



Appeal Decision

Site visit made on 20 July 2021

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2022

Appeal ref: APP/Q3115/C/21/3271189

Land at Toll Lodge Farm, London Road, Tetsworth, Oxfordshire, OX9 7AZ

- The appeal is made by Mr R Cockram under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by South Oxfordshire District Council on 4 February 2021.
 - The breach of planning control as alleged in the notice is: 'without planning permission, the material change of use of the Land from paddock land to a mixed use of paddock land and storage of building materials and machinery including creation of hard surfacing and earth bunds. The area in which the alleged breach of planning control is considered to be taking place is shown edged and hatched in blue on the Plan [attached to the notice]'.
 - The requirements of the notice are to:
 - (i) Stop using the Land for storage.
 - (ii) Permanently remove from the Land all building and construction materials, debris, paraphernalia, portacabins, machinery, sand, gravel, containers, tree stumps, lorry trailers and vehicles.
 - (iii) Dig up and remove from the Land the additional hardsurfacing that is in excess of that allowed to be constructed under approved site plan 2 of planning permission P14/S318/FUL and return the Land to grass.
 - (iv) Remove the earth bunds and all the resultant materials from such removal from the Land and return the Land to grass.
 - The period for compliance with the requirements of the notice is four (4) months.
 - The appeal is proceeding on the grounds set out under section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990. Since an appeal has been 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.
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FORMAL DECISION

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting the text of paragraph 3 and substituting: 'without planning permission, the material change of use of the Land from a mixed use for agriculture and the keeping of horses to a mixed use for agriculture, the keeping of horses and the storage of building materials and machinery, and the laying of hardsurfacing and creation of earth bunds to facilitate the unauthorised use. The area in which the alleged storage element of the mixed use is considered to be taking place is shown edged and hatched blue on the attached plan'.
 - Deleting paragraph 5(i) and substituting: '(i) Cease the mixed use of the Land for agriculture, the keeping of horses and the storage of building materials and machinery'.
 - Deleting paragraph 5(ii) and substituting: '(ii) Permanently remove all items being stored on the Land in association with the unauthorised use,

including building and construction materials, debris, paraphernalia, portacabins, machinery, sand, gravel, containers, tree stumps, lorry trailers and vehicles’.

- Deleting paragraph 5(iii) and substituting: ‘(iii) Dig up and remove from the land such hardsurfacing which does not accord with the terms and conditions of planning permission ref: P14/S318/FUL and return the Land to grass’.
2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

PRELIMINARY MATTERS

The Appeal Site and the Appellant

3. The appeal site, or the land subject to the notice, is shown edged in red on the plan attached to the notice and shaded red on an inset map. It is an irregular quadrilateral plot bound by the A40 to the south and farmland on its other three sides. It is a short distance from the village of Tetsworth.
4. The plan shows the site as divided into three, with what I shall describe as the ‘central area’ being edged and hatched blue as well as edged red. The notice states that the central or blue area is where ‘the alleged breach of planning control is considered to be taking place’. The existing access to the site from the A40 is also within the central area.
5. I shall refer to the other parts of the site as the western and eastern parcels¹. The largest alleged bund runs from north to south along the western edge of the central area, effectively dividing that part of the site from the western parcel. There are pre-existing mature hedgerows between the central area and eastern parcel, and around the site as a whole.
6. The appellant stated that he purchased the western parcel and central area in January 2015². He does not dispute the note in the Council’s enforcement report that he also owns the eastern parcel – or the claim that he is the owner and director of a construction reclamation company.

Planning History

7. Planning permission (ref: P14/S1318/FUL) was granted by the Council on 14 July 2014 for ‘proposed stables with tackroom/store and menage [sic] – change of use of agricultural land to paddock land’ on land that comprised the western parcel and central area of the appeal site.
8. The appellant has questioned the meaning of ‘paddock land’, and I would interpret the 2014 permission as authorising use for the keeping of horses. The plans and supporting documents showed that the stable block would include four stalls and be for private rather than commercial use.

¹ The appellant referred to the blue area as the eastern section of the western parcel.

² The appellant’s statutory declaration and attached plan RC01, Appendix 17 to the appellant’s statement of case

9. It is common ground that works comprised in the '2014 permission' took place and the approved development is taken to have been begun for the purposes of s56(2) of the Town and Country Planning Act 1990 (TCPA90). It follows that the 2014 permission remains extant and capable of implementation. The use of the central area and western parcel for the keeping of horses within the terms and conditions of the 2014 permission would be lawful.
10. An application (ref: P/18/S3558/AG) was made in September 2018 for the prior approval of the erection of an agricultural building on the eastern parcel of the site, under the provisions of Article 3 and Class A of Part 6 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Council did not determine the application within the prescribed period but has since advised that, in its view, the building would not be 'permitted development' (PD). Whether or not that is correct has little bearing on this appeal.
11. On 8 October 2020, the Council refused (ref: P19/S4691/O) outline planning permission for an equestrian fitness and rehabilitation centre with ancillary buildings, parking and landscaping. My copies of the refused plans are not clear but suggest that the '2019 outline application' related only to the central area of the site. The same seems true of the '2020 outline application' (ref: P20/S4792/O) which was made for a revised version of the same scheme and refused on 18 May 2021.
12. Since the grant of the 2014 permission, the Council has opened and closed various enforcement investigations in respect of the site. The Council served a Planning Contravention Notice (PCN) on the appellant in November 2019; a response was received in December 2019 but I have not seen a copy of it.

