



Appeal Decision

Site visit made on 14 June 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Appeal Ref: APP/J1860/C/21/3270783

Land at (OS 6913 7113), Sodington Hall, Mamble, Kidderminster, DY14 9JF

- 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 R.R. Tramontana against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 5 February 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised material change of use of land to a mixed use for general industrial (commercial) and storage/distribution.
- The requirements of the notice are: 5.1 Cease the use of the land for the storage of haulage/commercial type vehicles and associated paraphernalia, and for the carrying out of industrial processes; 5.2 Remove the vehicles, trailer/lorry backs, shipping container, campervans, plant machinery and other paraphernalia associated with the commercial use from the land as approximately marked green on the attached plan from the land as edged red; 5.3 Remove the roofing slate, vehicle tyres, 'Conquest Oil' vehicle, metal fencing, portaloo, pallets, trailers, and other paraphernalia associated with the commercial and storage use from the land as approximately marked blue on the attached plan from the land as edged red; 5.4 Remove the shipping container and soil as approximately hatched purple on the attached plan.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

The Notice

1. A third party has made comments in respect of this appeal and as regards the enforcement notice, submitting that the allegation within the notice should be extended. Specifically, it is sought to include reference in the allegation to the alleged depositing of material, expansion of hardstanding and enclosure of the barn on site. The third party submits that this variation can be undertaken without injustice on the basis that the appellant should have applied for planning permission before carrying out these works. However, my view is that to make these variations would cause injustice to the appellant since it would entail extending both the allegation and requirements.
2. I do consider though that minor corrections to the requirements should be made in the interests of clarity so that the mixed use referred to in the requirements properly replicates that in the allegation, and so as to clarify that

the various items are intended to be removed from the land edged red on the plan attached to the enforcement notice. I shall correct also the reference to '3 calendar months' to simply '3 months' in the interests of certainty. These minor corrections would not result in any injustice since they are made only for clarity.

The Appeal on ground (a) and the deemed planning application (DPA)

Main Issues

3. The main issues are:

- the effect on the character and appearance of the area and on the setting of the nearby Grade II listed building at Sodington Hall (LB);
- the effect on the living conditions of nearby residents, and on users of the public footpath crossing through the site with particular regard to noise and disturbance; and
- whether the site is a suitable location for the appeal development.

Character and appearance and heritage assets

4. The appellant states that the appeal site was once part of Mamble Coal Field but after its closure was used as a grain drying facility in connection with the arable land belonging to the Sodington Hall estate. Indeed, the appeal site is located immediately off the access road to the LB. As such, whilst there is no intervisibility between the LB and the site, nonetheless I consider that it forms part of the surroundings in which this heritage asset is experienced and so is within its setting.
5. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 stipulates that, in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker must have special regard to the desirability of preserving the building or its setting. Paragraph 193 of the National Planning Policy Framework (Framework) states that in considering impacts of development on the significance of a designated heritage asset, great weight should be given to the conservation of that asset.
6. Whilst the listing for the LB refers to the architectural features of the LB, in my view its significance also derives from its rural surroundings which are indicative of its historical agricultural associations. The appeal site in its previous form as a vacant grain drying facility would have had a neutral effect on the setting of the LB.
7. The change of use alleged in the EN has resulted in the visually intrusive presence of heavy goods vehicles (HGVs) in this rural setting, along with other miscellaneous items and equipment related to the appellant's sand blasting business. The effect is to detract from the historical agricultural associations of the LB, whilst also significantly urbanising the otherwise obviously rural surroundings.
8. Since the issue of the enforcement notice, the appellant has undertaken a clean-up of the site, removing many of the items listed in the requirements and moving the soil referred to in requirement 5.4 so that it blends with the verge. The appellant proposes also that the area permitted to change use could be

restricted so as not to include the area to the north of the building. These aspects together, the appellant submits, overcome any harm to the character and appearance of the area, and to heritage assets.

