Appeal Decision

Site visit made on 14 May 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2019

Appeal Ref: APP/V3120/C/18/3196055
Unit 13, Cross Trees Farm, High Street, Sutton Courtenay OX14 4AR

- 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 Paul Caudwell of Caudwell & Sons Limited against an enforcement notice issued by Vale of White Horse District Council.
- The enforcement notice was issued on 15 December 2017.
- The breach of planning control as alleged in the notice is the material change of use of the Land from agriculture, to use for mixed purposes, namely (a) storage, (b) workshop and (c) residential.
- The requirements of the notice are:
  - i. Stop using the Land for storage, workshop and residential purposes.
  - ii. Stop using the Land for any purpose other than one which is part of or otherwise incidental to the lawful use of the Land for agriculture.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary matters

1. All oral evidence to the inquiry was given on oath or affirmation.

2. During the course of the inquiry discussion took place concerning the allegation and requirements of the notice. Although there is no appeal on ground (b) the appellant has challenged the description of the alleged breach of planning control in two main respects. Firstly, he claims that the workshop area is ancillary to the storage use and secondly, that the site comprises two separate planning units; one having B8 storage use and the other being used as a single dwellinghouse.

3. Firstly, having considered the area in question on site visits and having also considered the evidence of Mr Fiocco, the current tenant, the Council has accepted that the workshop is ancillary to the main B8 storage use of the site. Accordingly, the main parties agree that the enforcement notice should be corrected by deleting reference to 'workshop'. This can be done without causing injustice to either party.

4. With regard to the planning unit, the concept is established in the case of *Burdle & Williams v SSE &and New Forest RDC* [1972] 1 WLR 1207. The planning unit should be determined by identifying the unit of occupation and whether there is a degree of physical and/or functional separation of primary uses as a matter of fact and degree. The judgement suggested three broad

categories of distinction: 1) a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) as single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes. In such a case, each area used for a different purpose, together with any incidental activities, ought to be considered as a separate planning unit. As a useful working rule, the judgement suggests that it may be useful to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

5. In this current case the unit of occupation comprises the potato store (which also includes the residential accommodation at mezzanine level) and the cattle shed. In determining the matter of planning unit the key question is whether any area the subject of the enforcement notice is separate both physically and functionally.

6. It is clear to me that the residential accommodation is physically separate from the remainder of the land the subject of the notice. Consequently, the main issue is whether it is functionally separate. In this regard the appellant's evidence at the inquiry confirmed that there is a functional link between the commercial and residential uses. In particular, the tenant's own evidence states that one of the main benefits of operating from Unit 13 at Cross Trees Farm is that he can use the unit as his private family dwelling and that the live-work arrangement offers benefits to his business and his family. Further evidence submitted by the appellant also indicates that the appeal site is effectively used as a live-work unit which allows the tenant to remain on site to provide security whilst enabling him to operate in a convenient location to manage his business.

7. The appellant also seems to be arguing that there are two separate planning units on the basis that the link between the commercial and residential uses is not an essential one – the commercial use could exist without the residential use and vice versa. However, I have not been referred to any case law or other authorities that require such a more onerous test. Therefore, as a consequence of the functional link between the commercial and residential elements of the use of the site, I find that it is in a mixed use, albeit one which no longer includes reference to there being a workshop. In that case, the relevant period for immunity from enforcement action is 10 years.

Site and surroundings

8. Cross Trees Farm is a former working farm with an area of approximately 1.8 hectares which is situated immediately East of the village of Sutton Courtenay. It comprises a number of buildings which are situated to the North of Old Wallingford Way and are accessed off a track which links the site with High Street. The access comprises part of the local public rights of way network.

9. To the east and south east of the site is open agricultural land which surrounds the rest of the village. Sutton Courtenay contains mainly residential properties with services and facilities include a village hall, petrol station, primary school, a shop, recreational ground with football club, cemetery, public houses and a church. The northern and central parts of the village are designated as a

conservation area and there are a number of listed buildings fronting High Street.

