



Appeal Decision

Site visit made on 18 February 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/D0121/C/19/3234409

Box Bush Stables, Box Bush Lane, Hewish, Weston-Super-Mare BS24 6UA

- 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 Andy James against an enforcement notice issued by North Somerset Council.
- The enforcement notice was issued on 10 July 2019.
- The breach of planning control as alleged in the notice is without permission (*sic*) the material change of use of land and buildings from a mixed residential, agricultural and equestrian use to a mixed use of residential, agricultural and equestrian and use as a vehicle recovery business.
- The requirements of the notice are 1. Cease the use of the land as a vehicle recovery business. 2. Remove from the land all vehicles and parts of vehicles not associated with the residential, agricultural and equestrian use of the land and remove any other items or miscellaneous paraphernalia not associated with the residential, agricultural and equestrian use of the land.
- The period for compliance with the requirements is four 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.

Ground (b) appeal

1. In order to succeed on this ground, the appellant must show that the matter alleged in the enforcement notice has not occurred as a matter of fact, the relevant test of the evidence being on the balance of probability.
2. The appeal site encompasses a bungalow, stables, another large building and a riding arena, together with an extensive area of open land. When I visited, several recovery trucks and a significant number of vans, cars and other types of vehicle, as well as quantities of mechanical parts and equipment, were present on part of the site. Aside from the recovery trucks, most of the vehicles appeared to be unserviceable. The vehicles were largely concentrated on a roughly hardsurfaced, partly grassed area to the east of the bungalow. The large building adjacent to the hardsurfaced area contained a recovery truck, together with facilities and equipment for maintenance of vehicles.
3. I am given to understand that the appellant's business recovers vehicles which are accident damaged or have broken down. Recovered vehicles are transported either to a repair facility, or to the site for storage. The appellant accepted that the material change to a vehicle recovery use had occurred, the crux of his case being that the use occupied a small area and was unrelated to the residential, agricultural and equestrian activities on other parts of the site.

4. The starting point for determining the relevant planning unit is the unit of occupation. To be in a separate planning unit, the vehicle recovery use would have to occupy a physically separate and distinct area for substantially different and unrelated purposes from the rest of the site. However, the appellant has provided little firm evidence which might have shown this to be the case. Vehicular access to the vehicle recovery use is shared with the bungalow, as well as other parts of the site in equestrian and agricultural use. There is limited physical separation between the vehicle recovery activities and the bungalow, which is occupied by the appellant. Although low post and rail fencing has been erected at some stage between the vehicle recovery activities and other parts of the site, in practice this fencing provides limited physical separation from the agricultural and equestrian uses.
5. Additionally, limited information was supplied in terms of the extent of land occupied by the appellant. No details were provided to show what parts of the site were in the appellant's control, either in his response to the Council's Planning Contravention Notice of February 2019 (the PCN), or in the grounds of appeal. Therefore, in the absence of firm evidence to indicate otherwise, I consider it more likely than not that the appellant's bungalow is used for purposes associated with the vehicle recovery use as well as for residential purposes. Moreover, I cannot be certain that any fluctuations in the scale of activity associated with the vehicle recovery use have not encompassed other parts of the site at times.
6. Due to the above factors, it is difficult to clearly identify any smaller part of the site where the only primary use is for vehicle recovery. Accordingly, as a matter of fact and degree and on the balance of probability, having regard to relevant case law¹ and based on the evidence before me, in my view the whole site comprises a single planning unit in which vehicle recovery is one primary component of a mixed use also containing other uses-namely residential, agricultural and equestrian uses-none of which are incidental or ancillary to one another or confined within separate and physically distinct areas of the site.
7. As a result, the appellant has failed to show that the mixed use alleged in the notice has not occurred; the available evidence suggests otherwise. In any event, had a different conclusion been reached in this respect I could have used the powers available under s176 (1) (a) of the Act, to correct the notice by reducing the area to which it relates. The ground (b) appeal fails.

Ground (a) appeal

Main Issues

8. The main issues in this ground of appeal are:
 - The effect of the vehicle recovery use on the character and appearance of the countryside.
 - The effect on highway safety.
 - The effect on the living conditions of occupiers of nearby residential property, having regard to noise and disturbance.