The Enforcement Notice

13. The appellant suggests that the notice is inaccurate and should be withdrawn (or presumably quashed). However, the Council did not withdraw it and s176(1)(a) of the TCPA90 provides that I may correct any error, defect or misdescription in the notice so long as that would cause no injustice to the appellant or the Council.
14. The appellant's first note is that the eastern parcel is in agricultural rather than 'paddock' use. Where a notice alleges that there has been a material change of use, and it is apparent that the notice does not record all of the components of a mixed use that are taking place within the planning unit, the notice should normally be corrected so that the allegation includes a proper description of the whole mixed use.
15. The 2014 permission relates only to the central area and western parcel but the whole site has since become a single unit of occupation. I shall treat the whole site as a single planning unit since there is no evidence or suggestion otherwise. I accept that agriculture and the keeping of horses are both lawful uses of the site, although the latter could not take place on the eastern parcel and the Council disputes that there is any agricultural or equestrian activity.
16. Thus, the notice should allege that there has been a material change of use from a mixed use for agriculture and the keeping of horses to a mixed use for

agriculture, the keeping of horses and the storage of building materials and machinery. I agree with the Council that the notice can be so corrected without causing injustice.

17. The first requirement of the notice should follow the allegation and be that the unauthorised mixed use must cease. I can make that correction without causing injustice because the requirement should not be interpreted as purporting to take away lawful use rights. The notice will not require the cessation of agriculture or the keeping of horses.
18. The appellant also considers the notice unclear as to whether the bunds and hardsurfacing are alleged to be in breach of planning control for facilitating the unauthorised change of use or for being unauthorised developments in their own right. In principle, a notice can be corrected without causing injustice to connect or decouple, as the case may be, uses and operations. I shall look at the relationship between the works and storage element of the mixed use when considering the timeline and appeal on ground (d).
19. The appellant's final point is that the blue hatching does not cover all of the large westerly bund. He has provided a drawing (RC01) which shows the full extent of the bund, but neither party has submitted a plan with revised blue hatching that I could attach to the notice. Nonetheless, I consider that the notice can be clarified without causing injustice.
20. It is not essential that the plan includes blue hatching at all because the allegation and requirements properly relate to the whole site edged in red. In the absence of any revised plan, I shall correct paragraph 3 of the notice to specify that the central or blue area is where the alleged storage use as opposed to the whole breach of planning control is taking place.
21. I must make one point of my own regarding the notice: it does not concern any new gates or wall. I could not expand the scope of the notice without causing injustice to the appellant, and so such features are outside of this appeal and I cannot consider objections made by local residents to them.

The 'Legal' Grounds of Appeal and Evidence

22. Grounds (b), (c) and (d) are the 'legal grounds' of appeal; success on any of them may result in the notice being corrected or quashed. The onus is on the appellant to make his case on the balance of probabilities. His evidence should be accepted so long as it is sufficiently precise and unambiguous, and there is nothing to contradict his version of events or make it less than probable.
23. The appellant's declaration was signed and stamped by a solicitor, and so it is sworn evidence which carries substantial but not necessarily decisive weight. The Council submitted new evidence with their final comments. To ensure fairness to all parties, I accepted the evidence on the basis that the appellant was given an opportunity to address it. I have taken account of his response.

THE APPEAL ON GROUND (B)

24. An appeal on ground (b) is that the matters stated in the notice have not occurred; whether that is so is a question of fact and degree. The appellant accepts that the alleged storage element of the mixed use is taking place and

an earth bund and hardsurfacing exist on the site. His principal argument is that the use and operations are associated with the implementation of the 2014 permission, but that is a question for ground (c). It is not a claim that the matters have not occurred at all.

25. There is no dispute that building materials and machinery are present on part of the site which is hardsurfaced and to the side of a large bund. The Council has submitted photographs from June 2020³ which show the hardstanding and bund, plus lorry parts, tyres, portacabins, a shed, horse boxes, shipping containers, machinery, scaffolding poles, sand, gravel, timber planks and pallets, tree stumps, bricks, roof and ridge tiles, chimney pots, stone blocks, poles and various fence panels. I saw much the same items at my visit.
26. The only contested fact is whether there are bunds plural. The Council suggests that bunds on the southern and eastern sides of the central area are shown in June 2020 photographs; the appellant says that those pictures 'simply show extended vegetation growth'. I can see distinct areas of elevated grass and weeds in the photographs labelled 'building materials/paraphernalia sited along southern boundary. Small earth bund behind'⁴ and 'building material along eastern boundary with earth bunds [sic] behind'⁵.
27. I find that, as a matter of fact and degree, those photographs probably show overgrown mounds or bunds. I conclude on the balance of probabilities that the site includes land used for storage plus hardsurfacing and bunds plural. The appeal on ground (b) fails.

THE APPEAL ON GROUND (C)

28. Ground (c) is that the matters stated in the notice do not constitute a breach of planning control. The appellant does not argue that the alleged change of use or the creation of hardsurfacing and earth bunds did not require planning permission. His case is rather that permission is already granted.

The 2014 Permission

29. The 2014 permission authorised the use of the western parcel and central area for the keeping of horses and the erection of a stable building and manège. Condition 2 imposed on the permission required that the development be carried out in accordance with specified plans. Plan no. 2 showed that most of the land would be laid out as paddock but the access from the A40 would lead to a new driveway and yard as well as the manège and stable building on the central area.
30. The approved works including hardsurfacing. The notice alleges that such is in breach of planning control because the Council considers that the amount created exceeds that permitted; hence the notice only requires the removal of 'additional' hardstanding. The appellant criticised the Council for not saying exactly how much extra surfacing was formed, but the onus is on him to show that the 2014 permission probably authorised what is on the ground.

³ Appendix 9 to the Council's statement of case.

