
Appeal Decision

Inquiry opened on 22 March 2022

Site visit made on 25 March 2022

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/W3005/C/19/3235042

249 Alfreton Road, Pye Bridge, Alfreton DE55 4PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is by Neil Barratt against an enforcement notice issued by Ashfield District Council.
 - The enforcement notice ref. UCU/2016/00095, was issued on 12 July 2019.
 - The breach of planning control alleged in the notice is the material change of use from residential to a mixed use for residential and commercial use. The commercial use include:
 1. Coach and mini-bus parking and dispatch.
 2. The storage of commercial vehicles in association with the coach and mini-bus parking and dispatch business.
 3. The storage of scrap vehicles and vehicle parts.
 4. The siting of 2 portable buildings and 2 lorry bodies used for commercial storage.
 5. The creation of a hard standing/surfacing to facilitate the commercial use.
 - The requirements of the notice are to:
 - 1) Cease the use of the land for:
 - a. Coach and mini-bus parking and dispatch
 - b. The storage of commercial vehicles in association with the coach and mini-bus parking and dispatch business.
 - c. The storage of scrap vehicles and vehicle parts.
 - d. The siting of 2 portable buildings and 2 lorry bodies used for commercial storage.
 - 2) Remove the scrap vehicles and vehicle parts stored on the land.
 - 3) Remove from the land 2 portable buildings and 2 lorry bodies used for commercial storage.
 - 4) Remove from the land the contents of the portable buildings and lorry bodies.
 - 5) Remove the hardstanding from the land shown hatched in blue on the plan marked ADC1 attached to the notice and return the land shown hatched in blue to its condition before the alleged breach commenced by reinstating the grassed area.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission is also to be determined.
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Decision

1. I allow the appeal on ground (g), and direct that the enforcement notice be varied by:
DELETION of *4 months* as the period for compliance; and,
SUBSTITUTION of *6 months*.

I further direct that the notice be corrected by:

OMISSION of the words '*2 lorry bodies*' from the fourth element of the allegation.

SUBSTITUTION of the words '*1 lorry body currently situated adjacent to the southern site boundary*'.

And varied by:

OMISSION of the words '*1 lorry body currently situated adjacent to the southern site boundary*' from the notice as varied from Requirement (3).

Subject to that variation and correction the enforcement notice is upheld, and planning permission refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Inquiry

2. Evidence at the Inquiry was taken under oath.
3. The Council's original enforcement and planning witnesses could not attend. Mr Woollard and Mr Morley took their places, and adopted their evidence.

Background

4. The appeal site lies on the southern side of Alfreton Road in the small settlement of Pye Bridge, a former open-cast mining area. It consists of little more than rows of residential terraces and semi-detached houses along both sides of the road. I note the postal address is '*Pye Bridge*', but settlement is also known as '*Jubilee*', which is referred to in some documents. For the purposes of this decision I have used the name Pye Bridge for the purposes of this determination.
5. No.249 is the eastern half of a pair of semi-detached houses. There is open space to the rear and eastern side of the property, and a lane beyond and to the side of that. This gives access to the rear part of the appeal site by means of gates in the timber fence along the side boundary of the site. The lane then turns to give access to the back gardens of houses to the west of the appeal site. The lane is also a public bridleway. There are open fields to the south, largely restored from their open-mining past. On the opposite side of the lane, behind no. 245 Alfreton Road is an area given over for a small nature reserve.
6. The open area to the rear of the house is mainly fenced, but the piece immediately to the east of the house next to the road is unfenced, laid to hardstanding and open to the lane.
7. A previous enforcement notice issued by the Council in February 2018 alleging the '*the change of use from residential to storage of scrap and abandoned vehicles and the stripping of vehicles for parts within the Green Belt catchment*' was allowed at appeal¹. This was for the reason that the residential use of the site still subsisted, and the allegation was incorrect in that it should refer to '*a material change of use from a residential use to a mixed use comprising....etc*'. It was determined that the notice could not be corrected without causing significant prejudice to the appellant, and the notice was quashed.

