reducing to £499,000 over time. The sale particulars set out that was for the dwelling and a 'thriving agricultural contractors' yard, with workshop store and glasshouse'.
27. However, it is clear that the dwelling was not marketed separately and I accept that the current market value of the dwelling (not the two currently on site) may be much greater than that which might be afforded by an agricultural worker. Also there may be potential for the dwelling to be attractive on the rental market but that market has also not been tested. Indeed the argument put forward by local residents that no potential purchasers came forward because of the asking price, considerably above that advertised in 2009, is not without merit.
28. Overall, it seems to me therefore that there is insufficient information to come to the view that the property would not have attracted interest were it to be marketed on its own and with the agricultural occupancy restriction reflected in the asking price. Although, given its size, and that it is no longer attached to an agricultural holding, I accept that such a market would be limited.
29. Nevertheless, that market may not be as restricted if, as set out above, an occupancy condition were to apply to the two smaller dwellings. Further if both properties were restricted to agricultural occupancy there would be no removal of the occupancy restriction to consider and it is to the matter of an additional dwelling in the countryside to which I now turn.
30. Policy HOU 5 of the Local Plan sets out that residential development close to the existing built up confines will be acceptable provided they meet a number of criteria which includes that the site is within easy walking distance of basic day-to-day services in the nearest settlement. Given the rural location there is some inevitability that Brissenden Lane is not lit and the nearest bus stop is some distance away and the village of Bethersden some 2kms away. Given that I accept the view that there would be reliance upon the private motor car. Albeit a larger dwelling exists in any event where such reliance is established.
31. Moreover, the policy also sets out that residential development elsewhere in the countryside will be permitted where the accommodation is to cater for an essential need for a rural worker to live permanently at or near their place of work in the countryside. In this case there is no dispute that there is a need locally and the development is not therefore at odds with the policy.
32. Furthermore, the revised Framework has slightly changed the approach to isolated homes in the countryside and Paragraph 79(d) sets out that the subdivision of an existing dwelling is an acceptable form of development. The conversion of the property to two dwellings is therefore also supported by the Framework.

33. Also, there would be no conflict with the following policies of the Local Plan; Policy ENV3a seeks to protect the landscape; and Policy SP1 which sets out the guiding principles for sustainable development including ensuring development is of a quality design and provides a mix of housing types and sizes.
34. For these reasons I find the creation of a new dwelling, subject to an agricultural occupancy condition would not be at odds with local or nation policy. However, the imposition of an agricultural occupancy condition on only one of the dwellings would deliver little by way of benefit; replacing a large agricultural dwelling with a smaller one may be more attractive to those seeking a smaller more affordable property but would in effect result in a reduction in the net availability. It would therefore be appropriate in this instance, in particular given the arguments regarding the demand for more affordable agricultural workers dwellings, to place a restriction on both properties by way of conditions ensuring the agricultural occupancy and as agreed at the Hearing.
35. I shall also impose a condition to ensure the cesspit system on the land is fit for purpose in the interests of public health. I do not consider a condition restricting occupation of the dwellings as single dwellinghouses to be necessary; if the use changed the Council would be able to take enforcement action in any event. The development has been carried out; a condition that it is done so in accordance with the plans is also unnecessary.

Other matters

36. I have also considered a number of other matters and accept that an increase to two dwellings has the potential to increase vehicular activity, but I see no reason to disagree with the Council's view that any effect would be minimal. Whether or not the dwellings are 'unkempt' in their appearance is not a matter for me, an owner of any property can choose to keep it as they see fit. From what I see of the marketing details there is little in terms of the structure of the building to differentiate it from the single dwellinghouse that was there before. The road has a variety of dwellings and farms along its length, many of which are extremely well kept. Nevertheless, given that variety, the use as two dwellings does not come as a surprise, it does not draw the eye or lead the viewer to question how they came to be. There has not been any significant harm to the character and appearance of the locality.
37. It is also clear that the dwellings are outside of the Flood Zone and the matter of whether or not the conversion was of a sufficient standard is a matter dealt with under Building Regulations. The matter of hedge removal from the site frontage does not form part of my deliberations which are based on what I saw on site and given the space at the front of each dwelling I see no reason to disagree with the Council, given the size of the dwellings, that there is sufficient space for associated parking which would comply with Policy TRA3 (a) of the Local Plan which seeks minimum parking standards.