⁴ Second photograph on page 20 of Appendix 9 to the Council's statement of case

⁵ First photograph on page 28 of Appendix 9 to the Council's statement of case

31. The appellant accepts that 'additional hardstanding...has been constructed over and above the terms of the' 2014 permission and that the difference is material 'albeit...not sufficient to give rise to material planning harm'. Whether the difference is harmful is not the same question as whether it is permitted.
32. The appellant has annotated a copy of the 2014 plan no. 2 in order to show the difference between the approved and existing hardstanding⁶. It is not possible to scale from the plan but, if I take it at face value, it shows the yard area being extended to the west and south, so as to be some 25% larger than as approved. It also shows additional hardstanding connecting the eastern parcel to the new drive, and along the northern edge of the manège area.
33. It seems to me that the annotated plan may underestimate the amount of unauthorised hardstanding. The '2021' aerial photograph submitted by the Council indicates that the drive is wider on the ground than the appellant suggests⁷. Also, the hardsurfaced area includes where the approved stable block would be, but it does not follow that the stable base has been laid. The appellant has submitted a letter from GM Building Design in April 2021 which indicates that concrete foundations would be needed to construct the stable⁸.
34. However, I can park those observations because the annotated plan alone would suffice for me to find a material difference between the hardstanding as approved and existing. In other words, engineering operations were carried out to form hardstanding which, alongside the use of land for storage and the creation of earth bunds, was not authorised by the 2014 permission.

'Permitted Development' Rights

35. Under Article 3 and Schedule 2, Part 4, Class A to the GPDO, planning permission is granted for the provision of 'buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on...that land'. The word 'required' must be read as 'reasonably required'.
36. The appellant argues that construction materials, portacabins, machinery, containers and vehicles on the site are required temporarily to construct or complete the approved stable, manège, yard and driveway. As noted, he purchased the site in January 2015. His sworn evidence is that he carried out works 'associated with the implementation of the permission' between September 2015 and December 2016.
37. Since I have accepted that development comprised in the 2014 permission was begun through the laying of hardstanding, it makes no difference to the status of that permission whether horses are currently grazed on the western parcel or not. However, whether development was begun so as to keep a planning permission alive is not the same question as to whether operations are being or to be carried out for PD purposes.

⁶ Appendix 19 to the appellant's statement of case.

⁷ Appendix 1 to the Council's statement of case

⁸ Appendix 18 to the appellant's statement of case

38. The appellant described clearing the ground, laying hardstanding and using the removed soil to form the large bund, but he did not say what happened after December 2016 or when he intends to construct the stable. The April 2021 letter from GM Building Design, which outlines 'a brief list of materials required for the construction of the' stable, manège and 'surfacing', gives no indication of any timetable for the works. The appellant has not shown that operations connected to the 2014 permission are 'being or to be carried out'.
39. Moreover, Part 4, Class A of the GPDO does not permit temporary changes of use. I assume for the sake of argument that the materials listed in the letter would be required in the quantities specified, but the appellant has not shown that they are 'buildings, moveable structures, works, plant or machinery'. The same applies to the tree stumps, stone blocks, chimney pots, fence panels and pallets which are on the land but not mentioned in the letter.
40. I accept that the portacabin, other temporary buildings, plant and machinery on the land are typical of those seen on any construction site. However, the appellant has not shown that any item on the central area, whether or not capable of being described as a building, moveable structure, works, plant or machinery, is required temporarily in connection with and for the duration of operations being or to be carried out in accordance with the 2014 permission.
41. It follows that the storage of building materials and machinery on the central area is probably not PD under Article 3 and Schedule 2, Part 4, Class A to the GPDO. The 'additional' hardstanding and earth bunds are not PD for the same reason and because the appellant has not shown how they might be 'required' to implement the 2014 permission at all.

Conclusion

42. The appellant has not demonstrated on the balance of probabilities that the alleged change of use and formation of hardstanding and earth bunds do not require or already have planning permission. I conclude that there has been a breach of planning control as alleged and the appeal on ground (c) fails.

THE APPEAL ON GROUND (D)

43. Ground (d) is that it was too late for the Council to take enforcement action on the date that they issued the notice. The appellant has pleaded ground (d) only in relation to the large westerly bund.
44. The appellant considers that success on this ground will depend on whether the operational development comprised in the construction of the bund is being enforced against in its own right or because it facilitated the storage use. The distinction matters because there are different 'immunity' periods for operations and material changes of use of land, four years for the former but ten for the latter under s171B(1) and (3) of the TCPA90.
45. The Council said in representations that the 'breach of planning control includes operational development' but also that the bunds are ancillary to or part and parcel of the alleged change of use, and that the ten year rule for taking enforcement action should apply. I can understand the appellant's frustration at the Council's lack of clarity but the onus remains on him to show that the alleged bund has become lawful through the passage of time.

The 'Four Year Rule'

46. S171B(1) of the TCPA90 provides that no enforcement action may be taken in respect of a breach of planning control consisting in the carrying out of building or other operations after the end of the period of four years beginning with the date on which the operations were substantially completed. The notice was issued on 4 February 2021 and so, if the four year rule applies, the bund would need to have been substantially completed by 4 February 2017.
47. I do not agree with the Council that 'no bund' can be seen in Google Earth aerial photograph dated 20 May 2018⁹; the picture rather shows an area of soil that is roughly the same size and shape as the bund shown in the aerial photograph taken in 2021¹⁰ and in plan RC01.
48. The main difference between the 2018 and 2021 photographs is the bund (and the land between the bund and existing hardstanding) comprised bare earth in the earlier picture but was grassed over in the later. The operations to form any soil mound would have to be substantially completed before vegetation can be left to grow undisturbed. The appellant's agent stated 'with absolute certainty that the bund...was in full existence' in Spring 2018' and that claim is consistent with the May 2018 aerial photograph. However, that date is less than four years before the date of issue of the notice.
49. The appellant declared that the bund 'had been completed' by December 2016, 'since which time no additional material has been added to the Bund and the Bund has remained thereafter'. That sworn evidence is precise and unambiguous but hard to square with the aerial photography. The appellant has not explained how the soil bund could have been left unaltered from December 2016 for an entire growing season and then into the following spring, but still be pictured with scarcely any green coverage in May 2018.
50. The appellant has not shown that, on the balance of probabilities, the bund was substantially completed by 4 February 2017. I cannot find it immune from enforcement action under s171B(1). The same is likely to be true of the 'additional' hardstanding because the appellant has made no case otherwise and its construction was tied to that of the bund.