9. I do not agree with that assessment. Restricting the area subject to the change of use, and removal of miscellaneous items identified would not overcome the visual harm and harm to the LB setting since there would remain a large area readily visible from the public footpaths which would remain available for the HGV parking, which is visually intrusive in this sensitive setting.
10. Moving of the soil so that it blends with the verge might in theory result in a modest visual improvement as compared to soil which was presumably previously piled in the location identified in the notice. However, no scheme is before me related to the redistribution of the soil. Amending the requirements of the notice to enable a scheme to be submitted for the Council's approval, or with the aim of describing the present redistribution would introduce unacceptable uncertainty into the requirements of the notice.
11. The appellant proposes to plant woodland around the periphery of the barn. However, in view of the public footpath running through the site, a landscaping scheme would not overcome the harm to the character and appearance of the area. Limiting the number of HGVs on site would also not overcome this harm since even a small number would appear incongruous in this context.
12. As views of the development are confined to a relatively discrete location, the harm would be less than substantial in the terms of section 16 of the Framework. Paragraph 196 of the Framework thus requires me to weigh that harm against the public benefits of the development. There would be moderate economic benefits arising from the commercial enterprise on site but these would not in my view be enough to outweigh the harm found to the significance of the LB.
13. I therefore conclude on the first main issue that the appeal development has a harmful effect on the character and appearance of the area and on the setting of the LB. It thus conflicts with Policies SWDP 6, 21 and 25 of the South Worcestershire Development Plan 2016 (SWDP), which seek to ensure that development conserves heritage assets, including their setting, and integrates effectively with its surroundings and the landscape setting. It would run counter to s66(1) as outlined above also.

Noise and disturbance

14. The dwelling at Sodington Hall is the closest residential property to the appeal site. The appellant's Noise Assessment¹ reports a noise survey which was undertaken to assess the noise impacts of sand blasting at the appeal site.
15. Measurements were taken on site, as well as at measured distances from the site. 'Location 3' was identified as the nearest accessible location to Sodington Hall and an appropriate point at which to assess the background noise levels for this property. For the purposes of assessing the noise impact on Sodington Hall, in view of Location 3 being some distance from the house, an 'Assessment Location' was identified towards the edge of the front gardens to the property.

¹ Produced by Hepworth Acoustics and dated 10 March 2021

16. A site specific analysis is given that, in view of the Assessment Location being a greater distance from the sand blasting activity as compared to Location 3, the Noise Assessment states that a reduction of at least 4dB would be expected. Corrections of +2dB and +3dB were then applied to take account of the character and tonality of the noise. The 'worst case' rating level at the Assessment Location was therefore determined as up to 5dB above background levels, which in BS 4142² terms represents an 'adverse impact' depending on the context.
17. However, it is noted in the Assessment that BS 4142 advises that where background sound levels are low, absolute levels can be as, or more relevant, than the extent to which the rating level exceeds the background level. The Noise Assessment notes the guidance in BS 8233³ in terms of desirable external noise levels in areas such as residential gardens, and the appellant submits that the likely noise levels at Sodington Hall would be well within this range. On this basis, and taking into account information from the appellant that on-site blasting is a relatively rare occurrence, the overall assessment made was one of low noise impact.
18. However, looking at the particular site context, Sodington Hall is set in a sensitive, open and tranquil rural location where there would be an expectation of quiet beyond that which would be expected in an urban setting. In view of this, and given the intrusive, readily identifiable and industrial nature of the noise, I consider that, whilst the sand blasting does not result in a 'significant adverse effect' in BS 4142 terms, nonetheless, on the evidence before me, it results in material harm to the living conditions of the occupants of Sodington Hall.
19. I note also the comment from the Council that the appellant's Noise Assessment also does not include any analysis of the noise impacts of HGV vehicle movements, although I note that numbers of these would be limited by the appellant's HGV licence and that the appellant would be willing to accept a condition to preclude the site from operating as a distribution centre.
20. It might in theory be possible to undertake some mitigation measures to reduce noise impacts such as a specially adapted container or acoustic screening. However, without further details of such proposals, I am not persuaded on the evidence before me that either would be appropriate in terms of their visual impact or effective in terms of noise attenuation. A condition seeking to control noise levels at certain boundary points would not be reasonable in the circumstances in the absence of evidence that a restriction which would properly safeguard living conditions of nearby residents would not also unduly impede the appellant's business operations.
21. The appellant proposes a condition limiting working hours and restricting the site area. However, the working hours proposed would still result in noise and disturbance for a large portion of the day. I cannot be satisfied that a more restrictive condition would not harm the appellant's business operation. Limiting the operative area of the site also would not in my view overcome my concerns in the absence of evidence that this would materially reduce noise levels.

