



Appeal Decision

Inquiry Held on 13, 14, 21 and 28 January 2021 and 3, 4 and 18 March 2021
Site visit made on 22 January 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Appeal Ref: APP/T2215/C/20/3248672

Land situate at the north-west side of Park Corner Road, Southfleet, Gravesend, Kent DA13 9LJ shown cross-hatched in green and edged red on the plan attached to the notice

- 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 Sharon Kirby (Storefast Estate) against an enforcement notice issued by Dartford Borough Council.
- The enforcement notice, numbered 19/00162/ENF, was issued on 12 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agriculture to a mixed use involving:-
 - a) The importation, deposit and open storage of waste, wood, scrap, skips, pallets, materials of various descriptions, including but not limited to, building materials, gas cylinders, plastics, a lorry body and shipping container(s);
 - b) the parking of vehicles;
 - c) the importation, deposit and open storage of intermediate bulk containers;
 - d) areas of hardstanding for the parking of vehicles;
 - e) the importation, deposit and open storage of soils and sub-soils, including the alteration of the land profile/grading, not in connection with the lawful agricultural use.
- The requirements of the Notice, with each a compliance period of 6 months, are to:
 - (i) Cease the unauthorised importation, deposit and open storage of waste, wood, scrap, skips, pallets, materials of various descriptions including, but not limited to, building materials, gas cylinders, plastics, a lorry body and shipping container(s).
 - (ii) Remove from the land all waste, wood, scrap, skips, pallets, materials of various descriptions including, but not limited to, building materials, gas cylinders, plastics, a lorry body and shipping container(s)
 - (iii) Cease the unauthorised parking of vehicles on the land.
 - (iv) Remove the vehicles from the land.
 - (v) Cease the use of the land as a hardstanding(s) for the parking of vehicles.
 - (vi) Remove from the land any hard surface(s) for use of parking of vehicles.
 - (vii) Cease the unauthorised importation, deposit and open storage of intermediate bulk containers.
 - (viii) Remove the intermediate bulk containers from the land.
 - (ix) Cease the importation, deposit and open storage of soils and sub-soils, not in connection with the lawful agricultural use.
 - (x) Where the land profile/grading has been altered with the importation and deposit of soils and sub-soils not in connection with the lawful agricultural use, reprofile/regrade the land to the level of the surrounding land on the site, in accordance with step (xi) below).
 - (xi) Upon completion of steps (i) to (x) above, grade the land with topsoil and sow bare earth areas with grass seed.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (c) and (d) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

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.

Applications for costs

2. Applications for costs were made by (a) Mrs Sharon Kirby (Storefast Estate) against Dartford Borough Council and (b) Dartford Borough Council against Mrs Sharon Kirby (Storefast Estate). These applications are the subject of separate Decisions.

Procedural matter

3. The appellant unsuccessfully applied for a Lawful Development Certificate (LDC) in 2020¹. As part of her application, she submitted statutory declarations with a plan² which identified and labelled 9 different areas within the appeal site. As these areas of the site were referred to by both main parties at the inquiry ("Area 1", "Area 2"...), I have continued reference to them in my Decision and such references should be construed accordingly.

Ground (c)

4. An appeal is brought under this ground that the matters stated in the notice do not constitute a breach of planning control.
5. The appeal site is a parcel of open land adjacent to a group of buildings ('the Storefast buildings') which are within the control of the appellant and occupied by a variety of businesses. In essence, the appellant's case under this ground is that the appeal site is part of the same planning unit as the Storefast buildings and that the matters stated in the enforcement notice (the parking of vehicles facilitated by areas of hardstanding and the importation, deposit and storage of various items and materials) are lawful by reason of being ancillary uses to the lawful primary use(s) of the Storefast buildings. Further, it is claimed by the appellant that any hardstanding laid is permitted development under Part 7 Class J of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
6. It is well-established law that an ancillary use must be carried on in the same planning unit as the primary use to which it has a functional connection. Therefore, as it is fundamental to the appellant's argument under this ground that the buildings and appeal site are part of the same planning unit, I will prioritise that issue.
7. Conditional Planning permission was granted on 30 March 1967 for the "development of land situate at North End Farm, Park Corner Road in the Parish of Southfleet and being the erection of a building for refrigerated storage, grading and packing of apples" (the 1967 permission).³ There is no dispute between the main parties that this planning permission was implemented. While the appellant claims the land subject to the 1967 permission included the current appeal site, the Council maintains not and that