The Alleged Works and Material Change of Use

51. Where an enforcement notice is directed at a material change of use, and works were carried out to facilitate the unauthorised use, the notice can require the removal of the works as well as cessation of the use, so long as the notice was issued within the ten year period and even if the works could not be enforced against in their own right for any reason.
52. In this case, the notice was drafted so as to allege 'the material change of use...**including** creation of hard surfacing and earth bunds' [my emphasis]. From that wording, and since there was reference only to the ten year rule, I read the notice as alleging that the operations facilitated the change of use.

⁹ Appendix 4 to the Council's final comments

¹⁰ The photograph must have been taken before June 2021 since it is included in Appendix 1 to the Council's statement of case.

53. The appellant says that there is 'no connection' between the bund and storage use – but that begs the question as to for what other reason the bund might have been formed. The appellant has not said what purpose the bund serves, or what its relationship to the lawful uses for agriculture or the keeping of horses might be. The bund was shown on the 2019 and 2020 plans but I do not know how it might have served the refused equestrian development.
54. The appellant's evidence is simply that the bund was formed from the soil that was removed to create the hardstanding. While I have accepted that the latter works were comprised in the 2014 permission, it does not follow that the appellant intended to otherwise implement the approved scheme. He admits that he laid more hardstanding than was permitted and he appears to have only used it as a base for the storage of building materials and machinery.
55. On the balance of probabilities, I find that the hardstanding was laid as it is in order to facilitate the use of the site for storage. It follows that the formation of the bunds from the soil that was removed in the course of laying that hardstanding was also part and parcel of the breach of planning control that consisted of an unauthorised material change of use.
56. The appellant does not argue that the alleged mixed use is immune from enforcement action under the ten year rule set out in s171B(3). The notice can require the cessation of the use and removal of the hardstanding and bunds whether they were substantially completed within four years or not¹¹.

Conclusion on Ground (d)

57. The appellant has not demonstrated that it was too late for the Council to take enforcement action against the large westerly bund either as a distinct operation under s171B(1) or as having facilitated the unauthorised change of use. The appeal on ground (d) fails.

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

The Description of Development

58. Ground (a) is that planning permission ought to be granted for 'the matters stated in the notice', that is, the development that is alleged to be in breach planning control. It is necessary to return to the question of whether the notice can and should be corrected without causing injustice.
59. As indicated above, the notice can be corrected without causing injustice to clarify that agriculture and the keeping of horses are lawful elements of the mixed use of the site. With another correction to clarify that the 'additional' hardstanding and bunds facilitated the change of use, the allegation shall be:
- '...a material change of use from a mixed use for agriculture and the keeping of horses to a mixed use for agriculture, the keeping of horses and the storage of building materials and machinery, and the laying of hardsurfacing and creation of earth bunds to facilitate the unauthorised use'.

¹¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598; *Kestrel Hydro v SSCLG* [2016] EWCA Civ 784

60. Under s177(1)(a) of the TCPA90, planning permission may be granted in relation to the 'whole or any part' of the matters or the land. The appellant has made no case for using the western or eastern parcels of the site for storage, so I assume that permission is sought for the mixed use on the basis that the storage element should be limited by condition to the central area.

Planning Policy and Guidance

61. The enforcement notice referred to the 'emerging' Tetsworth Neighbourhood Plan 2035 (TNP), but it was made on 20 May 2021 following a referendum. It now forms part of the statutory development plan with the South Oxfordshire Local Plan 2011-2035 (SOLP).
62. National planning policy as set out in the National Planning Policy Framework (the Framework) is material to this appeal. The appellant and the Council were given opportunities to make further representations when the Framework was revised on 20 July 2021. I refer below to paragraphs in the revised Framework which correspond to those cited earlier by the parties.
63. I have had regard to the Government's Planning Practice Guidance (PPG) and Natural England's Standing Advice on great crested newts. The latter was revised on 14 January 2022 so as to align with the revised Framework and PPG, but not so as to alter the outcome of this appeal.

Main Issues

64. The appellant appealed on ground (a) so that he would not be perceived as tacitly accepting that the appeal use causes harm, and thereby prejudice the 2020 application. Even if there is 'overlap between the planning issues raised', the Council's decisions to refuse outline permission for an equestrian fitness and rehabilitation centre with ancillary buildings, parking and landscaping are outside of my remit. They have not influenced any part of this decision letter which is written without prejudice to any separate appeal proceedings.
65. I consider that main planning issues in this case are:
- Whether the appeal site, being within open countryside, is a suitable location for the alleged mixed use.
 - The effect of the alleged mixed use and the 'additional' hardstanding and bunds on the character and appearance of the surrounding rural area.
 - The effect of the use and works on protected species.
 - Whether the use and works are liable to cause unacceptable ground contamination.
 - Whether the use and works ought to be considered as 'intentional unauthorised development'.

Reasons

Location

66. The site is outside of any settlement and in the open countryside for planning purposes. The Council objects 'in principle' to the use of the site for the

storage of building materials and machinery. The appellant's response is that the use is not inherently unacceptable because planning policies support development which promotes rural employment and takes place on 'previously development land' (PDL).