¹ Enforcement notice dated 13 February 2018. Appeal decision ref. APP/W3005/C/18/3197807, dated 30 October 2018.

8. There have also been LDC applications in 2014 and 2016, for the storage and dismantling of motor vehicles and caravans and sale of salvaged motor vehicle parts². Both were dismissed at appeal for the reason that Mr Barratt could not demonstrate the use had become lawful before he bought the site³. I understand these applications were made in order to establish commercial use of the site.
9. At the time of my visit, within the enclosed part of the appeal site were a blue Ford tow-truck, a Mercedes 33-seat coach, a larger Kässbohrer 39-seat coach, a red Leyland DAF tip-up truck, a minibus and a white Ford cargo lorry. On the open area to the front of the site and to the side of the house stood a disused former hot-food trailer, a black Ford pick-up truck, a 16-seat VW minibus, and a white Citroën van. I understand the pick-up and the Citroën belong to friends.
10. There is no dispute as to whether there is a mixed commercial and residential use being made of the site. However, the appellant challenges whether various elements identified in the notice should be included as parts of that use.

Preliminary observations

11. Looking at the materials/items stored on the site, I found in the various structures⁴ that there was a jumble of motor parts, mainly empty oil or coolant containers, tools, business equipment such as a computer and printer, lengths of timber, door frames, as well as some domestic items such as a chest of drawers and garden tools, and large quantities of dismantled cardboard boxes. Externally, on the ground were engine parts an old lorry mudguard, two cranes from the back of a tow-truck, as well as general rubbish.
12. The appellant appears to use the site as is convenient, storing vehicles and items in whatever space is available, and including those related to both business and residential uses. Vehicles are reasonably readily identifiable, but I consider other items stored in the various structures or out-of-doors are a more or less random mixture of commercial items and domestic items (of which there were relatively few) and difficult to distinguish. In my view this is an almost graphic illustration there is a mixed use taking place – both commercial and domestic.

The appeal on ground (b)

13. This ground is that the alleged breach has not occurred as a matter of fact. This is one of the grounds known as 'legal' grounds where the burden of proof is on the appellant to show that this is the case on the balance of probabilities.
14. The appellant's argument on this ground relates only to the second element of the five sub-components of the allegation – that is, the storage of commercial vehicles in association with the coach and mini-bus parking and dispatch business. It is claimed several of the vehicles are for Mr Barratt's hobby use and cannot be regarded as part of the commercial use.

² Application refs. V/2014/0651 & V/2016/0096 dated 11 December 2014 & 4 February 2016 respectively.

³ Appeal decision refs. APP/W3005/X/15/3006404 & APP/W3005/X/16/3147789, dated 11 November 2015 & 7 July 2016 respectively.

⁴ The lorry body on the southern boundary, the portable building on the western boundary and the garage with attached container.