10. The buildings within the wider site are divided into 14 separate units and have most recently been used for a range of activities, including storage and distribution, workshops, industrial, residential and mixed uses. Most of the previous uses have stopped operating on the site, but some remain, including a vehicle workshop, scaffolding storage, machinery storage, some agricultural storage and the storage and residential use which is the subject of the current enforcement notice. It is important to note that other than some small scale agricultural storage, the uses within the site do not benefit from planning permission. The buildings and other structures within the site are rather utilitarian and non-vernacular in character and appearance and are built of a range of materials, including timber, concrete block and metal sheeting.

11. Unit 13 comprises two separate areas of land situated within Cross Trees Farm; one being the former potato store and the other a former cattle shed. The potato store is a roughly rectangular area of land which contains a steel framed building with a floor area of approximately 518 square metres. The building has the proportions and external appearance of a two storey building, but internally it is open and apart from the mezzanine element is on one level internally. The building is clad in metal sheeting and its main openings are on the western elevation with two windows and a door on the south elevation which serve the residential use in the building. The doorway is served by a metal staircase which leads to a strip of hardstanding that runs along the western part of the south elevation. There are also two flues and an external light on the upper part of the south elevation.

12. Unit 13 is leased to Mr Gilberto Fiocco who lives at the site and also runs his business 'Brazilistone' from there. The company imports slate from Brazil and stores and displays it on site before it is distributed to customers. Before Mr Fiocco operated from the site the appellant states that it was used for the repair of forklift trucks by a previous tenant, Mr David Woodward.

13. Inside the former potato store the southern area contains a mezzanines floor that runs the full length of the building. The western part of this mezzanine is used as an office and showroom area where customers can see and order slate and the eastern part is used as a single self-contained residence. The rest of the building is used for storing the imported slate. There is a relatively small workshop area which is used in association with the slate storage use.

14. The second part of Unit 13 is a roughly rectangular piece of land which is approximately 154 square metres in area. It comprises a timber framed flat roof building which was previously used as a cattle shed. It has an open fronted southern elevation, the eastern elevation is constructed of concrete blocks and the north and west elevations are made of part-height concrete blocks. The roof is clad in metal sheeting and the area under the roof is hardstanding. The building is used for the storage of slate in connection with the Brazilistone business operated by Mr Fiocco.

The appeal on ground (d)

15. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action. In this respect, 10 years continuous use starting

from the date of the breach is required, so that the material date is 15 December 2007.

16. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of Gabbitas[1] the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.

17. Furthermore, under case law[2] in establishing whether the use has been affirmatively established over the 10 year period, the correct approach is to ask whether there was any period during the 10 years when the building in question was not physically occupied, even though available, when the local planning authority (LPA) could not have taken enforcement action against the use. It is also necessary to make a finding as to whether any periods of non-occupation were '*de minimis'*.

18. In this case where there has clearly been a change in the circumstances of the appeal site and what has historically been included within it, it is important to determine what the appropriate start date has been for the mixed use. Case law[3] explains that in cases such as this the relevant test is whether an event or series of linked events has taken place which can, as a matter of fact, have said to have opened a new chapter in the planning history. Such a change may be found to have occurred where the sub-division into smaller units of occupation or its incorporation into a larger single unit has taken place. The physical alteration of part of a site through the erection of a new building does not necessarily result in a new planning unit or extinguish the use – but that is one of the factors to be taken into account in considering whether there has been a change of so radical a nature as to constitute a break in the planning history. However, the judgement explains that where there has been a total change in the physical nature of the premises, it may be possible to conclude that any prior use has been abandoned and a new planning history is to begin.

19. The evidence presented at the inquiry shows that around 2011/2012 a number of changes took place with respect to the appeal site; namely, the addition of the cattle shed to the unit, the insertion of a substantial mezzanine in the potato store which significantly altered the configuration of the space within the building and the addition of a mezzanine showroom to the area used by the commercial operation of the property. It is my view that this series of linked events has brought about a new chapter in the planning history of the site. Consequently, the 10 year period cannot be demonstrated since these events occurred less than 10 years prior to the issue of the enforcement notice.