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

Reasons

Character and appearance of the countryside

9. The site is in open countryside, outside of any settlement boundary. The majority of the site consists of rural buildings and land in open, rural uses. According to the Council's Landscape Character Assessment Supplementary Planning Guidance (SPG), the site and surroundings form part of the *A1: Kingston Seymour and Puxton Moors Landscape Character Area (LCA)*. Adjacent to the site is an extensive area of land and buildings bounded by high enclosures, used for various commercial purposes. There are other smaller pockets of commercial development in the wider area. However, for the most part the surroundings are comprised of a patchwork of low lying, irregularly sized open fields bounded by maturing hedges, with scattered dwellings and farmsteads. Consequently, the site and surrounding landscape exhibit a character and appearance largely consistent with the remote, rural and pastoral qualities identified as being characteristics of the LCA in the SPG.
10. Given their angular profile, man-made materials and bold colours, the recovery trucks, vans, cars and other types of vehicle present on the site, as well as vehicle parts, are features more typical of an urban setting. In the absence of any screening, these features have a stark appearance in their largely open surroundings, causing a jarring contrast with the softer profiles, muted colours and rural, naturalistic qualities of the LCA. The accumulation of such features has therefore given the site a semi-industrialised appearance. This is entirely at odds with and alien to the predominantly rural characteristics of the site and its surroundings and has resulted in unacceptable harm to the character and appearance of the countryside.
11. Consequently, the vehicle recovery use fails to accord with Policy CS5 of the North Somerset Core Strategy (CS) as the distinctiveness, diversity and quality of the LCA is not conserved. By failing to demonstrate sensitivity to the established local character, the vehicle recovery use also fails to accord with CS Policy CS12. Moreover, having regard to the location of the site outside a settlement boundary and the failure to protect the character of the rural area, the vehicle recovery use fails to accord with CS Policy CS33.
12. The adverse impact of the vehicle recovery use on landscape character, the failure to respond to the distinctive qualities of the landscape and the failure to integrate into the natural environment responding to local character and identity and minimising landscape impact, does not accord with criteria in Policy DM10 of the North Somerset Sites and Policies Plan Part 1 (SPP). The failure to demonstrate sensitivity to the local character and the unacceptable harm to the character and appearance of the area does not accord with SPP Policy DM32 and SPP Policy DM53, the latter being referred to in the Council's statement of case. Additionally, the vehicle recovery use is inconsistent with the SPG landscape guidelines, which seek to conserve the remote and rural nature of the pastoral landscape and minimise the encroachment of visually intrusive land uses in the LCA. Moreover, the failure to conserve the natural environment is inconsistent with the National Planning Policy Framework 2019 (the Framework).

Highway safety

13. According to the appellant's PCN response he owns eleven recovery trucks, seven of which are based at the site. He stated that the business had undertaken almost 1300 vehicle recoveries in the six months prior to the PCN being served. It was unclear how many of those recovery incidents had involved attendance by vehicles based at the site. Also, it was unclear how many vehicles recovered were brought to the site, as opposed to being taken to the vehicle owner's home or a repair facility. Nevertheless, given around two thirds of the appellant's recovery trucks are based at the site, it is not unreasonable to assume that those vehicles accounted for a similar proportion of the recovery incidents attended. Attendance at a recovery incident will involve a recovery truck leaving its base and returning later, either empty or loaded. In their representations an interested resident referred to larger vehicle transporters also frequently visiting the site; evidence supplied provided some support for such occurrences.
14. Due to the above factors, the total number of vehicle movements to and from the site is likely to be significantly higher than the number of recovery incidents attended. Assuming the nature and scale of the vehicle recovery use has been continuous since the PCN response, it follows that there has been a significant increase in movements by large vehicles to and from the site. It is also likely moreover, that the frequency of such vehicle movements far exceeds that of local farming traffic.
15. The site is a significant distance from the primary road network. It can only be accessed by Box Bush Lane and other similar lengthy and winding country lanes. For the most part, these lanes are narrow and bounded by maturing hedges, with relatively limited forward visibility in places and with no segregated pedestrian footways or lighting. In many places, the appellant's recovery trucks or transporters are likely to experience difficulties in passing vehicles travelling in the opposite direction, due to the constrained width of the carriageway. Given these factors, Box Bush Lane and the majority of the local road network is inherently unsuitable to accommodate the substantial number of additional movements by large vehicles generated by the vehicle recovery use. In consequence, such use has caused unacceptable harm to highway safety, with a corresponding failure to accord with SPP Policy DM24 and criterion in SPP Policy DM53.