15. The appellant lists five vehicles – the Ford cargo lorry, the Ford tow-truck with the crane, the Leyland DAF tip-up lorry, a minibus and a van. The latter is one of the vehicles belonging to a friend. In my opinion all of these are normally regarded as for commercial use. Mr Barratt says the tow-truck and Ford lorry are to pursue his hobby of vehicle repair and maintenance, and in the case of the tow-truck, a restoration project. I was told the tow-truck has been used to remove vehicles from the site, and that he uses the tip-up truck now and then to transport domestic items to his mother's house, apart from a statement to this effect no other evidence was put forward.
16. As the Council said, it is conceivable a householder might choose to keep what are generally commercial vehicles for a hobby use, and that taxing them for personal use – as is the Leyland DAF - could be an indicator of that. However, to show a hobby use it could be expected there would be demonstrable active engagement in a leisure pursuit.
17. The argument in this case is that Mr Barratt is in the process of restoring the Ford tow-truck and uses his Ford cargo lorry to store parts for the tow-truck project. Mr Barratt says he is interested in exhibiting this in classic vehicle shows.
18. From what I saw, none of these vehicles had been properly repaired or maintained for many years, nor had restoration of any significance been carried out, although Mr Barratt claims he has painted the inside of the tow-truck cab. Furthermore, I saw no evidence of any repair/maintenance facilities on the site, including within the garage.
19. In claiming a hobby use the appellant relies heavily upon the two appeal decisions from 2015 and 2016. The Inspector in the first of these describes evidence from several locals to the effect that previous site owner Mr Smith tinkered with cars in his back garden, and this was his hobby. He then comes to the view that someone who take cars apart and mends them is not necessarily operating a business⁵. In the second the Inspector comments that had Mr Smith used the site as a business premises over a continuous 10-year period then more evidence of this would be available, and that the evidence suggested Mr Smith used the site for his own purposes such as occasional sale of scrap but other activities such as car repair as well. Neither of these two examples establish that Mr Barratt or Mr Smith before him pursued a proven hobby use.
20. Given the Ford truck has probably been on site for some 13 years, and the Leyland DAF rarely used in the 10 years it has been there, the likelihood of any vehicles on the site appearing in a classic vehicle show is slim, and at the current rate of progress would be very many years hence. I consider as a matter of fact and degree there is no active engagement in any leisure pursuit, and keeping these vehicles is not realistically a hobby use.
21. Evidence to show Mr Barratt dismantles, mends or repairs cars or other vehicles is very thin indeed, amounting to no more than an assertion. The appearance of the site and his vehicles suggests he does not do this in any recognisable way. Furthermore, he runs his own business from the site, rather than being a tinkerer, and has a considerable number of commercial type vehicles there.

⁵ DL para. 10.

22. The minibus is clearly a commercially used vehicle, and the van also. The fact that the latter belongs to a friend does not change this fact.
23. I conclude on ground (b) that on the balance of probabilities the storage of commercial vehicles in association with the coach and mini-bus parking and dispatch business has occurred as a matter of fact. The ground (b) appeal therefore fails.

The appeal on ground (c)

24. This ground is that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. Again, this is a 'legal' ground, and I will treat it as before.
25. The appellant claims this is the case for the second, third, fourth and fifth of the five elements of the alleged mixed use, that is:
- The storage of commercial vehicles in association with the coach and mini-bus parking and dispatch business.
 - The storage of scrap vehicles and vehicle parts.
 - The siting of 2 portable buildings and 2 lorry bodies used for commercial storage.
 - The creation of a hardstanding/surfacing to facilitate the commercial use.

Storage of commercial vehicles in association with the business

26. There are several vehicles stored on the site that are undoubtedly associated with the coach business - the two coaches, the minibus unused since 2018, and the minibus towards the front of the site. The Ford cargo lorry is highly unlikely to have been associated with the use of the dwellinghouse, and much more likely associated with the business. The appellant says in his Statutory Declaration that he has stored at least one out of commission vehicle on his land from September 2010.
27. Regarding other vehicles kept on the site, as I found above those listed are of commercial nature. I accept that a householder might have several vehicles for family use and might include some sort of utilitarian vehicle to transport large personal items. However, I consider it highly unlikely that this number of commercial-type vehicles would be kept on the site for personal use unconnected with the appellant's commercial vehicle business.
28. Few of these examples of vehicle storage can reasonably be seen as incidental to enjoyment of the dwellinghouse, and in my opinion storage of vehicles in association with the business is taking place. I consider that on the balance of probabilities this element of use requires planning permission, without which it is in breach of planning control.

Scrap vehicles and vehicle parts

29. Turning to the question of storage of scrap vehicles and vehicle parts, the Inspectors in the two LDC appeals acknowledged there could be an element of hobby use, but that was not established in those cases. These applications had been made in an attempt to establish a lawful commercial use of the site, and I have dealt with the claimed hobby use above.

30. However, the appellant says some vehicles are, or have been used as 'donor' vehicles to provide parts for repair of other usable commercial vehicles. It follows from this that donor vehicles are to support the business use and having quite fundamental parts removed would render them as scrapped.
31. I saw vehicles parts, including a gear box and two cranes for a tow-truck, as well as an old lorry mudguard stored either within the structures on the site, or out-of-doors, and such items must be seen as scrap. Further, I saw the Ford cargo lorry used for storage contains many items, much of it rubbish, but also doors from a scrapped minibus and engine parts.
32. I am by no means persuaded all these items are for Mr Barratt's personal use, or that the use should be seen as incidental to use of the dwellinghouse.

