
Appeal Decisions

Inquiry Held on 12 November 2019, and 6, 7 and 8 July 2021

Site visit made on 8 July 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/C3240/C/18/3207861 & 3207862

Land adjacent to 1 & 2 The Poplars, Shop Lane, Cold Hatton, Telford TF6 6PZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr John Anthony Dynsky and Mr Mark Evans against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 28 June 2018.
- The breach of planning control as alleged in the notice is:

Without planning permission, the unauthorised change of use of the land shown hatched marked 'A' from residential and agricultural to a mixed use of builders yard, joinery workshop and wood products manufacturing business, and the associated erection of boundary walls, gates and fences and erection of a 32m x 9m steel framed industrial building comprising two units.

Without planning permission, the unauthorised use of the land shown marked 'B' from agricultural to a mixed use of agricultural and the storage of building materials and building waste, and the unauthorised carrying out of engineering operations for the extraction of sand.

- The requirements of the notice are:
 1. Cease the use of the land shown marked 'A' for use as a builders yard, joinery workshop and wood products manufacturing business, and remove any associated items from the land.
 2. Demolish and remove from the land the unauthorised 32m x 9m steel framed industrial building including its footings, foundations and any associated services.
 3. Demolish and remove from the land the brick boundary wall and timber gates shown marked 1-2 on the plan.
 4. Demolish and remove from the land the boundary wall, gates and fencing shown marked 3-4, and reinstate the boundary to its previous position as shown marked 5-6.
 5. Remove all hardstanding, materials and any other structures that exist between the boundaries marked 5-6 and 3-4, and return the land to its previous condition and appearance as agricultural land.
 6. Cease the use of the land shown marked 'B' for the storage of building materials and building waste, and remove all building materials, building waste and any other items associated with the unauthorised use from the land.
 7. Cease all engineering operations for the excavation of sand within the land shown marked 'B', and reinstate the land to its former condition in terms of its levels, contours and appearance.

- The period for compliance with the requirements is six months.
 - The appeal by Mr John Anthony Dynsky (Ref: 3207861) is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal by Mr Mark Evans on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed. Appeal ref 3207862 is therefore proceeding on the grounds set out in section 174(2) (b), (c), (d) and (f) of the 1990 Act as amended.
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Summary Decision: the appeals are dismissed and the enforcement notice is upheld with corrections and variations as set out in the Formal Decision below

Application for costs

1. At the Inquiry an application for costs was made by Telford and Wrekin Council against Mr John Anthony Dynsky and Mr Mark Evans. This application is the subject of a separate Decision.

Procedural Matters

2. I initially opened the Inquiry on 12 November 2019 but, because some of the Council's representatives were too unwell to continue, I adjourned the Inquiry after hearing opening submissions. I also took the opportunity to carry out a preliminary accompanied site visit on that day. Due to the Coronavirus pandemic, it was then not possible to reconvene until 6 July 2021.
3. The occupier of Holly Mount, Mrs Lynda Baker Oliver, intended to give evidence at the Inquiry and did attend the opening of the Inquiry on 12 November 2019. However, for personal reasons, Mrs Oliver was unable to attend when the Inquiry reconvened. Her Proof of Evidence was tabled and I have taken that into account.
4. Evidence at the Inquiry was given under oath by way of affirmation.
5. The appellants have not pursued any grounds of appeal in relation to the storage of building materials and building waste, or the excavation of sand, from the area marked 'B' on the plan attached to the notice. I understand that they intend to comply the notice in those respects. I have therefore not considered these elements further.
6. The revised National Planning Policy Framework (Framework) was published in July 2021, shortly after the Inquiry closed. The parties were afforded an opportunity to comment on the revised Framework in writing. I have taken the comments received into account.

The Enforcement Notice

7. The notice alleges the 'change of use' of the land which, in itself, is not development requiring planning permission for the purposes of section 55(1) of the 1990 Act. I shall therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act.
8. The two breaches of planning control alleged at paragraph 3 of the notice both refer to a 'mixed' use but in neither case is the word 'mixed' carried through to the requirements at paragraph 5 of the notice. In the interest of clarity and consistency, I shall vary the notice to refer to a mixed use in the requirements.