¹ 20/00030/LDC

² 'Exhibit 2', Site Layout Plan – Drawing No RG-M-03 B

³ TH/5/66/610

- the boundary of the land was drawn more tightly around the curtilage of the building to be erected.
8. I agree with the appellant that there is nothing unclear or ambiguous about the decision notice, and so there is no need to refer to the application (or other extrinsic) material. However, contrary to what the appellant says in closing, the fact that the decision notice was for "land situate at North End Farm" does not necessitate that the planning unit was the whole farm – just that's where the development was located. Permission was for the erection of a building, with a specific purpose.
 9. The approved drawings forming part of that permission⁴ were "Site and Block plan No 7802" and "general arrangement plan 7803". Drawing 7802 B was the last version put to the Council before planning approval was given and is therefore the relevant one for interpretation rather than later, post permission, versions submitted for quite separate Building Regulation purposes. The drawing site plan shows the extent of North End Farm, with a thick line around its boundary and a less emboldened line around the field parcel in which the proposed building was to be erected (land which contains the site in the appeal currently before me). The block plan on the same document shows a closer, detailed view of the proposed building (as per the description of development permitted) within its application site. I do not share the alternative planning unit argument view put forward by the appellant that the line around the field parcel marked the boundary of the application site, as I consider that if that were the case it would also be clearly and continuously marked in the block plan – which it is not. Instead I take the application site – as I think a reasonable reader would applying common sense⁵ – to be the building and immediate area around it. This area is highlighted by shading and shown accurately for the avoidance of doubt by line markings annotated with measurements. When read together with approved plan 7803 (which shows the building together with the concrete apron to its front and side), it is unambiguous that the planning unit is essentially the permitted building and its identified curtilage area. This excludes the appeal site.
 10. Upon the block plan, to the south of the proposed building, are the words "NEW TREE PLANTING TO APPROVAL". However, I do not construe this as meaning that the trees would have been approved or planted on the current appeal site. The reasons given for the associated condition (No 2) imply that the trees were to screen the new building from views and this was arguably more effectively achieved were they planted close to the building, within the application site as I have identified it. Indeed, subsequent aerial photography shows that this did in fact occur. The Google Earth 1990 photograph shows a tree screen along the southern boundary of the application site, which together with other vegetation, physically separates the use of the site from the green field which is now the appeal site before me. While this evidence is not needed to interpret the permission, it is further evidence as to the planning unit at the time of the planning permission and since.
 11. The appellant suggests that the "adequate land" necessary reserved for the parking of vehicles (condition 1) meant that the current appeal site must have been included within the application site. However, that is unsupported speculation and I find (as would a reasonable reader applying common sense)

⁴ Barnett v SSCLG & East Hampshire DC [2009] 1 P&CR 24.

⁵ Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74

it much more likely given the approved drawings that the provision intended by the condition was to be upon the significant concrete apron of the application site. Indeed, while again not necessary in interpreting the permission, this appears to be what happened in reality. The officer report for the 1997 application⁶ remarked that "at the front of the site is an area of hardstanding used for car parking". And further to the paragraph above, it also said "A line of trees along the boundary screens the building to the south".

12. Consequently, the 1967 planning permission did not extend to the land subject to the enforcement notice under appeal nor did it form the same planning unit.
13. Further, there is nothing in the evidence I have seen and heard, and while applying the well-established *Burdle*⁷ tests, to lead me to find that the appeal site has at any time occupied the same planning unit as the building subject to the 1967 permission or buildings subsequently erected in association with it.
14. The 1970 planning permission⁸ was for a building to provide office and toilet facilities in support of the activities carried out at the fruit packhouse, and built on "waste ground" within the 1967 application site as I have identified it. Further, the block plan for a 1990 permission⁹ shows the proposed new canteen building highlighted by shading (located within the 1967 application site), and without a site boundary line clearly and continuously extending around the appeal site to a degree suggesting the same planning unit.
15. Notwithstanding that the appellant's company purchased the buildings (as then existed) and the appeal site as one in 1997 and that the appellant maintains overall ownership, the various units are occupied either by her and her company or by various tenants undertaking different businesses/uses with their own separate tenancies from their own secure units capable of being separately occupied (in some cases within separate buildings constructed at different times under separate planning permissions – including those built under the above 1970 and 1990 permissions). Further, there is no need for access to these units through the appeal site and they are physically separate from it. As in the *Metro Centre* case¹⁰, such features suggest that each of the units comprise a separate planning unit. For the above reasons, they are physically and functionally separate from each-other and from the appeal site.
16. Despite the statement of common ground agreed before the inquiry it is now in dispute (following the supplementary proof and subsequent oral evidence of the appellant's planning witness) whether or not the 1997 permission was implemented. However, and notwithstanding whether processing of agricultural products had commenced before the expiry of the extended commencement period¹¹, the pre-commencement conditions were not discharged. The officer report was explicit in that the permission should "take the proximity of an increased number of residential units into account" and Storefast had written to the Council to say "Please also take into account the disposal of organic waste (a natural bi-product of our operation) which is easily achieved by composting