20. Even in the event of a new chapter of planning history having not occurred, I am concerned that a change of use of the planning unit has occurred within the past 10 years. Before Mr Fiocco occupied the property it was used by Mr Woodward of Abingdon Forklift trucks as a place for the repair of forklift trucks with there also being some storage as an ancillary element. However, the evidence presented to the Inquiry which includes the description of the use of

[1] Gabbitas v SSE & Newham LBC [1985] JPL 630
[2] Swale BC v FFS & Lee [2005] EWCA Civ 1568
[3] Jennings Motors Ltd v SSE &New Forest DC [1982] 2 WLR 131 (CoA)

the potato shed in an application for a lawful development, Mr Fiocco's Statutory Declaration dated 22 March 2019, Paul Caudwell's witness statement and further oral evidence of Mr Caudwell points to the storage use being incidental to the principle use of the property for repairs and sales of forklifts rather than the other way around.

21. Part of the appellant's case is also that Mr Woodward lived at the property, but the only evidence of this is from Mr Caudwell who stated at the Inquiry that he never actually went inside the portacabin where it is claimed Mr Woodward lived. Mr Woodward has provided no evidence to the Inquiry. The particular dates when Mr Woodward is said to have occupied the property for residential purposes is unclear and, as set out later in this decision, the evidence presented in this regard is contradictory.

22. In addition to the forklift business it also appears that Mr Woodward stored other articles in the property including books and weightlifting equipment. However, since such storage is not indicated in other evidence such as planning contravention notices (PCNs) it is likely that it was on a relatively small scale. Nonetheless, whether the site was being used as a forklift repair business or for mixed use purposes including storage and forklift repairs, it is clear to me that it was in a different use to the B8 storage that it is now used for. As such, the appellant cannot demonstrate continuous use of the same character for a period of 10 years to the date of the enforcement notice being served.

23. It also seems to me that there was a gap between the end of Mr Woodward's occupation and the start of Mr Fiocco's occupation. In giving his evidence Mr Askew, on behalf of the appellant, contended that the logistical element of the change over of occupants meant that the intensification of the use dropped, but not significantly enough to result in abandonment. However, the matter of abandonment is not the correct test with respect to there being a gap, but rather the correct test is whether enforcement action could have been taken by the Council at any point during the relevant 10 year period.

24. Mr Fiocco's Statutory Declaration states that Mr Woodward vacated the property around March 2011, but he did not move his own stock over until January 2012. These dates are different from the dates provided by Mr Caudwell, but are the most reliable dates as confirmed by Mr Askew in his evidence. The evidence to the Inquiry strongly suggests that there was a period between March 2011 and the end of July 2011 (the date of the invoice for the sale of the mezzanine floor) when it was not occupied and no work was being carried out to the building. Some works were carried out during that period, including the removal of a wooden floor, but that would not be inconsistent with an agricultural use of the property, nor at any point has it been argued that such an operation accounts for the four months. Mr Fiocco has also referred to the yard serving Unit 13 being resurfaced with compacted ground, but that it not relevant to the current appeal since the yard is not part of the planning unit the subject of the current appeal.

25. Therefore, as a result of the course of events it would not have been reasonable for the Council to have issued an enforcement notice for a breach of planning control during that four month period since there was no non-agricultural use taking place. As such it is concluded that during that period, no enforcement action could have been taken. As such there is a material gap in the use during the 10 year prescribed period.

26. As part of a mixed use the appellant must prove that the property has been used continuously for storage and residential purposes for 10 years. However, given the fact that a new chapter opened in the planning history of the site during the 10 year period, the nature of the mix of uses also changed and there was a gap in the commercial and residential uses during the required period, it cannot be demonstrated that a mixed use benefits from exemption under the 10 year rule. Furthermore, I am also concerned that the evidence presented by the appellant regarding the residential occupation of the property is in itself imprecise and unambiguous.

27. Mr Fiocco's Statutory Declaration dated 9 April 2019 clarifies the dates of his occupancy of Unit 13, but there is inconsistency between his later account and the account provided in the PCN dated 1 July 2016. The explanation of the conflict and the evidence submitted in support of the circumstances that led to the original information provided is unconvincing, particularly when the information provided was of significant importance to the future of his residence and business. In addition, I have insufficient evidence to support the date when Mr Fiocco states that he moved into the residential accommodation within Unit 13. This could have included receipts, invoices and records of when the mezzanine floor was installed and fitted out. There are no records of items which may have been purchased to facilitate the move into the accommodation.