9. As originally drawn, the plan attached to the notice was incorrect insofar as it related to the boundary wall between No. 2 The Poplars and area associated with the workshop/steel framed building (area 'A' on that plan). The plan shows that boundary as being somewhat convoluted but on the ground a significant part of the wall follows a straight line.
10. Also as originally drawn, the plan attached to the notice encompassed a building located on the southern boundary of the site within the hatched area marked 'A'. In June 2005, the Council granted a Certificate of Lawful Use for the use of that building as a workshop (Council Ref: W2005/0485). There is no dispute that the use of the building is lawful in planning terms and that this building should be excluded from the notice. The Council have provided an amended plan, dated 8 July 2021, that excludes that building.
11. The plan attached to the notice shows a line labelled 3-4 which, it is alleged, depicts the extent to which the unauthorised use a builder yard has encroached into land previously used for agriculture. At the Inquiry, the Council accepted that the southern portion of the line 3-4 included a gate providing access onto the agricultural land. The Council conformed that removal of that gate would be an unintended consequence of the plan as drafted. The amended plan submitted by the Council therefore introduced an additional point, numbered '9', to which the requirements of the notice should relate.
12. I am satisfied that the notice can be corrected and varied in all these respects without causing injustice.

The Planning Unit

13. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

It is necessary to apply the principles established in *Burdle* to the facts of this case¹.
14. All of the land to which the enforcement notice relates is owned by Mr Dynsky but, it seems to me, the use of that land has changed incrementally since he took ownership in or around 1986. The Certificate of Lawful Use granted in June 2005 describes the use of the building found to be lawful as a workshop (Council Ref: W2005/0485), with no further description of or limitations on that use. The supporting information submitted with that application makes

¹ There was consensus that No 1 The Poplars should be excluded for this purpose.

reference to use of the workshop both for carpentry works in associated with the renovation of Mr Dynsky's home at No 2 The Poplars and in connection with Mr Dynsky's sub-contracting work in the building trade. It is therefore more likely than not that the workshop had been used for both of these purposes since at least 1995.

15. Although the workshop was used in part for joinery to support Mr Dynsky's sub-contracting work in the building trade, it seems to me that there was also a functional relationship with the host property. This was particularly so during the early stages of the renovation of his own house when, on Mr Dynsky's own evidence, he was doing more work on his own property. I therefore consider that, as a matter of fact and degree, the workshop and the dwelling at No 2 The Poplars formed a single planning unit at that point in time (June 2005), with the workshop ancillary to the primary use of the land as residential.
16. To my mind, there remains a question over the remainder of the land at that time. The primary use of that land appears to have been for agriculture but there is no evidence that the remainder of the land was physically and/or functionally separate from the dwelling at No 2 The Poplars. I am therefore unable to make any firm conclusions as to whether this was a mixed use in a single planning unit or two planning units within the same unit of occupation.
17. That situation began to change with the erection of a wall and timber gates in or around 2008. At that point, the residential use became physically distinct from the land surrounding the workshop building. However, I am not persuaded that that this resulted in an attendant creation of a new planning unit. It is Mr Dynsky's evidence that the use of the land carried on as before notwithstanding the presence of the wall and gates, with the workshop building still being used both in connection with the renovation of his own house and his outside contract work. Furthermore, at this time, it was only Mr Dynsky that used the workshop building.
18. The catalyst for the creation of a new planning unit(s) was the fire that occurred in November 2016 and which resulted in the destruction of existing buildings on the land. This resulted in the construction a new wall to enclose the residential curtilage. As part of my site visit, I was able to view the curtilage of No 2 The Poplars. The overriding impression is one of a residential garden, with domestic-style planting, an ornamental pond and garden outbuildings. It is a secluded and tranquil space that is intimately associated with the main dwelling, but has no sensory connection with the land beyond the boundary wall.
19. The other consequence of the fire was that the buildings lost were replaced by the erection of 32m x 9m steel framed industrial building now subject to the notice. The new steel framed industrial building comprises one structure, but sub-divided internally into two separate workshops.
20. The first workshop is used by Mr Dynsky, both in connection with his joinery business and in the continued renovation of his home. In giving his evidence to the Inquiry, Mr Dynsky confirmed that he operates on a broadly 50/50 split between work for his joinery business and work on his home. Mr Dynsky described the tools and equipment used in his workshop as being at the "lower end of the commercial scale".

