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## Appeal Decision

Site visit made on 10 December 2019

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 January 2020**

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**Appeal Ref: APP/R0660/C/19/3227635**

**Coppenhall House Stables, Groby Road, Crewe**

- 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 Mrs Alison Brazenbury of Fast Deals Technology against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 26 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a stable building to a B8 warehouse and distribution use with ancillary offices and the unauthorised change of use of agricultural land for a use for parking associated with the unauthorised B8 use and creation of associated hard standing shown hatched blue on the attached plan.
- The requirements of the notice are:-
  - A. Cease the use of the stable building for a B8 warehouse and distribution use and ancillary office use in its entirety.
  - B. Cease the use of agricultural land for the parking of vehicles associated with the unauthorised use.
  - C. Take up and remove from the land the unauthorised hard standing hatched blue on the attached plan and recover with top soil and reseed the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.**

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### The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. The scope of the requirements of the enforcement notice is limited by section 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.
3. Taking into account the above, the wording '*recover with top soil and reseed the land*' of requirement C could result in an improvement to the previous condition and I have little evidence to clarify what that condition was.

However, the appellant would be more than likely to have the best knowledge of what that condition was. As such, to ensure clarity and that this requirement does not extend beyond the limits of section 173(4)(a) and (b) of the 1990 Act I intend to delete the words '*recover with top soil and reseed the land*' and replace it with '*restore it to its previous condition prior to the breach occurring*.' I can carry out the correction without injustice to the parties.

## **The ground (a) appeal and deemed planning application**

### **Main Issues**

4. The main issues are:-

- the effect upon the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance;
- highway safety with regard to parking and turning facilities.

### **Reasons**

#### *Background*

5. The enforcement notice relates to a single storey building, access drive and parking areas that are currently being used in connection with a warehouse and distribution use that also has ancillary offices. The building is to the north of Coppenhall House which is the appellant's dwelling. The access drive also serves a number of other dwellings which include Oak Tree Farm, Apple Tree House and Coppenhall House Farm.
6. The access drive is off Groby Road and nearby is a commercial site currently occupied by a metal fabrication company and buildings associated with a livery. The building on the appeal site appears to be used largely by the appellant's company which buys in goods which are delivered to the site, these are then repackaged/processed/stored within the main part of the building and then these goods are then collected from the site by a delivery carrier to be distributed to customers. The evidence before me indicates that there are currently 3 full-time members of staff and 3 part-time members of staff who work, as part of this business, in the former stables.
7. The evidence before me indicates that the planning permissions that were granted in the late 20<sup>th</sup> Century, for the use of the former stables/appeal building as an office, were for temporary periods and were restricted by condition to the then occupier of the adjacent dwelling. I have no evidence to indicate that these planning permissions are still extant and have dealt with the appeal on this basis.
8. The development plan relevant to this site includes the Cheshire East Local Plan Strategy (LP), adopted July 2017, and the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (CNRLP), adopted February 2005.
9. LP Policy PG6 relates to the open countryside and even though it is not specifically cited in the enforcement notice it is referred to in the evidence before me, the appellant has had the chance to comment on it and I have been provided a copy of it. There is no dispute that for the purposes of this policy the site is within the open countryside.

10. This policy states that development within the countryside will only be permitted where it is for the purposes stated within its clause 2. It goes on to state that a number of exceptions outlined under clause 3 may be made. These include the re-use of existing rural buildings where the building meets a number of criteria. There is little evidence before me to indicate that the existing building that is within the appeal site would not meet those criteria. Clause 5 of the policy states that the acceptability of such development will be subject to compliance with all other relevant policies in the Local Plan.
11. LP Policy EG2 relates to the rural economy and states that developments that falls within one of a number of categories will be supported where it meets a number of criteria. The Council considers that the development does not meet criteria ii. and v. as it considers that; there is little evidence to indicate that the development could not reasonably be expected to locate within a designated centre by reason of their products sold and that it detracts from residential amenity with regard to noise and disturbance.
12. A recent appeal decision<sup>1</sup> relating to a development at the nearby commercial site has been drawn to my attention. I note that the Inspector in that case found that *'I find no possible conflict in that particular respect given that the supporting text identifies that the rural economy in Cheshire East supports many businesses including manufacturing, and a footnote implies that the latter part of the criteria is alternatively focussed upon a retail function taking place from the site - which does not form part of the appeal proposal. To my mind, such an interpretation of that criteria of Policy EG2 is consistent with the Framework which at paragraph 83 seeks that planning policies and decisions should enable, amongst other things, the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed buildings.'* Even though the business in this case is not manufacturing the enforcement notice does not allege that the development is focussed upon a retail function. As such, I consider in this case that there is no conflict with this part of LP Policy EG2.
13. LP Policy SD1 and CNRLP Policies BE1, BE3 and NE15 contain clauses in relation to ensuring sufficient parking spaces and safe access and that the development does not adversely affect the living conditions of nearby occupiers with regard to noise and disturbance.