Portable buildings and lorry bodies

33. With regard to the siting of 2 portable buildings and 2 lorry bodies used for commercial storage. The appellant argues that it is apparent from the LDC appeal decisions that Mr Barratt had inherited the portable buildings and large lorry body from the previous site owner and retained them in a use incidental to occupation of the dwellinghouse.
34. The Council's plan showing positions of the relevant buildings and lorry bodies indicates the long lorry body now positioned at the southern boundary, but another within the open area of the site immediately to the east of the house. There is no lorry body in that position. There may have been previously, but it is no longer there. While the Ford lorry next to the long lorry body is also used for storage, this is an entire lorry rather than a body.
35. In the light of this I intend to correct the allegation and requirements of the enforcement notice to refer to '*2 portable buildings and 1 lorry body*'. I do not consider any party to be significantly prejudiced by this correction.
36. The portable buildings identified by the Council are the somewhat dilapidated plywood shed on metal supports with a corrugated metal roof that stands against the western site boundary. I will refer to this as '*the shed*'. The second item is a container immediately to the back of the garage, and now attached to it. This attachment is not particularly permanent, with the container simply standing on the ground and is still reasonably described as 'portable'. I will refer to this as '*the container*'.
37. I saw that the shed contains such things as a ladder, tools, a chest of drawers, strimmer, hanging baskets and used electrical cabling as well as large quantities of disordered material. In the container there are such things as empty oil and coolant containers, an old computer and printers, as well as domestic items. Material in both structures was difficult to classify, but this cannot reasonably be described as purely domestic storage, but there are elements that are clearly commercial.
38. The lorry body contains a substantial quantity of used timber, old door frames and masses of cardboard in a disordered jumble. I did not see evidence of commercially used items there. This is essentially a ground (b) matter, which is concealed within the ground (c) appeal but should be duly considered for reasons of fairness. I will therefore vary the enforcement notice to omit the requirement for its removal. This will have the effect of granting planning

permission for keeping the lorry body. I do not consider any party to be significantly prejudiced by this.

39. Mr Barratt did not eventually occupy the house until about 2019, some 11 years after he bought it. The Council question whether there could be activities going on other than using the site as a convenient place to operate the business and store unroadworthy vehicles and vehicle parts. I concur with this view.
40. In general it appears to me that the appellant has made use of the various structures in ways that were convenient to him at any time, even though he did not live in the house until about 11 years after he bought it. Insofar as materials were not simply waste, as a matter of fact and degree this is akin to putting items into commercial storage than a use incidental to enjoyment of the dwellinghouse, and there is clearly a continuing element of commercially related storage in the identified structures that goes beyond *de minimis*. Although Mr Barratt may well have inherited the structures from the former owner, this does not justify their use for commercial storage.

Hardstanding/surfacing

41. As to the creation of hardstanding/surfacing to facilitate the commercial use, in an 18 April 2019 meeting with the Council Mr Barratt had said that gravel had been placed on the grassed area to make more room for the coaches, and this was for business purposes. However, he now claims the hardstanding is permitted development under Class F of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). Class F permits:
'Development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such'.
He also now claims in his Statutory Declaration the hardstanding was intended to store a horse trailer and caravan for personal use, but he no longer has these vehicles.
42. It is accepted the entire site constitutes a single curtilage. It cannot reasonably be said that part of this is partly curtilage for the dwellinghouse to which Class F permitted development rights apply, and partly for commercial use where they do not. If that were the case it would be conceivable to say the entire curtilage could benefit from the Class F rights.
43. The hardstanding may sometimes be used in part for residential parking, although none was evident at my visit. Nevertheless, the purpose is principally for parking/manoeuvring coaches and minibuses. This is a mixed business and residential use, and the hardstanding cannot be seen as incidental to the enjoyment of the dwellinghouse as such, but is for both commercial and residential use, for which planning permission has not been granted.
44. In the case of the fourth and fifth elements of the allegation, the Council put forward a somewhat tortuous argument that in not bringing a ground (b) appeal the appellant effectively admits that those elements were for commercial purposes, and therefore the ground (c) appeal should fail. I do not accept this argument. Ground (c), as set out in the Act, says that 'the matters

stated in the notice (*if they occurred*) do not constitute a breach of planning control' (my italics). In this case those matter did occur. It is not necessary to bring a ground (b) appeal in order to go on to ground (c).