21. The other workshop is used by Mr Evans in connection with his joinery business. That business specialises in the construction of bespoke timber animal enclosures for external customers, using tools and machinery akin to those used for domestic work. The business is operated by Mr Evans assisted by his wife, having previously employed one person on a full-time basis.
22. The uses taking place within the steel framed industrial building are both manufacturing uses. The use undertaken by Mr Evans is a light industrial use that, in my view, falls within the B1 Use Class as set out in the Town and Country Planning (Use Classes) Order 1987. By reason of the tools and machinery employed by Mr Dynsky, and the resultant impacts in terms of noise, I consider that his use falls with the B2 Use Class.
23. The area surrounding the new steel framed industrial building is hardstanding and is used for storage of materials. At the time of my site visit, this included timber pallets and sections of large-diameter piping. It was not clear to me whether these materials were connected to the businesses operated by Mr Dynsky and Mr Evans but, equally, there was no clear association with the residential property at No 2 The Poplars.
24. Here, then, is a situation in which a large industrial building is occupied by two separate companies manufacturing timber products, in large part, for external customers. The building sits within a defined area that is physically and functionally separate from the dwelling known as No 2 The Poplars. The character of the use of this land is industrial.
25. Similarly, the dwelling known as No 2 The Poplars sits within a defined enclosure. The character of the use of this land is overtly residential, and very different from the character of the industrial use taking place beyond the boundary wall. I recognise that there is an entrance in the boundary wall that divides these areas but, aside from providing access for Mr Dynsky from his house, there is no obvious bleed-through of the uses between the two areas.
26. Consequently, I conclude that, as a matter of fact and degree, the dwelling at No 2 The Poplars and its associated curtilage form a single planning unit. The area within which sits the steel framed industrial building forms a separate planning unit. The remaining area within the unit of occupation exhibits a different character of use again, with the primary use being agriculture. This agricultural use is physically and functionally separate from the other two planning units, and is for a different and unrelated purpose. I therefore consider that, as a matter of fact and degree, this agricultural use forms a third planning unit within the same unit of occupation.
27. As such, the appeal site is an example of the third category of distinction identified in *Burdle*, namely whereby the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. In that scenario, *Burdle* indicates that each area ought to be considered as a separate planning unit. In my view, that is the situation here.

The appeal on ground (b)

28. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in

which the burden of proof is on the appellants to show, on the balance of probability, that the matters alleged in the notice have not occurred.

29. The appellants' case on this ground of appeal is that the use as a "builder's yard" in the first allegation of the notice has not occurred. I am inclined to agree with the appellants in this respect. To my mind, the term "builder's yard" connotes a yard used by a builder to store materials/equipment that are taken from that yard to other locations where they are needed. Whilst an element of that activity might be occurring here, it seems to me that for the most part the materials are being stored on the land on a long-term basis, some with no intended purpose but rather in the expectation that they might come in useful at some point. For that reason, I consider the term "storage of building materials" to be a more accurate description of the breach of planning control alleged.
30. The notice is defective in that respect but this does not mean that matters alleged in the notice have not occurred: they have occurred but have just been misdescribed. I can correct the notice to allege the storage of building materials without altering the scope or meaning of the notice. In that respect, the other grounds of appeal on which the appellants rely would not be affected. I am therefore satisfied that I can correct the notice in this regard without causing injustice.
31. Accordingly, the appeals on ground (b) fail.

The appeals on ground (c)

32. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant. The test is again on the balance of probability. The appellant's case on this ground of appeal is confined to the fence between Points 3-7 on the plan attached to the notice.
33. The appellants maintain the wall and fence erected between Points 3-7 on the plan attached to the notice (as I propose to correct it) constitute permitted development under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Having regard to limitations in that Class of the GPDO, I see no reason to take a different view.
34. Accordingly, the appeals on ground (c) succeeds to that extent but, for reasons that return to below, that does not necessarily mean that the fence can be retained.