#### *Living Conditions*

14. The dwellings on either side of the access drive have elevations in close proximity to it and those of the dwellings, Oak Tree Farm and Apple Tree House form a boundary to the drive. In my view the environment is of a generally quiet countryside location, not a busy, trafficked urban area even though it is within the administrative area of Crewe Town Council. I have also taken into account that the appeal decision cited above was dismissed and that I have no evidence to indicate that a Class B2, general industrial use, has been authorised on that site. Consequently, notwithstanding the nearby commercial uses given the mainly rural character of the area the existing occupiers of the adjacent dwellings were likely to experience relatively low levels of noise and disturbance when within their gardens and the rooms with an elevation adjacent to the access drive prior to the breach occurring.

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<sup>1</sup> APP/R0660/W/19/3224674 – 16 October 2019

15. Even though Groby Road appears to be quite a busy road I noted at my site visit, in the mid-afternoon, that there is a modest background noise level when standing on the drive, near the elevations of the adjacent dwellings. I acknowledge that at other times of the day and in different weather conditions, it was raining heavily at the site visit, the background noise level may be different. However, I have little evidence before me to suggest that those differences would be significant.
16. I note that neither the Council nor the nearby occupiers have raised any concern with regard to noise and disturbance arising from the business operations that occur within the appeal building itself. Nonetheless, there is concern in relation to the noise and disturbance generated by vehicular traffic associated with the business.
17. The appellant has submitted diaries of the number of delivery vehicles that serviced the business each day between November 2018 and September 2019. These diaries indicate that between 2 and 5 such vehicles were recorded as delivering/collecting at the business each week. However, the nearby occupiers have stated that these diaries do not accurately record all of the vehicular movements that are associated with the business and that on one day 40 vehicular movements associated with the business were counted. Nonetheless, other than that statement little evidence has been submitted to substantiate that high level of vehicle movements.
18. It is clear that there have been building operations that have been undertaken to Coppenhall House whilst the business has been operating and therefore some of the deliveries at that time would have been associated with those works. Nonetheless, I have little evidence to indicate the duration of those works and it would appear that they were completed sometime in 2018. I also note that evidence submitted on behalf of the appellant is not entirely clear as it states that the Royal Mail van collects mail on a Tuesday and Friday around 17.00 and it also states Royal Mail visits the site daily delivering mail. It is not clear if the daily delivery is additional to the standard postal delivery service provided by the Royal Mail.
19. Even though, the 3 full-time members of staff appear to be related to the appellant and live within the adjacent dwelling the part-time members of staff will contribute to the vehicle movements on the access drive. Moreover, it is clear that in addition to the Royal Mail van other delivery services vehicles such as DPD, DHL and FedEx are regularly delivering goods to the business.
20. I note that the appellant has stated that the company has implemented efficient systems to minimise separate deliveries/collections being utilised and that it mainly distributes small items therefore large vehicles are not required to deliver/collect the goods. In addition, the amount of goods stored and distributed is restricted by the size of the building. Nevertheless, it is highly likely that given the nature of the warehouse and distribution use that regular deliveries/collections would still occur throughout the working day/week.
21. Moreover, it would not be reasonable to consider that the appellant can control or specify what type of vehicle the delivery services can utilise to visit the site. There is also no guarantee that larger goods may not be stored/distributed from the building at some stage and/or that a replacement company with different operating practices could occupy the building in the future. I also