28. Furthermore, the television licence evidence is not specific to the appeal property, but rather Unit 3, Cross Trees Farm and a property known as Fieldside Flat, Cross Trees Farm. HSBC bank statements submitted show the payment of Sky Digital from March 2012 but do not show the details of the property to which they relate.

29. In addition, with respect to Mr Fiocco's occupation Mr Caudwell appeared to be uncertain of the dates he referred to. He stated in his oral evidence that the dates he was providing were "guesses" and some of the dates which he stated were definite contradict the evidence provided by Mr Fiocco himself. Indeed, the oral evidence provided does not align with evidence such as rental payment records. Consequently, it is difficult to determine the actual date when Mr Fiocco first occupied the appeal property, particularly as Mr Fiocco was not available to give evidence.

30. There are also some contradictions in the appellant's evidence, including no mention of residential use in rental records or the certificate of lawfulness application dated 22 November 2012. In addition, there is no indication of residential occupation of Unit 13 by Mr Woodward in Mr Caudwell's PCN response of March 2017. Mr Fiocco's PCN response dated 1 July 2016 states that he had been living in the property since July 2003, which appears to be an error. The PCN also states that there were people living in the property for two years before he moved in. If the 2003 date is an error then the evidence indicates residential use for two years to 2012 which would potentially take the residential occupancy date to 2010 and not 2005 as is now being claimed.

31. There is also some confusion regarding where Mr Woodward actually lived. It appears to me that Mr Fiocco's Statutory Declaration and accompanying plan shows that Mr Woodward lived in a caravan outside the potato store Unit 13. This contradicts Mr Caudwell's claim that Mr Woodward lived in a unit inside the potato store. Such contradictory evidence has not been adequately explained.

32. The only evidence I have with respect to ground (d) is that which has been submitted by the appellant. The Council has not presented direct evidence to undermine what has been presented by the appellant and the current tenant, Mr Fiocco. Under oath Mr Caudwell has pointed to some specific events such as seeing Mr Woodward every day outside the portacabin for coffee, but there are some significant inconsistencies in the series of events. Therefore, under the scenarios discussed above, the appeal on ground (d) must fail.

The appeal on ground (a)

33. The ground of appeal is that planning permission should be granted. The main issues are

    i. Whether the principle of commercial and residential development is acceptable in this rural location.

    ii. Whether the access arrangements are adequate with reference to the safe movement of highway users.

    iii. The effect on the living conditions of the occupants of nearby residential properties with particular reference to noise disturbance.

    iv. The effect of the development on the character and appearance of the open countryside.

Principle

34. With respect to the commercial use of the site it is common ground that that the relevant development plan policies are GS7 and GS8 of the Vale of White Horse Local Plan Adopted 14 July 2006 (the LP). The site is located outside any settlement boundary and is within open countryside. It is also agreed between the main parties that the policies should be given full weight and are consistent with the National Planning Policy Framework (the Framework). In addition, Mr Askew conceded the point made in his written evidence based on inconsistency with the development plan and new permitted development rights. The cattle shed does not comply with the requirements of Policy GS7 in that, in order to comply with the policy, the building should be fully enclosed with walls and a roof and not require external cladding. As such criteria i) of GS7 cannot be met.

35. In addition, the combined business floorspace of the two buildings which comprise Unit 13 is approximately 742 square metres which is approximately 242 square metres in excess of the threshold of 500 square metres set out in criteria iv) of GS8. The appellant argued that this is not significant, but in my view such exceedance of the threshold by almost 50 per cent is significant and clearly conflicts with Policy GS8.

36. The residential element of the development needs to be assessed under Core Policy 4 of the Local Plan 2031 Part 1 Strategic Sites and Policies Adopted December 2016 (LP 2031) which relates to meeting the Council's housing needs. The policy was written after the introduction of the Framework and both main parties agreed that it should be given full weight. Furthermore, there was agreement between the main parties that the site is situated within the countryside where development will not be appropriate unless specifically supported by other relevant policies as set out in the development plan or national policy. In cross-examination the appellant's witness, Mr Askew

conceded that there is no support for the development in national planning policy. In fact, I consider that the development plan specifically seeks to prevent this type of development in the countryside.