67. The development plan and Framework clearly allow for economic development in the countryside – but not without qualification. SOLP Policy STRAT1 requires that development protect and enhance the countryside by ensuring that, outside of towns and villages, any change relates to very specific needs such as those of the agricultural industry or enhancement of the environment.
68. On the last point, and as discussed below, the appellant refutes that storage causes any unacceptable environmental harm but he does not go so far as to claim that it gives rise to any enhancement. On the question of 'specific needs', I consider that the appeal storage use is not related to the needs of the lawful agricultural use of the site, because storage is not an agricultural activity and few of the items being stored are useable for farming.
69. Given the phrase 'such as', I read Policy STRAT1 as allowing for change related to the needs of any rural enterprise. However, the 2014 permission was for the keeping of horses on a private rather than commercial basis. Even if the materials and machinery being stored could be used to build the stables, that would not justify a grant of permission for storage as a separate primary use in the mix. The appellant does not claim that his business must take place in a rural location and so the use conflicts with STRAT1.
70. SOLP Policy EMP10 supports the sustainable growth and expansion of all types of rural business and enterprise through the conversion of existing buildings; diversification of agricultural and other land-based rural businesses; sustainable rural tourism and leisure developments; and the retention and development of local services and community facilities in villages. Paragraph 84 of the Framework makes similar provision, except it also supports the growth and expansion of rural businesses through well-designed new buildings.
71. The storage of building materials and machinery does not take place in an existing or new building of any design – and it cannot be described as a 'land-based rural business' because it does not need to take place in a rural area. Policy EMP10 and paragraph 84 of the Framework do not expressly preclude a grant of permission for the use of land for outdoor storage in the countryside – but they do not 'lend significant positive support' for the appeal either.
72. Paragraph 85 of the Framework recognises that sites may have to be found beyond existing settlements to meet local business and community needs. It also encourages the use of PDL where suitable opportunities exist¹². The construction of hardstanding was authorised by the 2014 permission and so that part of the site is PDL as defined in Annex 2 to the Framework: 'land which is or was occupied by a permanent structure, including the curtilage of the developed land...and any associated fixed surface infrastructure'.

¹² I read paragraph 85 as allowing for development on sites which are PDL and/or physically well-related to an existing settlement.

73. However, the stable is not built and the hardstanding cannot have any curtilage¹³. I have noted the other appeal decision where the Inspector found that an entire equestrian site, including the paddocks, was PDL, but I do not know the details of that case¹⁴. I am satisfied that the lawful area of hardstanding is the totality of the PDL on the appeal site before me.
74. It would be possible to permit the mixed use but not 'additional' hardstanding, and to limit the storage activity to the area that I have found to be PDL. However, paragraph 85 of the Framework cannot be read as meaning that a site must be considered a 'suitable opportunity' for any employment development simply by virtue of being or including PDL. The appellant has not made any real argument that the storage of building materials and machinery must take place in this location in order to meet local business needs.
75. The appellant noted that, while the Framework encourages rural development to improve the scope for access on foot, by cycling or by public transport, it also recognises that opportunities to maximise sustainable transport options will vary between urban and rural areas. Since employees of or visitors to construction storage sites in any location will normally travel by private if not heavy vehicle, I would not refuse planning permission for the development on the grounds that the site is not near a bus stop or cycle lane.
76. However, the Framework also seeks to focus significant development in locations which limit the need to travel. Whether or not the storage use is 'significant' in that sense, it is likely to unsustainably increase needs to travel or distances travelled, because it takes place in a rural location when it does not need to. I would not dismiss the appeal solely for that reason but it adds weight to my view that the site is unsuitable for the use.
77. I conclude that the storage use is neither contrary to nor compliant with SOLP Policy EMP10 or the Framework, but it does conflict with SOLP Policy STRAT1, which – which is not inconsistent with the Framework. It also conflicts with TNP Policy TET1, which requires that development outside of the village of Tetsworth is appropriate to a countryside location and consistent with the SOLP. It follows that, in policy terms, the site is not a suitable location for the storage element of the mixed use and associated works.

Character and Appearance

78. The appeal site does not lie within or adjacent to any area that is designated or protected for its landscape, heritage or any other qualities. However, it is nonetheless within open countryside for planning policy purposes.
79. A Landscape and Visual Appraisal (LVIA) was prepared for the appellant in support of the 2020 outline application¹⁵. The LVIA is helpful to me but must be read in the knowledge that it concerned not only a different development but also a 'Site' limited to the central area.

¹³ Curtilage is essentially an area of land that has an intimate association with a building. The Framework states in any event that it should not be assumed that the whole of any curtilage should be developed.

¹⁴ Appeal ref: APP/D3125/W/19/3235474

¹⁵ Appendix 12 to the appellant's statement of case

80. The LVIA notes that the 'Site' falls within the 'Clay Vale Regional Character Area' (RCA) described in Natural England's 'Character of England' landscape assessment. The LVIA states that the RCA embraces a 'low-lying, gentle vale landscape...associated with small pasture fields, many watercourses and hedgerow trees'. It also states that 'many of the regional landscape characteristics are recognisable elements...and assist in defining the landscape character around the Site and how this affects the views of the Site'.
81. The LVIA also notes that the Site is within the 'Clay Vale Local Character Area' (LCA) and 'Undulating Semi-Enclosed Vale Landscape Type' (LT)¹⁶, characterised by 'a stronger structure of hedgerows and trees which provide a clear definition of the field pattern', 'predominantly intensive arable land with pockets of pasture' and 'predominantly rural character with localised intrusion from the main roads, overhead power lines and built development'.
82. I find that the appeal site as a whole reflects the RCA, LCA and LT. The eastern parcel is a well-defined arable field and the site as a whole is largely surrounded by gently rolling countryside. There are trees and mature hedgerows around and near to the site, and there are relatively few buildings in the area considering the proximity of the A40.
83. The LVIA found that the central area contributes 'a very minor element to the intrinsic character of the local landscape', has no more than 'community' value and has a 'low' sensitivity to change. I cannot read that assessment as applying the whole appeal site when the authors of the LVIA did not consider the landscape value of the western or eastern parcel.
84. I also note that the assessment of the 'Site' was made with regard to the central area having been 'partially developed in association with' the 2014 permission and having 'strong boundary features [including] an earth bund screening the west boundary'. The author(s) of the LVIA did not seem aware that some hardstanding and the bund were not lawful.
85. The LVIA advised that, subject to mitigation measures which could be secured by planning condition, the proposed equestrian fitness and rehabilitation centre with ancillary buildings, parking and landscaping would have a 'slight to negligible' or even no effect on the landscape character and any visual receptors. Again, I cannot assume that the authors of the report would have reached the same conclusion about the use of the central area (or even just part thereof) for the open air storage of building materials and machinery.
86. I agree with the appellant that no purpose is served by looking back to before 2015 when the central area was still laid to pasture. I am satisfied that the laying of some hardstanding was lawful and implementation of the 2014 permission represents a realistic fallback position for the appellant. The alleged use and works must be considered on their own merits and by way of comparison with there being a stable building, manège, yard and driveway on the site, all constructed and used in accordance with the 2014 permission.