⁶ 97/00194/COU "Change of use from cold storage and packing of agricultural products with office and canteen facilities to cold storage and processing of agricultural products with office and canteen facilities"; 26 September 1997

⁷ *Burdle v Secretary of State for the Environment* [1972] 3 All E.R. 240, 244

⁸ TH/5/70/240

⁹ 90/00047/FUL

¹⁰ *Church Commissioners for England v Secretary of State for the Environment* (1996) 71 P. & C.R

¹¹ In October 2002, the Council consented (02/00837/FUL) to extend time for commencement to 24 October 2007.

and returning to the land”¹². It is not perhaps surprising then that the officer concludes by saying that the composting and disposal of food waste could have an impact upon residential amenity unless adequately controlled. For these reasons, and while acknowledging a lack of reported complaints, in my judgement pre-commencement conditions 5 and 10 imposed to control off-site impact through the approval of details relating to odour control and composting go to the heart of the permission and are therefore ‘conditions precedent’. Accordingly, the planning permission has not been implemented and therefore the matter of what may have been the relevant planning unit in that case does not arise.

17. I place very limited weight on the ‘statutory declaration’ of Mr Shotton as it is not a true statutory declaration for the purposes of the Statutory Declarations Act 1835, and his evidence relating to any ground of appeal could not be tested under oath at the inquiry (including his understanding of the term ‘planning unit’).
18. For all of the above reasons, the appeal site does not have planning permission for the alleged material change of use and, being a separate planning unit, cannot in law operate ancillary uses connected to the lawful primary use(s) of the Storefast buildings. Accordingly, in determining this appeal it is not necessary for me to deal any further with the parties’ arguments as to the lawful use(s) of the Storefast buildings.
19. As I have found the material change of use to be unlawful, the lawful use of the land is agricultural and therefore the permitted development rights claimed for the hardstanding under Class J do not apply (industrial and warehouse premises).
20. Therefore, I find on the balance of probabilities that the matters stated in the notice constitute a breach of planning control, and accordingly the appeal on ground (c) fails.

Ground (d)

21. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
22. Section 171B(3) of the Act provides that, in respect to the alleged material change of use targeted by the notice issued on 12 February 2020, no enforcement action would have been possible after the end of the period of 10 years beginning with the date of the breach.
23. Therefore, if the alleged material change of use had already occurred before 12 February 2010 and that such use had been continuous since that time (and possible for the Council to have taken action in respect to it) then the appeal should succeed under this ground, providing that the use had not been superseded by a new chapter in the land’s planning history (or the land abandoned).
24. I have heard that the appellant acquired the land in 1997 and since that time has used it to some degree for parking and storage uses associated with the

¹² Letter dated 12 September 1997

Storefast building(s). This is supported by evidence adduced by the appellant including statements and statutory declarations (2020, and the intended but unsigned declarations in 2010), oral evidence at the inquiry, aerial photography, historic local resident complaints, and historic correspondence with the Council¹³. Having considered the evidence carefully, I accept there has been some use of the appeal site for storage and parking purposes, going back as far as its acquisition by the appellant.

25. However, it is essential to the appellant's case that such use, as a matter of fact and degree, resulted in a material change of use of the land and which was continuous for at least 10 years prior to the issue of the notice by the Council.
26. It is striking that, notwithstanding information submitted by the appellant suggesting that a large number her business tenants have used the appeal site for parking and storage associated with their commercial activity (such as indicated in Table 11.1), no tenancy or related contractual documentation has been adduced to this effect. This significantly tempers the strength of the appellant's evidence, since such records may have assisted in an assessment as to the extent, impact and continuity of use of the appeal site for the stated use(s). The limited formal documentation of such type is also suggestive that any such use of the land was of a limited and/or casual nature which may not have required contractual or formalised control by the appellant as landlord. Answers given in oral evidence by Mrs Ellis, the operations manager of one of the appellant's tenant businesses who had worked in the buildings since at least 2000, implied that storage upon the appeal site was somewhat limited and temporary and her recollection of storage activity appeared to be restricted to before 2010. There were also no "on the ground" photographs from the appellant which might assist in making her case.
27. The appellant seeks to argue that complaints made to the Council in the 2000s, as well as to the Local Government Ombudsman (the Ombudsman) in 2005 and 2006, establishes that the alleged change of use had occurred by this time.
28. However, it is clear from Mr Goldthorpe's extensive email to the Ombudsman's Investigator in May 2005 that the matters to which he referred to as taking place on the land were not continuous. For instance, while he refers to asphaltting for car parking in 1999/2000, he refers to a temporary demise in use following Council activity and that the "Greenfield is now being used again" (at the time of writing in 2005). He talks about an upsurge in activity in early 2003, following what he regards as a period of acceptable behaviour (although it is not clear whether this point refers to use of the appeal site or to the Storefast building(s)) and this is further evidence that use of the appeal site has waxed and waned as argued by the Council. Indeed, it appears that the Council's monitoring of the site and enforcement-related activity has been at least partly responsible for this dynamic.
29. The 20 June 2000 complaint to the Council about a new car park being formed led to a site visit on the following day and council warning letters dated 22 and 27 June 2000 as well as a further letter dated 26th October 2000. It is reasonable to conclude that this led to the demise of use referred to by Mr Goldthorpe. Even had facilitating hardstanding remained to some degree, being later re-laid in 2019¹⁴ or at some time following the Hooper and Sons Ltd