² British Standard 4142:2014+ A1: 2019

³ British Standard 8233: 2014

22. The appellant refers to other commercial enterprises nearby as regards their impacts in terms of noise and disturbance. However, planning decisions fall to be determined on their merits and I do not have full details of the planning circumstances leading to those other developments to make a proper comparative assessment. The Council also highlights fundamental differences between those developments and that at the appeal site.
23. As regards impacts on users of the public footpath, any exposure to noise would be for a transient period and so would not result in material harm. This does not though overcome the harm found to the living conditions of nearby residents.
24. Thus I conclude on the second main issue that the development has a harmful effect on the living conditions of nearby residents with particular regard to noise and disturbance. It conflicts in this way with Policy SWDP 31 of the SWDP which seeks to avoid significant adverse impacts on human health and wellbeing.

Whether a suitable location

25. The appeal site lies outside of any settlement boundary and so in the open countryside for planning policy purposes. Policy SWDP 2C of the SWDP states that in the countryside, development will be strictly controlled and only certain limited categories of development will be permissible.
26. One such category⁴ is for employment development in rural areas. However, the appeal development does not represent expansion of an existing employment site, nor a farm diversification since, on the evidence before me, there does not appear to have been an agricultural or other business operating from the site prior to the change of use alleged. As such, this exception does not apply.
27. Policy SWDP 8 supports the provision of employment land and conversion of existing buildings to support job creation provided that the development supports an existing business or new enterprise of a scale appropriate to the location. However, in view of the adverse effects in terms of visual impact, heritage assets and noise and disturbance as outlined above, I do not consider that the development is of a scale appropriate to the location.
28. On the third main issue I therefore find that the appeal site is not a suitable location for the appeal development. It runs counter to Policies SWDP 2 and SWDP 8 as outlined above in this way.

Other Matters

29. The enforcement notice does not refer to any concerns related to highway safety but the Council raises this matter in its statement. Since I am dismissing the ground (a) appeal for other reasons and any absence of harm in this regard would be neutral in the planning balance, I have not considered this matter any further. Other issues raised by third parties also have not led me to any different overall conclusion.

⁴ See Policy SWDP 12

Conclusion on Ground (a) and the DPA

30. For the reasons given above, I conclude that the change of use results in planning harm as outlined above and is contrary to the development plan, read as a whole. No material considerations have been advanced such as to indicate a decision other than in accordance with the development plan. Accordingly, the appeal on ground (a) fails and planning permission is refused in respect of the DPA.

The Appeal on ground (f)

31. This ground of appeal is that the requirements of the notice exceed what is necessary.
32. S.173 of the Town and Country Planning Act 1990 (1990 Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach.
33. The fact that the notice in this case requires the cessation of the unauthorised use, and the removal of various associated items from the land, suggests that its purpose is to remedy the breach rather than to remedy any consequent injury to amenity. It is seeking, per s173(4)(a) of the 1990 Act, to ensure discontinuance of the unauthorised use of the land and to restore the land to its condition before the breach took place.
34. As I understand it, the Appellant's case on this ground is essentially that, as outlined under the ground (a) appeal above, restricting the area subject to the change of use, removing some of the miscellaneous items on site, and moving the soil referred to in requirement 5.4 so that it blends with the verge would overcome any planning harm related to the change of use at less cost and inconvenience to the appellant.
35. None of these changes would remedy the breach of planning control in the sense of restoring the land to its previous condition before the breach took place. Further, restricting the area subject to the change of use, and removal of miscellaneous items identified would not overcome the visual harm identified since there would remain a large area readily visible from the public footpaths which would remain available for HGV parking. It is not possible to amend the requirements as regards redistribution of the soil without rendering the requirements uncertain, as explained above. Thus, the steps in the notice are the minimum necessary to overcome the breach.
36. I find then that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control, and the appeal on ground (f) should therefore fail.

Overall Conclusion

37. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

38. It is directed that the enforcement notice is corrected by:

- In paragraph 5.1, delete the wording 'land for the storage of haulage/commercial type vehicles and associated paraphernalia, and for the carrying out of industrial processes' and substitute 'Land edged red as a mixed use for general industrial (commercial) and storage/distribution'; and
- In paragraph 5.2, delete the wording 'commercial' and substitute 'unauthorised mixed';
- In paragraph 5.3, delete the wording 'commercial and storage' and substitute 'unauthorised mixed';
- In paragraph 5.4, after the word 'Remove', insert the words 'from the Land edged red'; and
- In paragraph 6, delete the word 'calendar'.

39. Subject to the corrections, the appeal is dismissed, 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.

V Bond
INSPECTOR