¹⁶ South Oxfordshire District Landscape Character Assessment 2017

87. I have noted that the hardcore is more extensive than permitted; I also saw that it is more roughly formed than I would expect a manège or a yard and driveway for horses and horse boxes to be. It appears as a scar on and unacceptably degrading to the countryside. I further consider that the earth bunds, particularly the long and high westerly bund, distort and appear unacceptably incongruous within this otherwise low-lying, gentle vale area.
88. The storage use, as the Council's June 2020 photographs show, is carried out on such a scale and in such a way that building materials and machinery, and other chattels and vehicles are strewn across a relatively expansive area. I find it hard to disagree with a local resident who described the central area as resembling a 'semi-industrial wasteland'. The nearby hedgerows do not soften or green the site enough to prevent the development from causing immense harm to and looking unacceptably discordant within its rural setting.
89. Even if permission was granted on the basis that storage can take place only on the lawful area of hardstanding, and the rest of the hardcore and the bunds must be removed, I consider that the use would unacceptably detract from the character and appearance of the appeal site and the surrounding rural area. The harm would not be justified by the 'fallback position', since the addition of a stable building and associated keeping of horses would be less intrusive and damaging to the landscape.
90. The appellant has suggested that visual harm caused by the alleged use and works could be mitigated by imposing conditions to restrict the height of stored materials to 3m above natural ground level and require the provision of additional boundary planting plus retention of that existing. However, the hedgerows within and around the site are already sufficiently high and dense to effectively screen the use and works from adjacent fields and the A40.
91. Additional planting and/or limiting the height of stored items – and restricting the area of storage – might address the Council's concern that the development unacceptably detracts from views from nearby public rights of way, particularly one which crosses higher land to the south. However, the existence or possibility of concealment can rarely be sufficient reason to permit development that physically degrades and despoils the landscape, as the alleged use does, the argument could be repeated too often.
92. I conclude that the use of the central area for the storage of building materials and machinery, the earth bunds and the (additional) hardstanding, whether considered individually or together, cause unacceptable harm to the character and appearance of the surrounding rural area which cannot be justified by the fallback position or overcome by imposing conditions.
93. The use and works conflict with SOLP Policies ENV1, DES1 and DES2, which require development that supports economic growth in rural areas to conserve the landscape and countryside, respect existing landscape character, take account of landform and landscaping, respect the local context and reflect the positive features that make up the character of the local area¹⁷.

¹⁷ The Council has referred to TNP Policy TET3, which requires development in a Countryside Character Sector (CCS) to preserve or enhance the character and appearance in accordance with the positive features identified

94. The use and works also conflict with the Framework, which expects business development on sites beyond existing settlements to be sensitive to its surroundings and sympathetic to local character, and to maintain a sense of place, and which expects planning decisions to recognise the intrinsic character and beauty of the countryside.

Protected Species

95. The Council's next objection is that there is no appropriate information or proposed mitigation to show that the use and associated works will not have an adverse impact of a protected species, namely great crested newts (GCN) which are protected under the Wildlife and Countryside Act 1981 and Natural Environment and Rural Communities Act 2006.
96. In response, the appellant submitted a 'Preliminary Ecological Assessment' (PEA) that was again prepared for the 2020 application and takes the central area as the 'Survey Site'¹⁸. The PEA notes that there are six ponds within 250m of the Survey Site, including two that 'are located offsite but within the [appellant's] ownership'. The 'Phase 1 habitats plan' confirms that the ponds referenced as P1 and P2 are in the western and eastern parcels respectively.
97. The PEA observes that both ponds were dry at the time of the survey, P1 might retain water seasonally but P2 is likely to remain dry other than during exceptional rainfall. Nonetheless, the PEA also stated that 'the habitat between both offsite ponds and the Survey Site include pasture and scrub which provide adequate connectivity to the Survey Site for terrestrial GCN'.
98. The PEA further found that 'notwithstanding the disturbed nature of the Survey Site generally, boundary habitats, including the hedgerows and the earth mound [or bund] on the western site boundary provide suitable terrestrial habitat for GCN. The grassland may also [do so]...The extensive stacks/piles of stored materials provide potential refugia/hibernacula for GCN if left undisturbed for any length of time'.
99. Noting that there are recent historical records of GCN within 250m of the Survey Site, the PEA finds that 'there is a possibility that terrestrial GCN are present within the Survey Site'. That assessment is consistent with the note of the Council's Senior Countryside Officer to the effect that the site is within a 'red zone' or area of highest risk to GCN as shown on the Impact Risk Map which forms part of the Council's GCN district level licensing (DLL) scheme¹⁹.
100. The PEA advised that the equestrian fitness centre could impact upon GCN; the same must be said of the alleged use and works. It could be construed from the PEA that GCN might benefit if the bunds are permitted – but if the storage use is allowed, I would question whether stored materials could be left undisturbed for any length of time, and what effect vehicular and other movements would have on the protected species. However, there is no survey

within that sector in the Neighbourhood Plan Character Assessment. I cannot tell from the TNP which CCS covers the site or what the positive features of that sector are.