Living conditions

16. Although there are no residential properties immediately next to the site, a number are located in the vicinity, including around the junction of the approach road and along Box Bush Lane. Other nearby commercial uses notwithstanding, urbanising intrusions in the wider locality are relatively limited. Therefore, occupiers of residential property in the vicinity might reasonably expect to enjoy a strong sense of peacefulness and tranquillity consistent with the remote, largely rural surroundings.
17. Nevertheless, due to the substantial number and nature of vehicular movements generated by the vehicle recovery use, residential occupiers are likely to experience significant levels of noise and disturbance at regular intervals from large vehicles travelling along Box Bush Lane. According to the Council the use operates around the clock seven days a week-the appellant did not suggest otherwise. This means it is also likely that recovery trucks will

often be travelling to and from the site at times such as during the evening, early morning and at weekends, when occupiers might be particularly sensitive to sources of noise and disturbance, having regard to the otherwise tranquil rural setting. Moreover, such noise and disturbance is likely to be more apparent during summer months, when it might reasonably be expected that occupiers would have windows open at times.

18. Therefore, I find that the level of noise and disturbance likely to arise from the vehicle recovery use has caused unacceptable harm to the living conditions of occupiers of nearby residential property, with a corresponding failure to accord with criterion in SPP Policy DM53. There is no failure to accord with criterion in SPP Policy DM32, as there has been no loss of privacy, overlooking, overshadowing or overbearing impact. Even so, the failure to provide a high standard of amenity for existing users is inconsistent with the Framework paragraph 127 (f).

Other matters

19. According to the appellant, the vehicle recovery activity was taking place on part of the site which had a long history of use for vehicle repairs. However, no firm evidence was supplied to support such a claim. I was not made aware of a Certificate of Lawful Existing Use or Development under s191 of the Act having been granted in respect of a use for vehicle repairs. In any event, even if the relevant part of the site was 'Previously Developed Land' as defined in the Framework, that does not necessarily mean that it should be developed. Therefore, this matter only carries limited weight.
20. I am given to understand that the appellant employs eleven drivers in addition to himself. Consequently, the vehicle recovery use provides some support to the local economy. However, this benefit is of relatively small scale and therefore only weighs moderately in favour of granting planning permission.

Conclusion on ground (a)

21. The vehicle recovery use fails to accord with the Development Plan, it is inconsistent with the SPG and inconsistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

22. The ground of appeal is that the notice requirements are excessive for their purpose. The appellant made no definitive case under ground (f), the planning merits of the vehicle recovery use having been dealt with on ground (a) above.
23. At s173 (4), the Act provides that an enforcement notice can remedy a breach of planning control, including by discontinuing any use of the land, or it can remedy any injury to amenity which has been caused by the breach.
24. By requiring the vehicle recovery activity to cease, the notice is clearly directed at remedying the breach by discontinuing that use, as opposed to remedying an injury to amenity. As a result, lesser steps stopping short of ceasing the use and removing all incidences of that use would not remedy the breach.
25. However, the notice also requires removal of all vehicles and parts of vehicles together with any other items or miscellaneous paraphernalia not associated with residential, agricultural and equestrian use of the site. This is excessive

for the purpose of remedying the breach because in addition to incidences of the vehicle recovery use, it could also ostensibly prohibit vehicles, vehicle parts and other items being brought to the site in conjunction with other lawful uses, or with as yet unsubstantiated future breaches of planning control.

26. Therefore, I shall vary the notice to require restoration of the site to its condition before the breach took place, by the removal of all vehicles, vehicle parts and other items associated with the vehicle recovery use. This requirement would be sufficiently precise in order to remedy the breach. It follows that the ground (f) appeal succeeds to this limited extent.

Conclusion

27. For the reasons given above, I conclude that the appeal should succeed on ground (f). I shall uphold the notice with variation and refuse to grant planning permission on the deemed application.

Formal Decision

28. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by deleting step 2 and substituting it with the following step:

- Restore the land to its condition before the breach took place, by removing all vehicles, parts of vehicles and other items associated with the vehicle recovery business.

Subject to the above variation 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.

Stephen Hawkins

INSPECTOR