¹³ Including letter from Cliff Thurlow, 24 November 2010

¹⁴ Mr Kirby's Statutory Declaration

estimates provided in 2011 and 2016 (had they applied to the appeal site), this is not in itself evidence of continuous use.

30. Following Mr Goldthorpe's complaint to the Ombudsman in 2005 that the 'greenbelt field' was being used (for car parking, dumping of surplus building material and building spoil, storage of imports and the burning of rubbish) the Council's letter of 30 September 2005 confirmed that the matter would be addressed on-site with the owners. It appears that this again caused activities on-site to wane; the aerial photograph from 2006 shows Area 2 grassed over and storage/parking uses occurring largely on the segment of land excluded from the enforcement notice, with no or *de minimis* hardstanding beyond. Mr Goldthorpe's statutory declaration to the inquiry confirms in relation to his Ombudsman complaint that "the results were positive with regards to concerns about encroachment onto the appeal site" and that "there was removal of storage and building spoil etc, from the green belt field and a cessation of parking and regular bonfires". He also says that where there had been "problems" over the years, when breaches were reported the activities ceased. While Mr Goldthorpe's evidence would have been afforded greater weight had the appellant had the opportunity to test his evidence given under oath at the inquiry, the statutory declaration was solemnly made under the Statutory Declarations Act 1835 and I give it significant weight.
31. Disruption of activities by the Council on the site, resulting in loss of continuity, also appears to have occurred since. The Council's letter of 18 November 2008 refers to an investigation into storage of a large number of motor vehicles apparently taking place on the appeal site, with cessation required by 24 November 2008. This resulted in an enforcement visit with a warrant and temporary stop notice on 25 November 2008 as access was refused. The briefing note for that intervention does not provide explicit evidence of storage and parking on the land, nor does the document entitled "Notes re Warrant", but the letter from Mr and Mrs Kirby of 26 November 2008 confirms removal of the cars from the land.
32. An undated file note, but which appears to be from 2008, refers to several cars and transit vans at odd angles in the open grassed area to the west. However, it is not clear whether this was within the appeal site as they may have been on the section excluded from the enforcement plan. Further there is a note that Tideway Drilling had parked 9 out of 10 of its vehicles on the road. Those vehicles accounted for in the 'vehicle count' would appear to relate to the Storefast buildings apron as the document separates that section from the "open grassed area to the west". Therefore, contrary to the appellant's arguments about this note, I do not find it adds any significant weight to her case. The same applies to the site visit note of 24 June 2009 since the reference to storage and parking could have related to the apron or the section excluded from the notice. Indeed, part of Area 4 and Area 3 has been excluded from the notice with storage shown in the 2009 aerial photograph being within the excluded area as far as is material.
33. The appellant has invited me to compare aerial photographs from 2008¹⁵ and 2020¹⁶.