¹⁸ Appendix 13 to the appellant's statement of case

¹⁹ Appendix 10 to the Council's statement of case

before me to show what impacts, if any, positive or negative, that a grant of permission for the whole or part of the development would have on GCN.

101. The PEA advised the appellant that two options were available to enable the 2020 equestrian development to proceed with legislative compliance in respect of GCN: to undertake presence/absence surveys of the offsite ponds within 250m of the site boundary and devise an appropriate mitigation strategy [or] join the DLL scheme operated on behalf of Natural England. I assume for the sake of argument that the same recommendation would be made for the alleged development, and I agree with the appellant that the options should be read as in the alternative:

The Survey Option

102. There is no dispute that, if the DLL option had to be discounted for whatever reason, a survey would be required as the PEA advised²⁰. The question is whether such a survey could be delayed until after planning permission is granted and required by imposed a condition.
103. The PPG advises that the potential impacts of development on protected species, and the scope to avoid or mitigate any impacts must be considered **with** planning applications. It continues that 'an ecological survey will be necessary **in advance** of a planning application if the type and location of the development could have a significant impact on biodiversity and existing information is lacking or inadequate' [my emphases]²¹.
104. SOLP paragraph 7.14 likewise states that 'adequate information must be provided prior to the making of a planning decision, to assess any impact of the development on biodiversity reasonably likely to occur. The use of conditions to require the submission of ecological information after a grant of planning permission will only be considered in wholly exceptional circumstances where the need for such a survey could not have been reasonably foreseen.
105. The appellant has not argued that there are exceptional circumstances in this case, and I consider that the need for a survey was reasonably foreseeable given that this course was expressly recommended in the PEA. It makes no difference that I am considering an application for planning permission deemed to be made through an appeal against an enforcement notice. Just as if this was an express application made to the Council, the appellant ought to have carried out a survey before I came to make my decision.
106. In line with the PPG, I could not approve the alleged development, in whole or part, subject to a condition which requires a future GCN presence/absence survey; such work should have been undertaken beforehand so that the

²⁰ Natural England's 'Great crested newts: advice for local planning authorities', issued on 12 November 2020, stated that a survey should be sought if records that there may be GCN, there is a suitable water body within 500m even if it only holds water for some of the year [and/or] the site includes refuges with 500m of suitable aquatic habitats. That guidance was republished as 'Great crested newts: advice for making planning decisions' on 14 January 2022 with that a survey should be sought if the protected species is likely to be present and may be affected by the development.

²¹ PPG paragraph refs: 8-016-20190721 and 8-018-20190721

actual and potential impacts of the development on GCN, and the scope to avoid or mitigate any harm could be considered in this decision letter.

The DLL Scheme Option

107. The Council's Countryside Officer referred to Natural England's 'Great crested newts: advice for local planning authorities' issued on 12 November 2020. It appears to have been republished as 'Great crested newts: advice for making planning decisions' on 14 January 2022. Both versions described DLL schemes as mitigation licensing schemes for GCN granted at local authority level, where a developer can make a financial contribution towards the scheme instead of applying for a separate licence or carrying out their own survey.
108. Both versions also stated that, if a developer chooses to rely on DLL to meet their legal requirements with GCN, they need to sign an agreement with Natural England or the DLL operator so that, subject to planning permission being granted, the development can be included in the DLL scheme. Likewise, interim guidance from Natural England to South Midlands local authorities, which was cited by the Countryside Officer, states that developers can obtain an assessment from the DLL operator during the planning process as to whether the development is eligible to use DLL.
109. Natural England's Standing Advice on Protected Species and Development, revised on 14 January 2022, states that, if a DLL scheme is in place, developers can make a strategic off-site habitat compensation instead of applying for a separate licence or carrying out individual detailed surveys. But if a proposal is likely to affect a protected species, permission can only be granted where all appropriate avoidance and mitigation measures have been incorporated into the development and appropriately secured [and/or] any compensation measures are acceptable and can be put in place. The revised advice accords the PPG.
110. The Standing Advice includes a link to Natural England guidance, which has not been changed since May 2021, on how to join DLL Schemes. It requires developers to include a copy of the countersigned agreement with their planning application to show that they have agreed to join. It follows that entry into the DLL scheme cannot simply be ensured or controlled by condition as the appellant suggests. He ought to have made an agreement with the local DLL operator and submitted the documentation with this appeal.
111. The appellant has referred to grant of outline permission (ref: P17/S4441/O) by the Council for development that included B8 (storage and distribution) floorspace on another site, subject to conditions that required compliance with the Council's organisational licence²². However, the conditions also required compliance with a specified 'Impact Plan'. It is not clear whether the Council approved that scheme with so little information as there is before me.

Conclusion on Protected Species

112. The Council's Ecology Officer accepted the recommendations of the PEA and found that condition could be imposed as suggested on the 2020 outline

²² Appendix 15 to the appellant's statement of case

application. Nonetheless, there is insufficient evidence for me to identify the potential or actual impact(s) of the alleged storage use and/or associated works on GCN, or to identify the scope to avoid or mitigate any harm. There is no agreement to show that any adverse impacts would be compensated for through entry in the DLL scheme. I conclude that planning permission cannot be granted for the use and/or works, in whole or part, because there is a clear risk of unacceptable harm being caused to this protected species.