Conclusion

38. Thus, having considered all matters raised, I find the development would not result in unacceptable harm to the character and appearance of the area with regards to the availability of dwellings for agricultural workers or with regards to the creation of a new dwelling in the countryside and the s78 appeal should

succeed. Permission will be granted subject to conditions. The appeals on ground (a) however fail and enforcement notices A & B will be upheld but will cease to have effect by reason of the provisions of section 180 of the 1990 Act as amended.

Appeals A & B the appeals on ground (f)

39. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. The arguments put forward for both appeals are predicated on the fact that consideration should be given to lesser steps that would in effect allow the subdivision to continue.
40. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the restoration of the land to its condition before the breaches took place. However, given my findings on Appeal D there is no need for me to deliberate over those purposes or the arguments put forward given the result of the S78 appeal is the subdivision of the property. Thus, the ground (f) appeals do not fall to be considered.

Appeal C – the appeal on ground (a)

Main Issue

41. The effect of the development upon the living conditions of those living nearby with particular regard to noise and disturbance.

Reasons

42. The previous use of the site as a plant nursery has been well-rehearsed and I do not need to repeat it here. I accept the appellant bought the site in good faith as a contractor's yard and was under the impression that the use of the buildings and land for storage and business use would not require planning permission. Nevertheless, that does not mean action should not be taken in the face of a breach of planning control. Furthermore, whether or not the yard was being used as a building contractor's yard prior to the acquisition by the appellant is not a matter that carries any weight in terms of my consideration here. There is no evidence to corroborate such a claim and in any event the noise being generated by the current use is that upon which I am to focus.
43. Most recent noise levels have been assessed using BS4142, Methods for rating and assessing industrial and commercial sound. The current assessment post-dates previous assessments the result of which are somewhat disputed. I have considered the previous report and accept that the second report was submitted in 'draft form' in March 2017 and that the appellant considers that the significant noise impact set out there would be an unlikely or infrequent scenario. The report did not find the use of the site by commercial vans/utility vehicles or other HGVs would result in significant noise impact and in any event noise attenuation measures could be put in place. In addition, there is some dispute over whether or not the doors to Ram Doctor were open when measurements were made.

44. Nevertheless, regardless of those disparities and the comments of the Environmental Health Officer, the latest report is undisputed in terms of the data collected and the methodology used. Furthermore, I was able to judge for myself the noise generated by the current use; I am grateful to the appellant for arranging vehicles to be driven on site, the lathe to be worked, drill to be operated and equipment to be loaded onto a flat-bed truck during my site visit. That included the vehicle reversing alarms that have been alluded to by local residents. At the time of my site visit the weather was fair and there was little if any wind. Background noise was characterised by the noise of traffic on surrounding roads, occasional light aircraft and some building works locally
45. In addition, from all that I have seen and heard, there can be no dispute that the current use does not resemble that which went before. During my site visit I saw that the majority of the site is laid to hardstanding and a considerable number of pieces of civil engineering equipment were being stored along with trailers and associated equipment. In addition, I was able to see the business 'Ram Doctor' in operation from the building nearest the road.
46. The latest report refers to the Planning Practice Guidance (the Guidance) which sets out how to recognise when noise is a concern and a noise exposure hierarchy based on the likely average response. That indicates that a Significant Observed Adverse Effect Level (SOAEL) should be avoided and that is where noise is noticeable and disruptive and amongst other things means that the quality of life is diminished due to a change in acoustic character of the area. BS4142 sets out the methodology for measuring such noise and receptors were placed at various points around the site. The measurements are as set out in Mr Lewis' statement and again are undisputed as accurately measuring the noise levels at the times and dates set out. I accept that on those measurements the noise generated would appear to be below the Lowest Observed Adverse Effect Level (LOAEL)² referred to in the Guidance.
47. However, there are a number of assumptions within the assessment as accepted at the Hearing. They include the frequency of loading vehicles, pressure washing and job changeovers. These assumptions were also based on interviewing those with a vested interest in the site and basic logs. There is no robust data or evidence over a significant period of time to reflect the actual use on site. Such assumptions inevitably reduce the reliance that can be placed upon the findings of the latest report.
48. Against that background I was able to make my own assessment during my site visit. To that end I could hear clearly the vehicular reversing alarms and the movement of vehicles when stood outside Inwood and beyond the location of Monitoring Site 3³; noise from the works being carried out within the Ram Doctor Building (with the main door open) were indiscernible above the background noise at that point. The reversing alarms and vehicle movements continued to be heard almost to the junction with Bethersden Road.
49. That mirrors the findings when stood outside, and in the rear garden of, Cloverley where volumes were considerably higher to the ear. The battery powered drill, used for removing wheels from equipment, was also discernible