37. Consequently, there is a conflict with the development plan and therefore in order to succeed on ground (a) the appellant would have to show that other material considerations outweigh this conflict. A number of other material considerations have been identified by the appellant and each should therefore be considered, in turn.

38. The Framework states that decision-making should accord with the development plan and in my view the development plan is consistent with the Framework itself. Accordingly, the Framework cannot be used to outweigh conflict with the adopted development plan policies.

39. The appellant has accepted that the Written Ministerial Statement 31 August 2015 (relating to Green Belt protection and intentional unauthorised development) is relevant to the overall planning balance. Although the appeal site is not in the Green Belt the WMS is clearly concerned about the harm that is caused by development that has occurred in advance of obtaining planning permission. Therefore, the unauthorised nature of the development and resultant conflict with the development plan is a material consideration that weighs against the development.

40. With regard to permitted development rights under Classes Q and R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) these relate to the conversion of agricultural buildings to up to five dwellings (Class Q) and to a flexible commercial use (Class R). Subject to a range of criteria the principle of converting agricultural buildings to these uses is established. However, in this case the appeal buildings do not satisfy the criteria set in the GPDO to convert to either a dwelling, dwellings or a flexible use because the buildings which make Unit 13 were not used solely for agriculture on 3 July 2012. Furthermore, it is important to understand that permitted development rights do not indicate particular planning policies. As such, the appellant's witness Mr Askew accepted that such permitted development rights could not outweigh any conflict with the development plan.

41. Given the lack of material considerations that exist that may outweigh the conflict with the development plan the only remaining argument progressed by Mr Askew related to rather vague and generic economic benefits associated with the commercial and residential development in this location. As such I consider the benefits to be modest at best and, if accepted, would mean that the development plan is being set aside for an argument that could be pursued by any developer in the future where similar development is proposed. Such an approach would not be the correct approach to decision-making.

42. Therefore, having regard to the development plan I conclude that the principle of commercial and residential development is not acceptable in this rural location and conflicts with Policies GS7 and GS8 of the LP, CP4 of the LP 2031 and the Framework. I shall now go on to consider the specific impacts of the proposal in terms of highways, living conditions and the character and appearance of the countryside.

Highways

43. The Framework states that developments which have an unacceptable impact on highway safety or would result in severe residual cumulative impacts on the road network should be refused for safety reasons. Policy CP33 of the LP 2031 states that the Council will work to ensure that the impacts of development on the strategic network are minimised and DC5 state that development will only be permitted where safe access is provided, there should be no congestion problems on the wider network, the impact of vehicles will be minimised and the needs of more vulnerable users prioritised. In addition, Policies GS7 and GS8 of the LP state that services and facilities, including access roads, necessary for the development can be provided without harm to rural character and outside the built-up area of settlements the re-use of non-vernacular buildings will only be permitted if it is sustainable located for the scale and type of use proposed.

44. Access to the appeal site is taken from the High Street via a track which is situated to the north of the site. There is also an additional access to the site from Old Wallingford Way to the south of the site, although at the time of my site visit that particular access was closed and appeared to have not been used for some considerable time. It is my understanding that there is a history of vehicle movements by a range of agricultural and commercial vehicles using the main northern access and during busy periods the Old Wallingford Way access was used for site egress purposes.

45. A key consideration in assessing the effect of the development on highway safety is traffic generation. The Council has calculated that the use would be likely to generate around 50 vehicle trips on a daily basis. Furthermore, it is calculated that four of these would be during the AM peak and three during the PM peak. It is my understanding that this takes account of the nature of the mix of uses on the site, but most of the traffic movements would be generated by vans and commercial vehicles taking deliveries from the site or heavy goods vehicles (HGVs) delivering goods to the site.

46. The appellant's own calculations are somewhat different, concluding that the commercial development would generate minimal traffic movement along the access at approximately 6 per day. However, the assessment does acknowledge that a more general warehouse use could result in 13 vehicle movements per day.