The appeals on ground (d)

35. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that operational development had been substantially complete on the date four years before the notice was issued: the relevant date in this case being 28 June 2014. The test in this regard is the balance of probability and the burden of proof is on the appellants.

36. The appellants case under this ground of appeal relates to the wall and timber gates between Points 1-2 on the plan attached to the notice (as I propose to correct it). There remains a question as to whether this wall and gates ever did constitute permitted development under Class A, Part 2, Schedule 2 of the GPDO. That is academic now. There is no dispute that the wall and gates had been in situ and substantially complete for more than four years prior to the date on which the notice was issued. In other circumstances, that would be the end of the matter but in this case there is a further consideration to take into account.
37. Section 173(4)(a) of the 1990 Act provides that an enforcement notice may require that a breach of planning control is remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. Section 173(5) gives power to require the alteration or removal of buildings or works, or the carrying out of any building or other operations. Accordingly, it was held in *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate that material change of use, the enforcement notice may require that the works are removed in order that the site is restored to its previous condition and the breach is thereby remedied. The question before me is therefore whether the wall and gates between 1-2 were integral to, or part and parcel of, the breach of planning control that has occurred.
38. I am not convinced that they were. The wall and timber gates between 1-2 were erected in or around 2008. According to Mr Dynsky, the wall and gates were erected for security purposes and specifically to protect the equipment in his workshop and store. At that time, the 'workshop' was that which is now accepted should be excluded from the notice. The store was one of those buildings lost in the fire in November 2016.
39. Furthermore, it appears to me that, on the balance of probability, the breach of planning control subject to the notice occurred in or around February 2018 with the erection of the steel framed industrial building. It was the erection of that building and the use associated with it, rather than anything that had gone on previously, which resulted in the creation of a new planning unit. It follows that the neither the steel framed industrial building nor the use taking place within the new planning unit had become immune from enforcement action through the passage of time on the date that the notice was issued². Moreover, the character of the use taking place in the steel framed building and within the new planning unit was different to that which had taken place previously, such that the 'immunity clock' had been reset in February 2018³.
40. The corollary is that the erection of the wall and gates between 1-2 were neither integral to nor part and parcel of the breach of planning control alleged in the notice: they were in existence long before that, and had been erected for a different purpose. Consequently, I consider that the Council cannot rely upon the principle established in *Murfitt* to require the removal of the wall and timber gated between 1-2.

² Section 171B(1) and section 171B(3) respectively.

³ *Beach v Secretary of State for the Environment, Transport and the Regions & Runnymede BC* [2001] EWHC 381 (Admin)

41. The appeals on ground (d) succeed to that limited extent and I will vary the requirements of the notice accordingly.

The appeal on ground (a) and the deemed planning application

42. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, and other issues have been raised in third party representations. The main issues raised by this appeal are therefore:

- the effect of the breach of planning control on the character and appearance of the area
- whether the appeal site is a sustainable location for the development that has taken place
- the effect of the development on the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise disturbance and light pollution.

Character and appearance

43. The appeal site is located in a rural setting outside the settlement of Cold Hatton. The landscape surrounding the appeal site is characterised by gently undulating fields with areas of woodland. Within this landscape, buildings are widely dispersed and typically largely take the form of isolated dwellings and farms, the latter with the associated farm infrastructure.
44. The steel framed industrial building is visible from public vantage points within the surrounding landscape. In particular, clear views of the building are obtained from several places along Shop Lane, both through gaps in the hedgerow that line the lane and from a metal gate to the south of the appeal site. In these views, the whole of the roof is clearly visible but a significant proportion of the building below roof height is obscured by the intervening terrain. Nevertheless, by reason of its size, design and the external materials used, the building is incongruous and visually intrusive in this location. The building dominates the immediate surroundings and as such fails to respect the local context.
45. The appellant points out that there are other large buildings in the landscape, of a similar design and utilising similar external materials. I have no reason to doubt that evidence but no such buildings are visible in the immediate vicinity of the appeal site. Context is everything and, by reason of its position and visibility from public vantage points, in the context of the appeal site the steel framed building on the appeal has a harmful impact of the character of the surrounding countryside.
46. I am mindful that, when viewed from the public highway on Shop Lane, the steel framed industrial building is viewed against a backdrop of trees. I have therefore considered whether the visual impact of the building could be made acceptable by the imposition of a condition requiring the building to be clad or otherwise finished in materials of a colour that would blend into the backdrop formed by those trees. However, whilst that would assist in reducing the visual impact from some locations and at certain times of the year, it would not assist when viewing the building from relatively close quarters. Furthermore, as I