113. A grant of planning permission subject to the conditions proposed would conflict with SOLP Policies ENV3 and ENV2, which require that development causes no net loss of biodiversity or direct or indirect loss, deterioration or harm to protected species unless it is shown that the need or benefits of the development outweigh the harm, the development could not take place on an alternative site and measures that would avoid, mitigate or compensate for the adverse effects can be secured by condition.
114. A grant of permission would also conflict with TNP Policy TET8, which requires that development does not unacceptably affect existing wildlife habitats. It would conflict with the PPG as outlined above, and with the Framework, which requires that development be refused if it would cause significant harm to biodiversity that cannot be avoided, adequately mitigated or compensated for.

Contamination

115. The Council's final reason for issuing the notice was that insufficient information has been provided to identify exactly what is stored or present on the land, and whether 'the materials and debris could contain contaminants...harmful to the ecology, groundwater resources and soil'.
116. The appellant has commissioned a ground investigation survey which, cutting to the chase, advises that the alleged storage use has not led to contamination of the land in the central area or near the earth bunds – and no further risk assessments or remediation measures are required. The Council does not dispute those findings and neither do I.
117. I take the Council's point that different materials could be brought to the site, but any risk of future contamination could be minimised by imposing a condition to require the submission and approval of a closed list of what items will be stored. I do not see the necessity or benefit of a condition to require further investigative work.
118. I conclude that the alleged use and works need not cause unacceptable ground contamination. They do not conflict with SOLP Policy ENV12 or the Framework, which expect development to not result in significant adverse impacts on human health or the natural environment, and that any site is suitable for its proposed use taking account of contamination risks.

Intentional Unauthorised Development

119. The Council raised a new objection in its statement of case, namely that the alleged breach of planning control represents 'intentional unauthorised development' (IUD) and that is a material consideration to be weighed in the

balance²³. If the appellant is the owner and director of a construction reclamations company as suggested, then it may be that he bought the site with the benefit of the 2014 permission in order to construct hardstanding for the purpose of business-related storage.

120. However, the appellant has still made an appeal against the enforcement notice on grounds including (a) and he has paid the fee for consideration of this deemed planning application. I must deduce that, now at least, he wishes to regularise the unlawful use. Even if the alleged development was carried out as IUD before the notice was issued, I attach little weight to that consideration against the appeal.

Conclusion on Ground (a) and the Deemed Planning Application

121. For the avoidance of doubt, and although the appellant has relied on policy support for employment development in his representations, he has not suggested that any economic or other benefits of the business use might outweigh any harm found to be caused. Indeed, he has not identified any economic or other benefits of the alleged mixed use.
122. I conclude that the appeal site is not a suitable location for the alleged development – and that the use and works cause unacceptable harm to the character and appearance of the site and surrounding rural area. There is insufficient evidence before me as to the scope to avoid or mitigate any adverse impacts of the development on great crested newts.
123. The harm identified could not be overcome by limiting the storage element of the mixed use to the central area or such hardstanding as was permitted in 2014. It could not be overcome by imposing other planning conditions as discussed above.
124. The use and works need not cause unacceptable contamination but that is neutral in the planning balance. The same would be true if the use and works did not represent IUD. I have had regard to all other matters raised but there are no considerations which outweigh or justify the harm that is caused by the development now and would still be caused if it was permitted in part.
125. Even if the use and works are not contrary to SOLP Policy EMP10 or TNP Policy TET3, they conflict with SOLP Policies STRAT1, ENV1, DES1, DES2, ENV2 and ENV3, TNP Policies TET1 and TET8, and thus the development plan when read as a whole. Those policies are relevant and not out of date, and indeed the use and works also conflict with the Framework. Thus, the appeal fails on ground (a) and the deemed planning application is refused.

THE APPEAL ON GROUND (F)

126. Ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity, as the case shall be. The purpose of the notice is discerned by looking at the allegation and requirements. In this case, the notice alleged that there had been a

²³ Written Ministerial Statement, 17 December 2015

material change of use and required that the use must stop. It does not 'under-enforce' and its purpose must be to remedy the breach.

127. The appellant suggests that having to 'permanently remove...all building and construction materials...' would leave him unable to complete the approved stable, manège, yard and driveway. He argues that, in the event that this is found to be an 'amenity notice', it should be varied to allow the retention on the land of the items required to fully implement the 2014 permission
128. However, this is not an 'amenity' notice and I have in any event considered the 'injury to amenity' said to be caused by the development via ground (a). I found that the development causes unacceptable harm which cannot be overcome by imposing conditions. The merits of the storage use, 'additional' hardstanding and bunds cannot be reconsidered through ground (f).
129. It is not excessive for the notice to require that the items being unlawfully stored are removed. Rather, the requirement is necessary to ensure that the breach is remedied through the site being restored to the condition it was in before the breach took place. It would be difficult for the appellant to implement the 2014 permission without removing the stored items.
130. That said, a notice should not prevent a developer from doing something that they are entitled to do. I shall vary the second requirement to clarify that the items to be removed are those which are present in association with the storage use. It will then be clear to the parties that, for example, bricks may be on the site if and when the approved stable is being built.
131. The appellant also suggests that the requirements should not relate to the whole of the 'land' when part of it is used for agriculture. However, it is necessary and not excessive for the notice to relate to the whole unit of occupation so that the storage use is not simply removed from one area or parcel to another.
132. I shall vary the third requirement to clarify that hardstanding should be removed so that what remains is in accordance with the terms and conditions of the 2014 permission; the amendment will result in no injustice. I conclude that the appeal on ground (f) succeeds to the extent outlined.

OVERALL CONCLUSION

133. For the reasons given above, and with regard to all other matters raised, the appeal is dismissed and the enforcement notice is upheld with corrections and variations as set out in the Formal Decision above.

Jean Russell

INSPECTOR