47. It is clear to me that the appellant's assessment relies on a TRICS sample of two properties from the TRICS database. One of these was 32,300 square metres in size which is very significantly larger than the appeal site. Consequently, this is not a comparable site. In addition, I have noted that the appellant's calculations have not included the residential part of the development which is a clear omission. Therefore, on the evidence before me I consider that the Council's assessment of traffic movements is more robust and, indeed, the appellant's transport and highways witness Mr Booker acknowledged in his oral evidence that the correct figure with respect to traffic generation would be closer to the Council's calculation than his own. The appellant's reliance on the minimal level of traffic generation associated with the development is flawed.

48. There has clearly been concern regarding the use of the access in the past, including the use of a planning condition on the grant of planning permission by

the Council for a relatively minor storage use. In that particular case an increase in traffic movements from 6 to 8 per day justified a condition limiting the use on the grounds that the access to the site is sub-standard and unsuitable to serve general unrestricted B8 use. Local residents have also expressed their concerns about the use of the access and potential conflicts between users of the access including vehicles (in particular large lorries and vans), pedestrians and equestrians.

49. There are two main sections of the access track. Firstly, a section between the High Street extending towards the site for a length of approximately 52 metres in length which is defined as a Byway Open to All Traffic (BOAT). Along this length of track vehicles may use the route, but it is mainly used by all of the public for the same purpose for which footpaths and bridleways are used. The second section between the end of the BOAT to the entrance to the site is a length of approximately 83 metres and is a designated bridleway where the public have the right to pass on foot and horseback but there are no other rights of way except for private rights for people to gain access to their property. Therefore, given the status of the track it is important that it is a safe and attractive route for pedestrians and equestrians to pass.

50. I understand that a width of 5.5 metres is required for a vehicle to pass a horse, but the width of this track is significantly short of that at between approximately 3.3 metres and 3.7 metres. The appellant's own evidence shows that the 7 day average 85^{th} percentile speeds were an average of 18 miles per hour mph). I have also noted that on each day of the week the traffic survey shows vehicle movements travelling in the 21 to 30 mph bracket in both directions along the access. Although there is good forward visibility and the fact that it is not a track which encourages high speeds, I am concerned that given its restricted width and the priority that should be given to pedestrians and equestrians, the speed of traffic could lead to highway safety issues. In addition, future use of the site for storage purposes may significantly increase the level of use of the track which would be likely to cause conflict with other highway users.

51. The appellant's representative Mr Booker accepted in his oral evidence that the access is sub-standard but appeared to use that as a means of justifying why the access is acceptable for the mixed use development because no driver would try to pass a horse. In addition, the appellant's representative expressed that he is not aware of there having been any traffic accidents relating to the current operation of Unit 13. The first of these does not seem to me to be the right approach to dealing with the development plan which seeks to ensure that priority is given to more vulnerable highway users such as pedestrians and equestrians. The interests of these vulnerable groups should be particularly protected along stretches of routes such as this given the priority they should be afforded. Also, I acknowledge that there may be no records of accidents, but this relates only to those which may have occurred on the adopted highway, rather than any along this stretch of access track between the adopted highway and the entrance to the appeal site.

52. I have also noted that Mr Booker's assessment is clearly based on an assumption that the pre-1997 agricultural use of the farm may be resumed at some point. I consider that this is not a reasonable approach to take given the fact that such a position is highly presumptive and not based on any realistic prospect of this happening. Also, this appeal is concerned with Unit 13 only.

Other unauthorised uses across the wider Cross Trees Farm should not be used as a precedent to justify the development the subject of this appeal.

53. Mr Booker also appears to have taken account of the highways situation regarding the planning permissions for two new replacement dwellings which are served by the access track. The evidence presented by the Council indicates that these permissions were granted on the basis of them resulting in no increase in vehicle movements. However, it is clear that in that particular case, where there was an increase in the number of dwellings from 3 to 5, the difference in overall traffic generation would be likely to be imperceptible and as such it would not have been reasonable on that basis to have refused planning permission. As such the decision to approve the replacement dwellings has little bearing on the determination of the current appeal in terms of highways considerations.

54. With respect to the access I am therefore concerned that the number of traffic movements and the speed of the movements combined with its restricted width and priority for vulnerable highways users means that the development is unsuitable to be served by the existing access arrangements.