observed during my preliminary site visit, the backdrop of trees is not so well formed during the winter months. Accordingly, I am not convinced that the visual harm could be mitigated by the imposition of planning conditions.

47. I conclude that the steel framed industrial building unacceptable harms the character and appearance of the area. I therefore conclude that the breach of planning control conflicts with Policy BE1 of Telford & Wrekin Local Plan which, amongst other things, states that the Council will support development which respects and responds positively to its context and which enhances the quality of the local natural environment.
48. The Framework places an emphasis on the creation of high quality, beautiful and sustainable buildings. The harm caused by the steel framed industrial building to the character and appearance of the area fails to accord with the Framework in this respect.

Sustainability of the location

49. Policy EC3 of Telford & Wrekin Local Plan confirms that the Council will support new employment development in rural areas where it involves the re-use of previously developed land, and subject to three criteria that are set out in the policy itself. On my reading, the construction of the policy is such that the three criteria only become relevant if the development proposed *involves* previously developed land (emphasis added).
50. The Oxford English Dictionary (OED) defines the word 'involve', insofar as it relates to a situation or event, as "to include something as a necessary part or result". The inclusion of the words 'include' and 'part' in the OED definition to my mind indicates that the word 'involve' does not necessarily relate to the whole of something. Consequently, as a matter of ordinary language, the word 'involve' in Policy EC3 can only reasonably be read as meaning that only some part of the land to which a development relates needs to be previously developed land in order to pass the 'gateway' into consideration of the three criteria set out later in the policy.
51. The definition of previously developed land is set out in Annex 2 of the Framework. In this case, in relation to the erection of the steel framed industrial building, the only land that can reasonably be described as previously developed land for the purposes of the Framework is that previously occupied by the stable block destroyed by the fire in November 2016. Although that represents only a fraction of the footprint of the steel framed industrial building, that is sufficient to pass the 'gateway' into consideration of the three criteria set out in Policy EC3.
52. The first of these criteria is that the development relates to agriculture, forestry or assists in the diversification of the rural economy. The uses taking place within the steel framed industrial building and the associated planning unit are clearly not related to agriculture or forestry. The question then becomes whether the use *assist* the diversification of the rural economy.
53. In this respect, the policy refers to the diversification of the "rural economy". On my reading, this can only reasonably be interpreted as relating to the rural economy as a whole and not the diversification of the particular site on which the development takes place. It is also my opinion that 'diversification' in this context should not be narrowly construed. I therefore take the view that

- 'diversification' in this context should not be taken as meaning the introduction of a new use that previously did not form any part of the rural economy when taken as a whole. Rather, in my view, the policy should be interpreted as meaning assisting the diversification of the rural economy through bolstering alternatives to agriculture or forestry. Both the B2 use undertaken by Mr Dynsky and the B1 use undertaken by Mr Evans fall into that category. Accordingly, the breach of planning control accords with criteria (i) of Policy EC3.
54. The second criteria in Policy EC3 is that the local highway network is *capable* of accommodating the traffic generated by the development (emphasis added). Both Mrs Breeze and Mrs Oliver refer in their evidence to issues arising from large vehicles using Shop Lane. However, the Council's Highway Engineer has indicated that, in his view, the impact on the highway would be limited and could be controlled by the imposition of conditions. In the terminology of the second criteria to Policy EC3, this must mean that the Council's own Highways Engineer is satisfied that the local highway network is capable of accommodating the traffic generated by the development. Accordingly, the breach of planning control also accords with criteria (ii) of Policy EC3.
55. The third criteria is that the proposal is supported by an appropriate business case which demonstrates that the proposal will support the local economy and help sustain rural communities. The appellants maintain that the use of the appeal site has operated on the site for many years and that a business case should not be required for the resumption of a previous use.
56. But that is not what has happened in this case. The steel framed industrial building is considerably larger than the buildings destroyed in the fire that it replaced. The uses taking place within the building are different too, and now incorporate an element of B2 use. Both of the business operating from the building now exclusively employ individuals residing at The Poplars such that it is unclear whether they do support the local economy and help sustain rural communities, and if so to what extent. That information ought to be provided in an appropriate business case in order that it might be properly assessed and evaluated. The appellant has had ample opportunity to provide an appropriate business plan, even more so given the delay in these proceedings resulting from the Coronavirus pandemic. I therefore consider the failure of the appellant to provide an appropriate business plan to not accord with the third criteria of Policy EC3.
57. Whilst I am satisfied that the breach of planning control accords with the first two criteria set out in Policy EC3, it does not accord with the third. It therefore does not accord with Policy EC3 when read as a whole.