¹⁵ Mr Landsberg's POE exhibit 13 p.353

¹⁶ Mr Whittaker's POE App 32 p.106

34. In 2008, the photo shows what appears to me to be a largely verdant greenfield site. While there is clear evidence of a rectangular parking area at Area 2 there are no vehicles parked (with I note no vehicles parked in the 2009 aerial photograph either). The hardstanding and storage associated with Area 4 appears to be largely associated with the section excluded from the notice. Although there appears to be some hardstanding and stored items beyond the excluded area, it is limited and closely associated with it. Consequently, I regard it as *de minimis*. Overall, the appeal site has the character of a verdant greenfield site with vegetation and trees.
35. The 2020 photo is not the best one to use to assess the site at the time the notice was issued, as it was taken approximately 2 months afterwards when the extensive stack of intermediate bulk containers (IBCs) had been removed from Area 9 within the appeal site. As shown by an aerial photograph taken in 2019¹⁷ (which also shows extensive parking of vehicles within the site at Areas 2 and 4) the storage of a substantial stack of highly visible light-coloured cuboid-shaped commercial containers in the context of the appeal site and adjoining agricultural fields within the Green Belt was sufficient, in itself, to materially change the character of the land. Notwithstanding this, it is immediately apparent when considering the 2020 photograph that the areas of hardstanding at Areas 2 and 4 are substantially larger than in the 2008 photograph (with significant soil deposits/bunding in Area 5 next to the extended hardstanding of Area 4). In contrast to 2008, the 2020 photograph also shows storage extensively across the site including the compound at Area 1 with steel container and the piles of materials at Areas 6 and 8.
36. I therefore conclude that by 2019 and 2020 (at the time the notice was issued) the appeal site had materially changed in its character of use from what was materially a countryside field in 2008/9 (with *de minimis* storage and parking) to a significantly-developed business yard with extensive storage and parking throughout the site facilitated by large amounts of hardstanding. This had resulted (taking into account the on-site and off-site impacts which I address in dealing with ground (a)) in such a significant difference in the character of the activities from what had gone on previously, as a matter of fact and degree, that it amounted to a material change of use.
37. This finding is also consistent with, and reinforced by, the evidence of local residents and to which I give significant weight.
38. Notwithstanding the consistent view of the residents that the above-mentioned changes occurred around 2018, which may in part may be due to the storage of IBCs from 2018/2019, in my judgement it appears from the aerial photography from 2014 and 2015 onwards that the significant proliferation of hardstanding and the storage and parking uses facilitated the material change of use from around about that time. Earlier photographs such as those taken in 2012 and 2013 (Area 2 appears to be at least partially overgrown) support my finding, as at 2008, that the character of the use was essentially as a countryside field with other uses *de minimis*. In any respect, whether the material change of use occurred in 2014 or whether it occurred in 2018 it was not too late for the Council to issue the notice as it was not later than 10 years from the alleged breach of planning control.

¹⁷ Mr Whittaker's POE App 29 p.93

39. I acknowledge that Mrs Ellis said in oral evidence that she had always parked her car in Area 4, and also that the streetview image from February 2009 shows vehicles parked in Area 2 (although only perhaps 1 or 2 vehicles can be made out, amidst a greater view of the extensive green field constituting the appeal site). However, that evidence is not inconsistent with the evidence of Mr Buttery who as a local resident told the inquiry that parking at Area 4 was "occasional intermittent usage" and "occasional and fairly minor" at Area 2. The appellant says that some aerial photographs were taken at the weekend but those taken on Monday 9 July 2012 and Tuesday 9 July 2013 appear to show a single car parked in Area 2 (with several photographs showing the site over the years showing no parking at all at this location). Taking all the evidence into account (including all of the aerial photography, notwithstanding some were taken at weekends) I find as a matter of fact and degree that such parking (and the level of any facilitating hardstanding) was *de minimis* and not sufficient overall to result, together with any storage on the land, in a material change to its character before 2014 at the earliest.
40. The "building frame" referred to by Mr and Mrs Kirby which they say has been stored for years in Area 8, has been covered over by vegetation. Enforcement officers may have visited and only seen vegetation as accepted by Mr Kirby. The building frame would have been hidden and the "storage" could not have been enforced against.
41. The soil bund in Area 5 does not appear to be present in the aerial photographs before 2018 at the earliest. Further, it seems apparent from the Council's "on the ground" site visit photographs taken on 1 October 2019 that the bund did not have the degree of vegetative growth to suggest it had been created several years before to the extent it would be immune from enforcement action. I note what the appellant has said about a different bund that, according to some of the Council's documents, had existed in 2008 but that is not the bund that was visible to officers before the issue of the notice and of which it was confirmed by the Council to be the subject of the notice.
42. For all the reasons given above, I am not satisfied on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) does not succeed.

Ground (a) and the deemed planning application

Main issues

43. The main issues in the ground (a) appeal are:
- Whether the appeal development is inappropriate development in the Green Belt.
 - The effect of the appeal development on the openness of the Green Belt.
 - The effect of the appeal development on the character and appearance of the area, and upon the setting of North End Farmhouse which is a Grade II listed building.

- The effect of the appeal development on the living conditions of neighbouring occupiers, as regards disturbance from traffic movements, deliveries, parking, light pollution, and extended hours of use.
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the appeal development?