² Noise can be heard and causes small changes in behaviour

³ As set out on the statement of case – Tobias Lewis

- at those locations. Walking further to the west the noise from the activities on site were not discernible outside the dwelling La Flaque.
50. In respect of the dwellings at Oldbury there can be no doubt that there would be a significant adverse impact upon living conditions, with regards to noise generation, given the model scenarios submitted by the appellant. I accept that a condition requiring occupancy of the two dwellings on site be restricted to those working on site could resolve any noise issue but that would potentially be at odds with the agricultural occupancy condition.
51. I also accept that there are potential noise mitigation measures that could be put in place such as a noise barrier, keeping the doors to the Ram Doctors building shut, limiting the movement of vehicles and plant and best practice. These methods have not been fully modelled (the noise barrier in particular) and I am not convinced, in any event, that any other measures could be practically monitored or enforced. The levels of noise monitored in the latest report may well change particularly if the use of the site was to increase or the business was to change hands.
52. For instance, I heard that the Ram Doctor was at capacity currently with no ambition to increase its throughput but there is nothing to say activity there and introduction of more machinery wouldn't happen in the future. Whilst the appellant maintains that the current level of use is low and is predicted to stay as such, situations can change. Circumstances can be unforeseen and levels of use are not guaranteed. Furthermore, the subjective evidence of local residents regarding the impact of the noise being generated should not be ignored.
53. The Guidance sets out that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation. In this case I find those factors, as a matter of fact and degree, from the evidence before me and my own site assessment, combine such that the use does have an unacceptably harmful impact upon the living conditions of residents of nearby properties by way of discernible and intrusive noise.
54. I recognise that hours of operation could be restricted but given the level of use could not be controlled in any logical manner and that the current use of the site can involve vehicle manoeuvring, loading, drilling, power washing, servicing and maintenance separately or in combination would be more akin to an industrial operation than that of an agricultural enterprise where some of those noises would be expected but not to the level currently experienced.
55. Whilst I have not been directed to any particular policies in the Local Plan that supersede the previous policies relied upon I do find that the development is at odds with the Framework which seeks developments which are sensitive to their surroundings and do not undermine the quality of life. In addition, Policy SP1 of the Local Plan seeks high quality design with development promoting a sense of place, with respect to living conditions, this development does not achieve that.
56. I come to that view having considered noise generating activities at the nearby airfield and agricultural holdings but there is nothing before me to indicate such activities are as frequent as the use or have a similar impact by way of noise.

In the same way I am not convinced, on the evidence before me, that the prior approval for the change of use of the existing glasshouse on site for use for commercial storage purposes is comparable. The glasshouse sits further into the site and it seems to me a storage use would result in a different noise profile to that experienced currently.