Living conditions

58. Both Mrs Breeze and Mrs Oliver allege that the businesses taking place in the steel framed industrial building give rise to noise disturbance. Mrs Breeze was able to expand upon her experiences in that respect when giving her evidence to the Inquiry. Furthermore, in his written representation, Mr White, the occupier a property known as The Mount, cites noise intrusion caused by the manufacturing business taking place in the steel framed industrial building as his main objection to the breach of planning control that has occurred. That property neighbours those occupied by Mrs Breeze and Mrs Oliver, all being located to the north-east of appeal site at the end of track leading off Shop

Lane. Reference is also made in the written representation from Waters Upton Parish Council to noise of machinery within the steel framed industrial building being heard by neighbours.

59. As part of my site visit on 8 July 2021, I requested that tools/machinery were turned on in the steel framed industrial building whilst I stood at the end of the lane leading from Shop Lane (directly opposite the property known as Sandycroft)⁴. The exercise was repeated both with the roller shutter doors open and closed. I was unable to hear the noise from within the building from that location, either with the roller shutter doors open or closed.
60. I have difficulty in reconciling the objections made by the occupiers of the properties at the end of this lane with my inability to hear any noise from the tools/machinery being operated from within the building. I am, however, mindful that my experience was a snapshot in time and that local residents are better placed to experience the impact over a longer period of time. I was also struck by the conviction with which Mrs Breeze expressed her views on this point in giving her evidence to the Inquiry, and note that Mrs Breeze felt compelled to lodge a complaint with the Council's Environmental Health department about the noise⁵. Similarly, I note the consistency in the views expressed in representation on this point and the strength of feeling expressed.
61. The appellant has not commissioned a noise survey. There is therefore no technical evidence before me to refute the evidence of local residents. Consequently, on balance, I prefer the evidence of the local residents on this point.
62. In her evidence, Mrs Breeze also referred to light pollution from the lights within the steel framed industrial building. In viewing the building from directly outside Mrs Breeze's property, I noted that only one end of the building was visible. Even then, it was a glimpsed view through gaps in the vegetation on the side of the lane. I did not view from within Mrs Breeze's house⁶, but I did note that there is a substantial hedge between the front elevation of the house and the lane. For those reasons, together with the considerable separation distance between Mrs Breeze's property and the steel framed industrial building, I am not persuaded that light pollution is a significant issue. Furthermore, I take the appellant's point that such light pollution that may occur could be mitigated by a condition requiring that the lights are shielded.
63. I find that the breach of planning control has unacceptably harmed the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise disturbance. I therefore conclude that the breach of planning control conflicts with Policy BE1 of Telford & Wrekin Local Plan which, amongst other things, states that the Council will support development where it is demonstrated that there is no significant adverse impact on nearby properties by noise.

⁴ I was accompanied by a representative of the appellant and from the Council, whilst another representative from the Council remained in the building to verify that the tools/machinery were operating.

⁵ There had been no response to that complaint at the time of the Inquiry.

⁶ In view of the Coronavirus pandemic, I deemed it not prudent to request to view from within Mrs Breeze's property.