- noted that there is a usable area within the roof space that appears to be capable of being utilised for additional storage.
22. Furthermore, the majority of delivery vehicles appear to be transit van type vehicles. Even if these vehicles can turn within the site, in my experience, many of them are fitted with reversing alarms that will exacerbate the noise and disturbance that arises from them. In addition, in the hours of darkness, headlights will draw attention to the arrival/departure of each vehicle given the location of a number of windows to habitable rooms in the dwellings that bound the access drive. The vehicles may be on site for relatively short periods of time and in a less sensitive location the amount of vehicle movements generated by the use may not be considered to be substantial.
23. However, even with the growth of online shopping and the associated deliveries I consider that the amount of vehicle movements generated by the business is highly likely to be appreciably greater than would be expected to be generated on a regular basis by the small number of dwellings that are served by the access drive. As such, the occupants of the properties adjoining the access drive are likely to experience disturbance associated with the noise and headlights generated by those vehicular movements passing in such close proximity to their dwellings and gardens. This results in harm to their living conditions which is likely to be significant in nature due to that proximity and the predominantly rural character of the area.
24. The existing boundary treatments to the gardens and walls to the dwellings may mitigate the disturbance to some extent. Nevertheless, no acoustic assessment has been submitted and therefore I have no technical evidence before me in relation to background noise levels and noise levels associated with vehicular movements on the access drive.
25. The appellant has suggested that acoustic fencing could be erected on the boundary with the garden area that adjoins Apple Tree House. However, whilst this may be effective at reducing the noise levels and disturbance to the neighbours when in their garden given the proximity of a number of windows/doors and habitable rooms to the drive I do not consider that this would mitigate the disturbance to those occupiers when in their dwellings.
26. The appellant has stated that a temporary permission of 12 months would allow the vehicular movements to be monitored without the construction work traffic distorting the impression of the servicing requirements of the business. However, it would appear that the business has already been operating for at least 3 years on this site and that the construction works were completed sometime in 2018. Moreover, the representations from the neighbours indicate that the noise and disturbance from the vehicular traffic has been ongoing in 2019.
27. The Council has suggested that a condition could control the hours of operation of the use and deliveries/collections associated with it. Nevertheless, it would appear that the majority of the noise and disturbance that derives from the vehicular movements occurs within the hours indicated in that condition. Therefore, the condition would not mitigate the harm identified above. There is no dispute that conditions restricting the number of delivery/collection vehicles and the size of the vehicles would be very difficult to enforce and would not be reasonable. I have also considered as to whether a planning condition restricting the occupancy of the building to the appellant's company could be

imposed. However, the Planning Practice Guidance (PPG)<sup>2</sup> advises that planning permission normally runs with the land and that a permission limiting the benefit to a company is inappropriate. Therefore, such a condition in this instance would not be reasonable.

28. Taking into account all of the above, the evidence before me does not offer sufficient clarity and robustness for me to be able to conclude that the development does not have an adverse impact on the living conditions of the adjacent occupiers with regard to noise and disturbance. Moreover, from the information before me it appears highly likely that it does cause disturbance to those nearby occupiers and that harm cannot be mitigated by the imposition of planning conditions. Consequently, it follows that the development does not comply with LP Policy EG2 and CNRLP Policies BE1 and NE15 in this respect. There is also associated conflict with LP Policy PG6 and CNRLP Policy NE13 as they require the development to comply with other relevant policies in the development plan. The development also conflicts with paragraph 127 of the National Planning Policy Framework (the Framework) which states, amongst other things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