55. There was a brief discussion at the Inquiry regarding Old Wallingford Way and whether it may be used as an alternative access to the site. However, given the fact that it serves a range of uses including a football club, recreation ground and cemetery and it also has a restricted width, it is even less suitable use than the currently used access track.

56. In addition, with respect to the access arrangements it is important to also consider the wider highway network conditions. Evidence presented by the Council shows that there are acute traffic problems at nearby Culham Bridges and associated junctions and highways network during peak AM and PM periods. The junctions in the vicinity operate way above the threshold of efficient operation with an increased likelihood of there being road traffic accidents, including those arising from unsafe manoeuvres as road users attempt to avoid queues. The junctions near to Culham Bridges currently have saturation levels of 130% to 190% where 90% and above is considered to be threshold for residual cumulative impacts. Therefore, in these circumstances I consider that the increase in the number of movements associated with the development would have a disproportionate effect on the local highway network with a consequent likely impact on the safety of highway users.

57. The severity of the local highways problems has been recognised by Inspectors who have dealt with relatively minor development proposals recently. Firstly, in February 2018[4] it was concluded that a development of a dwelling and alterations to an existing semi-detached dwelling resulting in an increase of 0.5 vehicle trips onto these junctions during peak periods would be slight, but nonetheless may result in a severe impact. Secondly[5], in November 2018 an Inspector determined that a proposal for what was effectively a single dwellinghouse generating 0.5 traffic movements in total during each of the AM and PM peak periods was significantly harmful to warrant dismissal. In this latter case there was a fallback position relating to the use of the building in question as a residential annex. The Inspector found that an annex use would generate less traffic movements than the proposal for the conversion of a

[4] APP/V3120/W/17/3187947
[5] APP/V3120/W/18/3200241

storage barn to two bedroomed residential accommodation, but would be sufficiently harmful to justify dismissal of the appeal.

58. Given the unauthorised nature of the development at Unit 13, any approach which appears to justify the effect on the highways based on it being an existing development is flawed because national policy clearly does not seek to favour unauthorised development, but the contrary with respect to intentionally unauthorised development. Furthermore, I am not aware of evidence which suggests that the situation at Culham Bridges has improved since the Highway Authority's survey and traffic modelling which took place in May 2017. Rather, I am aware that much new development has occurred since May 2017, including extensive commercial development at Milton Park and residential development at Sutton Courtenay and Didcot, which would generate significant traffic movements during the day and particularly at AM and PM peak periods.

59. In coming to my conclusions on highways matters I have taken account of the appellant's comments with respect to the Highway Authority and in particular the fact that they did not attend the Inquiry. However, there is little evidence to suggest this is due to the limited effect of the development on the highways network or the marginal nature of the Council's reasons to take enforcement action. Therefore, on this issue I conclude that the access arrangements are not adequate with reference to the safe movement of highways users. As such there is conflict with Policy CVP33 of the LP 2031, Policies DC5, GS7 and GS8 of the LP and the Framework.

Noise

60. Policy DC9 of the LP states that development will not be permitted if it would unacceptably harm the amenities of neighbouring properties or the wider environment in terms of noise and vibration, among others. In addition, Policy CP28 of the LP 2031 which relates to new employment development on unallocated sites states that such development will be supported provided that the benefits are not outweighed by any harmful impact, taking account of the effect on the amenity of nearby residents and occupiers.

61. The appellant's acoustics evidence by Hepworth Acoustics has been carried out under BS4142. The assessment shows that for on-site noise the noise of an articulated lorry causes a significant adverse impact at East House which is the closest residential receptor to the north west of the appeal site. With respect to the nearest residential receptor to the south, an articulated lorry has an impact which tends towards a significant adverse impact. Furthermore, a 12.5 tonne rigid truck fixed lorry causes a significant adverse effect on the residential receptor to the north west.

62. With respect to off-site noise the evidence presented shows that noise from a fixed lorry has a moderate adverse impact at East House to the north west of the site and potentially a substantial adverse impact at East House from the movement of an articulated lorry.

63. It has been suggested that improvements to the quality of the surface of the access track would ameliorate some of the noise from the movement of lorries. It was also suggested that the weighbridge which is close to the access to the site could be moved. Neither of these options has been carried out to date and I have insufficient evidence that they have been seriously considered as

options to deal with noise issues in the past. There is no certainty that the improvements to the access track could even be delivered.