Green Belt, whether inappropriate development, openness

44. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
45. Paragraph 146 of the Framework says that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it, such as assisting in safeguarding the countryside from encroachment¹⁸. These include material changes in the use of land such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds. The use of the site as represented by the appeal development, including parking facilitated by significant areas of hardstanding and the open storage of items and materials apparently associated with the commercial activities of the Storefast buildings, falls far from the character of these types of uses. In any respect, the material change to the new mixed use from the lawful agricultural use of what was an open field in the countryside (with some trees and vegetation) clearly represents a significant reduction in the openness of the land as regards both spatial and visual aspects due to the combined enclosing effects of storage (including, as one example only, the stacked IBCs), the parking of vehicles (notwithstanding that they come and go) and the facilitating hard surfacing. For the same reasons, taken together with vehicle movements onto and off the land resulting from business parking and storage, the development represents an unacceptable encroachment of the countryside by commercial use and activities notwithstanding the lawful use(s) of the adjacent Storefast buildings. It is therefore inappropriate development in the Green Belt.
46. Policy DP 22 of the Dartford Development Policies Plan 2017 says that inappropriate development in the Green Belt will be resisted in accordance with national planning policy.

Character and appearance, listed building

47. Associated with my finding as to countryside encroachment is the character of the area in which the appeal site is located, which I consider to be a largely rural one. The site lies adjacent to agricultural fields, and notwithstanding the current uses of the converted agricultural buildings nearby (such as barns and stables) or of the Storefast buildings (the one closest the farmhouse being built as the fruit packhouse under the 1967 permission), the appeal site and the wider area of land containing the buildings largely derive their historical pattern

¹⁸ Paragraph 134(c), National Planning Policy Framework

of development and character as a whole from the farm of which they formed part. The appeal site, being closely overlooked across Park Corner Road by the prominent front aspect of the listed North End Farmhouse, is cohesively linked to this character and so, to the Farmhouse. The commercial activities of the appeal site field are not agricultural in nature, and are therefore starkly incongruous within this prevailing character even when taking into account the use(s) of the Storefast Estate buildings. Further, while I accept there is some landscape screening for instance from public views from the direction of Park Corner Road (albeit with Mr Kirby acknowledging he has reduced the height of trees in this area) this does not sufficiently reduce the visual impact. In any case, harm to the character of an area is not contingent on public views. The presence of the busy A2 road, which can be seen and heard beyond the agricultural fields, does not in my judgement detract from the historical pattern of development and rural character of the area surrounding the appeal site. For these reasons, the appeal development causes significant harm to the character and appearance to the area.

48. North End Farmhouse is a Grade II listed building. Its listing entry says it has been listed due to its special architectural or historic interest¹⁹. The Framework is clear that listed buildings, as heritage assets, are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.²⁰ Significance derives not only from a heritage asset's physical presence, but also from its setting. I have applied the statutory duty in Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and had special regard to the desirability of preserving its setting. For the reasons given above, the Farmhouse's significance is derived from being experienced within the cohesive setting of its former agricultural buildings and farmland. The field forming the appeal site is closely associated with the listed building being directly opposite and overlooked by it. Several prominent views of the Farmhouse incorporate views of the appeal site, particularly from the track that runs along its south-western boundary and next to the adjacent agricultural field. The commercial storage and parking activities of the appeal development in front of the Farmhouse appear strikingly out of character, as compared to the lawful use of the site as an agricultural field in keeping with the character of the setting of the Farmhouse.
49. Having regard to paragraph 196 of the Framework, whilst the harm caused to the significance of the listed building would be less than substantial, it is a matter of considerable weight and importance. Furthermore, in this case there are no public benefits which would outweigh the harm caused.

Living conditions, neighbours

50. The Council has attached Appendix D to its statement of case which is a document entitled "Complaints received relating to activities at North End Farm, Park Corner Road, Betsham From July 2019 to 1 August 2020". However, due to the way information has been recorded (or perhaps due to the way the complaints were made) it is very difficult to separate those complaints about the appeal site from complaints made about other areas, buildings and uses associated with the 'Storefast Estate'. This includes 'Barn A' on the same side of Park Corner Road, and adjacent to, the homes of local residents and it

¹⁹ List Entry Number: 1099179; Historic England

²⁰ Paragraph 184, National Planning Policy Framework

is not a matter of dispute that many concerns have historically been connected with the use of that building.