#### *Highway safety*

29. I acknowledge that the Council's highway engineer does not appear to have formally objected to the development. However, this appears to be subject to the imposition of a planning condition requiring a turning area to be constructed on the site to enable delivery/collection vehicles to be able to enter and leave the site in a forward gear.
30. I observed that there is a relatively large area that has been hardsurfaced adjacent to the appeal building including what appeared to be a recently laid paved area between it and Coppenhall House. Whilst, the area shaded blue on the plan attached to the enforcement notice has been hardsurfaced it is divided from the main hardsurfaced area by a gate and does not appear to have been used as a parking or turning area for some time given its overgrown appearance.
31. The main hardsurfaced area is capable of accommodating a number of parked vehicles in a tandem formation. I have not been provided with any relevant parking standards that have been adopted by the Council. Nevertheless, there is little evidence before me to indicate that the parking of vehicles used by the staff and employees is over spilling onto the highway. However, that parking could restrict the amount of hardstanding space that is available for turning and therefore it could affect whether delivery/collection vehicles are able to turn and leave the site in a forward gear. I noted that there is sufficient space to enable a vehicle such as a large family car to turn within that main hardsurfaced area with some cars parked in a tandem formation.
32. However, I have little evidence, such as swept path drawings, to indicate that the type of vehicles likely to deliver/collect goods to this type of business are able to enter and leave the site in a forward gear. Furthermore, the appellant has objected to the Council's suggested condition in relation to a turning facility being installed to the south of Coppenhall House.

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<sup>2</sup> Paragraph: 015 Reference ID: 21a-015-20140306

33. Groby Road appears to be quite a busy road, there are boundary treatments and landscaping that restrict visibility to a certain extent when entering and exiting the site and the access point is on the inside of a bend. If vehicles were to reverse onto the access drive from Groby Road or reverse onto Groby Road from the access drive this could impact on the safe and efficient operation of the highway network in the vicinity of the appeal site. This is due to the fact that vehicles would need to wait within the highway for an opportunity to reverse into the site and this would mean other vehicles would need to wait to pass that vehicle or until it had reversed into the site. Such a manoeuvre could be hazardous, as the driver of the reversing vehicle would have limited visibility of pedestrians and vehicles on the access drive, and of oncoming cars and bicycles on the road due to the bend and boundary treatments. Furthermore, drivers of vehicles reversing onto Groby Road from the access drive would be likely to have limited visibility of vehicles and bicycles on that road again due to the bend, boundary treatments and the fact that the reversing driver would be appreciably further from the junction than if the vehicle was in a forward gear.
34. The reversing of vehicles onto and off the access drive and onto Groby Road is highly likely to have an unacceptable impact on highway safety. Therefore, in my opinion, it would be key to show that safe and suitable access to the development can be achieved for all users. Vehicle tracking analysis could subsequently find that the development cannot address the concerns highlighted. As such, a planning condition could nullify the planning permission and it would not be reasonable to apply it.
35. Even though, I consider that sufficient parking is provided for the development insufficient evidence is before me to indicate that a safe and suitable access is achievable for all users of the development and that there is not an unacceptable impact on highway safety. It follows that the development conflicts with LP Policy SD1 and CNRLP Policies BE3 and NE15. It also conflicts with paragraphs 108 and 109 of the Framework which state, amongst other things that, in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users and that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

### ***Planning Balance and Conclusion***

36. The development has resulted in the reuse and refurbishment of an existing building and it appears to have involved little change in the external appearance of the appeal building. It provides economic benefits in terms of employment, helps to support the rural economy and reduces the appellant's and the other employees', who reside at Coppenhall House, commute as they live adjacent to the appeal building. The appellant has also installed an electric vehicle charging point and aims to fully utilise electric vehicles. I give appreciable weight to these matters taking into account the size of the scheme and due to sections 6 and 11 of the Framework in relation to supporting a prosperous rural economy and making effective use of land.
37. Nonetheless, I have also found that the development conflicts with LP Policies EG2, PG6 and SD1 and CNRLP Policies BE1, BE3, NE13 and NE15. Taking into account paragraph 213 of the Framework I consider that these policies are broadly consistent with the Framework. Therefore, this conflict has substantial

weight. Moreover, paragraph 15 of the Framework states that the planning system should be genuinely plan-led, and I have found that it conflicts with paragraphs 108, 109 and 127 of the Framework. I conclude that the development conflicts with the development plan as a whole. Consequently, whilst there are benefits associated with the proposal, I consider that there are no material considerations, including the provisions of the Framework, of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.

38. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

### **Formal Decision**

39. It is directed that the enforcement notice be corrected by deleting the wording '*recover with top soil and reseed the land*' within its requirement C and replace it with '*restore it to its previous condition prior to the breach occurring*'. 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.

*D. Boffin*

INSPECTOR