57. Whilst there may be benefits with regards to securing the removal of the glasshouses and landscaping as part of the scheme that would not outweigh the harm I have found. I have also considered whether a condition restricting noise levels could be implemented alongside a noise management plan. However, on the evidence before me, and without any information regarding the effectiveness of noise barriers on the site, I am not convinced conditions would overcome the harm. In the same way a condition restricting the opening times, vehicular movements and deliveries may go some way to achieving a reduction in noise levels, particularly outside of certain times but would not result in the noise impacts identified being reduced significantly.
58. Finally, the appellant suggest that the use should not be described as a Class B2 use and should have originally been described as a Class B1(c) use as the appellant's noise expert suggest that noise emanating from Unit 1 would not justify a Class B2 categorisation. However, that is not a matter for me to decide under a ground (a) appeal. Furthermore, my decision does not prevent a further application being made under s191 or s192 of the Act.

Conclusion

59. For all of the reasons given above, I conclude that the appeal should not succeed. The change of use of the land has resulted in unacceptable harm to the living conditions of those living nearby. I accept that the current use has some economic benefits locally but that and the other considerations in favour of the use, as discussed above, do not overcome the harm and the development does not accord with the development plan as a whole or the Framework.
60. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal C the appeal on ground (f)

61. The evidence put forward by the appellant under this ground, and as accepted at the Hearing, is evidence that goes to the heart of the ground (a) appeal. Amongst other things the appellant asserts that conditions could be implemented regarding noise attenuation, vehicle movements and deliveries and that targeted physical noise mitigation measures could be introduced. On that latter point there is no attenuation scheme before me to consider.
62. Furthermore, all those matters have been discussed under the ground (a) and s78 appeals. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the restoration of the land to its condition before the breach took place.
63. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. In my view the requirements are entirely appropriate to

achieve the objective of restoring the land to its condition before the breach took place and there are, in my assessment, no lesser steps that could be taken to achieve that objective.

64. Thus, no good reason is advanced by the appellant as to why the requirements of the Notice exceed what is necessary to restore the land to its condition before the breach took place and, for the reasons explained above, this is the limited scope of a ground (f) appeal in a case such as this. Further, no alternative lesser steps have been suggested by the appellant. This ground of appeal must therefore fail.

Appeal C the appeal on ground (g)

65. It is claimed that 12 months are needed to comply with the notice in particular with regard to the level of noise identified by the appellant. However, I have found the level of noise to be harmful and whilst I accept there may be few other sites available for the appellant to locate to. There is no evidence to suggest 12 months would be required to find a useable site elsewhere for the business to relocate to. Nor is there any evidence to corroborate the view that relocation would have a detrimental social or economic impact on other businesses in the area and I find that six months would be sufficient. Thus, the appeal on ground (g) also fails.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Gary Mickleborough	Planning Agent
Toby Lewis	Noise Consultant
Tony Button	Appellant
Steve Parish	Interested party/local resident
Christine Bankstead	Interested party/local resident

FOR THE LOCAL PLANNING AUTHORITY:

Kelly Jethwa RTPI MA	Principal Planning Officer
BA(Hons).	
Rob Bewick MA BA(Hons)	Senior Planning Officer
Trevor Ford	Environmental Protection & Licencing Team Leader

INTERESTED PERSONS:

Keith Brannan	Betherden Parish Council
Alan Pickering	Councillor
Jill Tees	Local Resident
Ian Anderson	Local Resident
Ruth Orchard	Local Resident
James Grundy	Local Resident

DOCUMENTS

Document 1 – Recommendation Sheet Ref: 18/00100/AS
Document 2 – Decision Letter Ref: 18/01061/AS
Document 3 – Consultation with Betherden Parish Council dated 10 March 2000
Document 4 – Copy of Google Image dated March 2011
Document 5 – Drawing showing Flood Plain
Document 6 – Inspectors’ Post Hearing Advice dated 29 June 2018