Other considerations

64. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

Support for small businesses

65. As a separate point to that of diversification of the rural economy considered above, Policy WUA3 of the Waters Upton Neighbourhood Plan (WUNP) encourages and supports small businesses. It also promotes the use of suitable redundant buildings for appropriate employment use. This is consistent with paragraph 84(a) of the Framework, which indicates that planning policies and decisions should enable sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings.
66. The erection of the steel framed industrial building has provided more space and a better working environment for the businesses operated by Mr Dynsky and by Mr Evans. In that regard, I acknowledge that the erection and use of that building supports these businesses. The support provided by Policy WUA3 of the WUNP is unequivocal: it stems from a separate sentence to that which follows it in relation to the use of suitable redundant buildings. As part of the development plan, compliance with that policy benefits from the full force of Section 38(6) of the 2004 Act.
67. The support provided by paragraph 84(a) of the Framework is predicated on the growth and expansion of rural businesses being sustainable, including through the conversion of existing buildings and well-designed new buildings. I have already found that the use of steel framed timber building harms the character and appearance of the area, and has unacceptably harmed the living conditions of the occupiers of surrounding residential properties. Furthermore, the erection of the steel framed industrial building is neither the conversion of an existing building nor a well-designed new building. It is therefore not a sustainable form of development. For that reason, in this case I attach only moderate weight to support for rural businesses provided by paragraph 84(a) of the Framework.

Intentional unauthorised development

68. The Written Ministerial Statement issued in December 2015 introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning appeals. The Council contends that the breach of planning control in this case is an example of intentional unauthorised development and that this is a material consideration that weighs against the appellant.

69. Following the fire in November 2016, Mr Dynsky received an Initial Advice Report from Sergon Building Consultants⁷ provided through his insurers. That report contained the following advice regarding the buildings damaged by the fire:

The buildings are classed for agricultural use and as such do not require planning and building regulations approval.

70. Mr Dynsky interpreted this advice as meaning that he could erect a building many times larger than those destroyed in the fire without seeking planning permission from the Council. The buildings are described in the report as being agricultural and Mr Dynsky ought to have been aware from his own use of them that this was not the case. Nevertheless, Mr Dynsky acted on that advice without questioning the facts on which it was clearly based, or checking with the Council that the advice was correct. In the latter respect, Mr Dynsky had by that time already had previous engagement with the planning system, including having two enforcement notices issued against him. It is therefore reasonable to conclude that Mr Dynsky was broadly aware of the need for planning permission for the development of land, and of the potential consequences if any planning permission necessary is not obtained.
71. In his defence, Mr Dynsky is not a planning professional. Consequently, whilst that is all the more reason why Mr Dynsky ought to have verified with the Council the advice he received from Sergon Building Consultants, from the perspective of a layman he acted on that advice in the genuine belief that he did not require planning permission for the steel framed industrial building that he erected. Put another way, Mr Dynsky did not deliberately erect the building in the certain knowledge that it required planning permission and that no such planning permission had been granted. He did not deliberately flout planning laws. As such, the erection of the steel framed industrial building cannot reasonably be considered to constitute intentional unauthorised development for the purposes of the Written Ministerial Statement.
72. No doubt Mr Dynsky will in due course come to reflect upon his decision to act upon the advice of Sergon Building Consultants. However, for present purposes, that is not a decision which should weigh against him in the determination of this appeal.

Conditions

73. The Council has suggested a number of conditions that it would favour in the event that the appeal is allowed, and these were discussed at the Inquiry. These include conditions relating to external materials, external lighting and hours of operation. They also include conditions restricting the use to wood manufacturing/joinery, and no other purposes within the B2 Use Class.
74. The appellants had prepared a draft Unilateral Undertaking which covenanted, amongst other things, to limit the occupation of the appeal site to those primary employment is there and whose primary residence is on the land. In the event, there was consensus that the matters covered by the draft Unilateral Undertaking should more properly be secured through the imposition of suitable planning conditions, the Unilateral Undertaking was withdrawn.

⁷ Dated 25 January 2017

75. The conditions suggested by the Council, together with conditions to cover the matters set out in the draft Unilateral Undertaking, would be necessary to make the development acceptable in planning terms had it been acceptable in all other respects. However, the imposition of those conditions would not overcome the harms that I have identified above in relation to the main issues.