51. It is said by the Council that the complaints about NPS since 2018 are inextricably linked to the appeal site because of their use of it, but that company also has a fenced forecourt and parking to the front of the Storefast buildings (as well as storage and an office inside them). It appears for instance that neighbours' concerns about light pollution (a reason for enforcement in the notice) are associated with security lighting associated with the NPS forecourt.
52. Therefore, it is very unclear how the complaints can be differentiated from uses which are not the subject of the enforcement notice and deemed planning application before me. For those that do, more clearly than others, relate to the appeal site they appear to be more observations of activities on site than evidence of how living conditions might be affected (eg storing, loading, unloading, parking, operating on "greenbelt").
53. There are records of noisy plant and vehicles operating on the appeal site over a few days in late July 2020 (albeit several months after the notice was issued and according to the appellant towards compliance with it) and a Community Protection Warning issued to NPS as regards noise and disturbance to local residents on the 29th of that month. However, it appears from a note dated 2 November 2020 from the Council's Environmental Protection Officer that there was insufficient evidence of noise nuisance for further action at that time.
54. Notwithstanding the above, I place significant weight on several appeal representations from local third parties who have commonly reported noise and disturbance over extended hours from increased vehicle movements associated with the appeal development. Further, whilst I have no measurements or estimates before me showing any increase in vehicle movements, it is reasonable to find it likely that the material change of use from an agricultural field to a site in use for storage and parking for commercial activities would increase local vehicle movements to and from it using the Storefast site entrance relatively close to the cluster of residential dwellings across Park Corner Road. It is also reasonable to conclude, supported by evidence heard at the inquiry from a local resident, that the additional operational space afforded by the appeal site for such purposes enables businesses (such as NPS) to operate at a greater scale or intensity than would otherwise be the case with the associated potential for the disturbance of local residents.
55. I do not accept the appellant's "agent of change principle" argument as the residential conversion of buildings on North End Farm preceded the development represented by the material change of use in the appeal before me.
56. For these reasons, I find that the appeal development causes significant harm to the living conditions of neighbours through increased noise and disturbance.

Other considerations

57. The appellant argues that the site is not a particularly sensitive one and that it is adjacent to the Storefast buildings and subject to a range of detracting visual influences including the A2 and electricity pylons. Further, it is argued that if harm to the Green Belt is caused it is very minor. I disagree, and for the reasons I have given consider that the appeal development causes multiple and

serious layers of harm including to the Green Belt. Therefore, I give these considerations as raised by the appellant very limited weight.

58. Paragraph 83 of the Framework supports the growth and expansion of all rural enterprises which contribute to the rural economy as well as the development and diversification of agricultural land. I accept that the Storefast business has been established for over 20 years and that being able to use the appeal site would support its business which employs people. I also accept that the site offers a convenient location (being as it close to the A2 and good highway connections) from which business tenants have been able to operate, with employment opportunities and associated social and economic benefits. Notwithstanding letters from tenants in support, I have seen modest evidence of how the loss of the appeal site for the mixed use alleged would harm any business or lead to lower levels of employment. However, given my comments that the appeal development would appear to facilitate a scale and intensity of operations that might otherwise not be possible were the site not used as alleged I give this consideration moderate weight.
59. The appellant says that her business and 2 of its tenants have been classified as "essential suppliers" during the Covid 19 pandemic. Very limited evidence has been submitted to show how the appeal development facilitates their roles amid the pandemic, but I acknowledge the roles as stated and I give this consideration moderate weight.

Green Belt/planning balance

60. Paragraph 144 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found that significant harm is caused to the character and appearance of the area, and less than substantial harm to the listed building to which the Framework requires I attach considerable weight. I have also found significant harm to the living conditions of local residents. In totality, the harm is of a magnitude which weighs very heavily against the appeal development.
61. Having considered all matters raised in support of the appeal development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework and Policies DP3, DP5, DP13 and DP22 of the Dartford Development Policies Plan 2017 which together seek to protect the Green Belt, character and appearance, designated heritage assets and living conditions.
62. The conditions put forward for consideration, or any conditions, would not make the development acceptable in planning terms. The proposed condition restricting storage and parking on the site to ancillary uses of the Storefast buildings (even were that legally possible given I have identified separate planning units) would not affect any of the different types of harm I have identified, nor would the proposed condition restricting future permitted development rights. While a condition restricting the height of stored items (or one restricting the storage of IBCs as implied in the appellant's submissions) might reduce harm, such restrictions would not overcome the unacceptable impact on the Green Belt otherwise caused by the enclosing effects of the development overall on the land and the encroachment of the

countryside. The proposed landscaping condition including tree planting along the boundaries of the site would also not acceptably remedy a reduction in spatial openness caused by the appeal development, and in fact would by itself decrease a sense of openness of the land. Further, it would sever the important connection between the agricultural field and the listed Farmhouse which I have identified as important in preserving its setting and significance as a designated heritage asset. A condition restricting hours of use would have had some benefit in reducing noise and disturbance, but would not reduce unacceptable impacts within any operating times that could be reasonably imposed by condition. In any respect, in the absence of effective conditions which might control the other harms identified in respect to this land in the Green Belt, a restriction as to hours would be of no account.