64. The noise evidence indicates to me that the levels of noise generated by the development is considered by the appellant to be acceptable due to the frequency that noise events occur – when materials are being imported and exported from the site. However, should the current appeal be allowed the property could be used by another B8 operator who may generate significantly more articulated lorry and fixed truck movements than is currently generated by Mr Fiocco. Also, Mr Fiocco may decide to intensify his B8 use of the site which may have a similar effect.

65. Furthermore, the highways evidence before me shows that the number of vehicle movements associated with a B8 operation is likely to be significantly greater than has been shown by the appellant's evidence. Given the difficulty in enforcing a condition which restricts the number of vehicles accessing the site it is my view that an unfettered storage use of the site would result in unacceptable noise levels to the detriment of the living conditions of the occupants of nearby residential properties. Restricting the hours of operation may contribute towards mitigating noise and disturbance impacts, but there is insufficient evidence before me to conclude that such a condition would go far enough to secure a satisfactory development.

66. Consequently, on this issue I conclude that the development has a harmful effect on the living conditions of the occupants of nearby residential properties with particular reference to noise disturbance. As such it conflicts with the provisions of Policy DC9 of the LP and CP28 of the LP 2031.

Character and appearance of the open countryside

67. Policy GS7 of the LP relates to the re-use and adaptation of buildings outside settlements and includes measures which specifically relate to the protection of the countryside, including the re-use and adaptation of buildings should not adversely affect the character and appearance of the setting or surrounding area.

68. The nature of the use of the access would be commercial rather than agricultural and the pattern of vehicle movements and the type and number of vehicles is likely to be different. Consequently, the character of the use of the site and its associated access is different from that which would be expected in such a location. Users of the access track, in particular pedestrian and equestrians, are likely to encounter large commercial vehicles.

69. Irrespective of any argument relating to the number of vehicle movements and highways safety, it is my view that the development leads to a type of commercial use which results in harm to the overall character and appearance of the countryside and conflicts with the provisions of Policy GS7.

Other matters

70. I have noted the appellant's frustration with respect to the timeliness of the Council's enforcement actions. There have been some significant delays in dealing with this particular site and the alleged unauthorised use for mixed use purposes. However, in coming to my decision I have taken account of the evidence presented by parties rather than speculating about why action may

not have taken place quicker or why the Council chose not to use other means of pursuing this particular breach.

71. Furthermore, I have taken account of the suggested conditions, but do not consider that those suggested which would restrict the hours of operation, restrict the occupancy of the residential unit or require the implementation of a scheme of landscaping would adequately mitigate the harm I have identified.

Formal Decision

72. I direct that the enforcement notice is corrected by:

a) The deletion from paragraph 3 of "(b) workshop".

b) The deletion from paragraph 3 of "(c) residential" and the substitution therefor of "(b) residential".

c) The deletion from paragraph 5(i) of the word "workshop".

Subject to these corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Alastair Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Rob Pattinson, Solicitor of Knights Solicitors	Instructed by Mr Paul Caudwell of Caudwell & Sons Ltd
He called	
Mr William Booker	Singleton Clamp and Partners Ltd
Mr Graham Rowland	Hepworth Acoustics
Mr Paul Caudwell	Caudwell & Sons Ltd
Mr M Askew	Knights PLC

FOR THE LOCAL PLANNING AUTHORITY:

Mr Cain Ormondroyd	of Counsel, instructed by the Head of Legal and Democratic Services, Vale of White Horse District Council
He called	
Mr Timothy Foxhall	Glanville Consultants
Mr Rob Cramp	Vale of White Horse District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Opening Statement on behalf of the appellant
2 List of recipients of the Council's Inquiry notification letter dated 23 March 2019.
3 List of suggested conditions from the Council.
4 Closing submissions on behalf of the Council.
5 Closing submissions and attachments on behalf of the appellants.
6 Statutory Declaration of Gilberto Fiocco dated 9 April 2019
7 Letter from Dr David Ellis of Oak Tree Health Centre dated 16 April 2019