Conclusion on the ground (a) appeal and the deemed planning application

76. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan when read as a whole. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
77. Accordingly, I conclude that planning permission ought not be granted.

The appeals on ground (f)

78. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice, as I propose to vary them, include to cease the use of the land for use for the storage of building materials, joinery workshop and wood products manufacturing business, and to demolish the steel framed industrial building. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
79. The appellants argument on this ground of appeal in relation to the workshop building subject to the Certificate of Lawful Use have been superseded by the exclusion of that building from the area subject to the enforcement notice. I have also found the wall between 1-2 on the plan attached to the notice to be permitted development that the notice cannot require to be removed. The sole remaining argument on this ground of appeal relates to the fence between points 3-4 on the plan attached to the notice.
80. The wall/fence between 3-7 encloses an orchard (as shown the amended plan; marked 3-4 on the plan originally attached to the notice), which is essentially an agricultural use. It seems to me that, in principle, there can be no objection to fencing off an orchard in order to protect it from damage by livestock. Simply ceasing the storage of building materials in that area would achieve the purpose of the notice. The removal of the wall/fence between 3-7 would not be necessary in order to accomplish that. The requirements of the notice are therefore excessive in that respect.
81. However, varying the notice in that respect does not obviate the need to reinstate the boundary to its previous position as shown marked 5-8 on the plan attached to the notice (marked 5-6 on the plan originally attached to the notice). I shall vary the notice to make this clear.
82. The appeals on ground (f) succeed to that extent, and I shall vary the requirements of the notice accordingly.

Conclusion

83. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations 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

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

- In both the first and second alleged breaches of planning control at paragraph 3 of the notice, insert the word "material" between the words "unauthorised" and "change of use"
- In the first breach of planning control at paragraph 3 of the notice, delete the words "builders yard" and substitute there the words "the storage of building materials"
- Delete the plan attached to the notice and substitute that plan with the plan attached to this Decision below.

85. It is directed that the enforcement notice is varied by:

- Delete the requirement at paragraph 5.1 of the notice in its entirety, and replace it with "Cease the use of the land shown marked 'A' on the attached plan for the mixed use for the storage of building materials, joinery workshop and wood products manufacturing business, and remove any associated items from the land."
- Delete the requirement at paragraph 5.3 of the notice in its entirety.
- Delete the requirement at paragraph 5.4 of the notice in its entirety, and substitute there the requirement to "Reinstate the boundary to its previous position as shown marked 5-8 on the plan attached to the notice."
- In requirement 5.5 of the notice, delete "5-6" and "3-4" and replace with "5-8" and "3-7" respectively.

86. Subject to the corrections and variations, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Christian Hawley

Of Counsel

He called:

Mr Mark Evans

Appellant

Mr John Anthony Dynsky

Appellant

Mr Phil Plant BSc (Hons) MRICS

Managing Director, Mid West
Planning

For the discussion on conditions only

Mr Fred Quartermain

Associate Solicitor, THRINGS

FOR THE LOCAL PLANNING AUTHORITY

Miss Sarah Clover

Of Counsel

She called:

Mr David Jones BSc (Hons) MPlan

Principal Enforcement Officer

Mr Ian Gary Lowe MA, BSC (Hons)

Principal Planning Officer

Mrs Lisa Breeze

Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening statement on behalf of Mr John Dynsky and Mr Mark Evans
2. Opening on behalf of Telford & Wrekin Council
3. Closing submissions on behalf of Telford & Wrekin Council
4. Closing statement on behalf of Mr John Dynsky and Mr Mark Evans
5. Costs application on behalf of Telford & Wrekin Council
6. Response to the Council's costs application on behalf of Mr John Dynsky and Mr Mark Evans
7. Amended enforcement notice plan, dated 8 July 2021



Plan

This is the plan referred to in my decision dated: 24 August 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Land adjacent to 1 & 2 The Poplars, Shop Lane, Cold Hatton, Telford TF6 6PZ

Reference: APP/C3240/C/18/3207861 & 3207862

Scale: Not to scale