63. Accordingly, the appeal on ground (a) does not succeed.

Conclusion

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

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Melissa Murphy (Barrister)

She called

Sharon Kirby (Appellant)
John Kirby
Sandra Ellis
Paul Landsberg (Director, Barton
Willmore LLP)

FOR THE LOCAL PLANNING AUTHORITY (LPA): Emmaline Lambert (Barrister)

She called

Neale Buttery (Local resident)
Paul Hockley (Local resident)
Neill Whittaker (Planning witness)

INTERESTED PERSONS: None

DOCUMENTS submitted at the inquiry

- 1 Opening submissions – Appellant
- 2 Opening submissions – Local Planning Authority
- 3 Core Document 11.1 – Appellant’s schedule for tenant outside use
- 4 Core Document 11.2 – Appellant’s schedule for customer outside use
- 5 Core Document 12 – North End Farm Residential Permissions
- 6 Official copy of register of title, title number TT98042
- 7 Official copy of title plan, title number TT98042
- 8 Documentation relating to Local Government Ombudsman (LGO) complaint – “Goldthorpe 1”
- 9 Documentation relating to LGO complaint – “Goldthorpe 2”
- 10 Documentation relating to LGO complaint – “Goldthorpe 3”
- 11 Documentation relating to LGO complaint – “Goldthorpe 4”
- 12 Documentation relating to LGO complaint – “Goldthorpe 5”
- 13 Documentation relating to LGO complaint – “Hoadley 1”
- 14 Documentation relating to LGO complaint – “Hoadley 2”
- 15 Documentation relating to LGO complaint – “Hoadley 3”
- 16 Documentation relating to LGO complaint – “Hoadley 4”
- 17 Letter dated 25 February 2004 from LPA to Southfleet Parish Council
- 18 Storefast Briefing Note (undated)
- 19 Letter dated 20 May 2004 from LPA to Mr Goldthorpe
- 20 Letter from LPA to Mr x dated 20 May 2004

- 21 Letter from LPA to Councillor (unnamed)
- 22 Letter from LPA to Mr Goldthorpe dates 7 July 2004
- 23 Letter from LPA to Mrs x dated 20 May 2004
- 24 Letter from LPA to Mrs x dated 25 February 2004
- 25 LGO complaint by Mr Goldthorpe – undated document appears to be internal notes in response to complaint
- 26 Ms x complaint – letter to LGO dated 20 June 2006
- 27 “Ombudsman Complaint by Mr Goldthorpe Re Storefast 03/145/ENF” – internal notes in relation to complaint
- 28 Undated Appeal statement – re Mr x against conditions 1, 2, 3, 6, 9
- 29 Letter from LPA to Mr Goldthorpe dated 30 September 2005
- 30 Undated file note of a site visit
- 31 “Briefing at 10.30 on 25/11/2008 pursuant to warrant”
- 32 Letter from LPA to Mr and Mrs Kirby dated 18 November 2008
- 33 Notes re warrant undated, Notes ACCESS storage, EMM Services
- 34 Site visit note 24 June 2009
- 35 Correspondence between Ms x and LPA regarding Barn A and use of Storefast and expansion onto appeal site
- 36 Complaints received for Barn A from 21.11.19 – 2.5.20
- 37 Email correspondence LPA/Mr Goldthorpe dated 11 January 2020
- 38 Site visit log dated 25 August 2006 regarding complaint on out of hours working – File closed and signed 13 March 2007
- 39 Enforcement complaint re Rear Barn North End Farm out of hours working dated 25 August 2006 and letter to Mrs x notifying that complaint assigned
- 40 Email x/LPA dated 26 October 2018
- 41 Email Mr Buttery/LPA date 29 March 2020
- 42 Email Environmental Health/Planning Enforcement, 1 October 2020
- 43 Emails Mr Buttery/LPA dated 30 October 2020 and Environmental Health/Planning Enforcement 1 and 2 November 2020
- 44 Supplementary proof of evidence (SPOE) – Mr Landsberg
- 45 Supplementary proof of evidence (SPOE) – Mr Whittaker
- 46 Rebuttal by Mr Landsberg to Mr Whittaker’s SPOE
- 47 Statutory Declaration – Mr Ian Goldthorpe (Local resident)
- 48 Town and Country Planning (Use Classes) Order 1963/708
- 49 1970 delegated officer report with reference TH/5/70/240
- 50 Appellant costs application with Appendices A, B and C
- 51 LPA costs application with letter from Barton Willmore 30 April 2020
- 52 LPA rebuttal to Appellant costs application
- 53 Appellant rebuttal to LPA costs application
- 54 LPA closing submissions
- 55 Appellant closing submissions