Ground (c) conclusions

45. I do not find the appellant's evidence in the ground (c) appeal to be sufficiently precise or unambiguous to show that on the balance of probabilities, apart from the one remaining lorry body, the elements appealed against are matters that do not require planning permission. There has been a breach of planning control, and the ground (c) appeal therefore fails, except for the one remaining lorry body, where I do not consider there has been a breach of planning control and the ground (c) appeal succeeds. It is not necessary for me to go on to consider the 1 lorry body under any of the other grounds.

The appeal on ground (d)

46. This ground is that the alleged breach is immune from enforcement action as a result of the passage of time. In the case of a material change of use of land the appellant must show that on the balance of probabilities the breach has occurred continuously for a period of 10 or more years before the date the notice was issued on 12 July 2019. This is also a 'legal' ground, which I have treated as before.
47. It is claimed to be the case for the first, third, fourth and fifth of the elements of the alleged mixed use, that is:
- Coach and mini-bus parking and dispatch.
 - The storage of scrap vehicles and vehicle parts
 - The siting of 2 portable buildings and 2 lorry bodies used for commercial storage.
 - The creation of a hard standing/surfacing to facilitate the commercial use.
48. It became clear at the Inquiry – and accepted by the Council - that Mr Barratt has bought the greater part of the appeal site in late 2007, rather than in 2006, as was stated in his PCN response of December 2017⁶. A further piece was bought in 2017 – this latter being roughly triangular in the north-eastern corner of the site. The entire area falls within the red line on the plan attached to the notice, the blue hatched area where removal of hardstanding is required does not include the triangular area, or the rest of the open area to the side of the house.

Coach and mini-bus parking and dispatch.

49. The appellant has put in a very large number of documents to support the dates when he has run his coach, minibus and wedding car operations. Apart from those relating to the wedding cars, these all relate to his address in The Delves, Swanwick – a town about 4 kilometres to the west of Pye Bridge. I appreciate it is reasonably normal practice to have a correspondence address that is not necessarily the operating centre, but equally this does not establish where the operating centre might be.

⁶ PCN ref. UCU/2017/00095 dated 19 October 2017. Response dated 7 November 2017.

50. These documents mainly comprise such items as Public Service Vehicle (PSV) inspection reports; records of road worthiness; vehicle defect reports; daily check reports; test certificates; payments of vehicle tax and tachograph records and relate to a number of different PSVs. None make any significant connection to the operation in Pye Bridge, and dates are by no means continuous from July 2009.
51. In addition to documents relating to vehicles, there is a large number of invoices from the late Derek Sellers, who undertook coach driving for Barratt Coaches and operated under the name '*Driving-4-You*'. Mr Barratt said that Mr Sellers worked primarily from Pye Bridge. The invoices mainly record school trips, and trips for other organisations such as disable people's groups and real ale clubs. The earliest is from November 2007, and there are a further three from September, October and November 2008⁷. These all appear to relate to journeys to and from Swanwick or Swanwick Hall. There are then no invoices until an unnumbered one on 20 March 2010. This last mentions Pye Bridge, but it is not clear whether this relates to the appeal site or to a journey to/from Pye Bridge Rugby Club. There is no indication of the origin of this trip or any others of the many submitted. This March 2010 trip is in any case less than 10 years before issue of the notice. Overall, none of these invoices tell me clearly from where the vehicle(s) operated, and there is virtually no mention of Pye Bridge.
52. Although the address for documents relating to the wedding car business is given as the appeal site, this evidence is from no earlier than 2011. Indeed Mr Barratt's evidence is that this aspect of his business did not start until about that time, and this is corroborated by Mr Vestey - a resident of Alfreton Road - who sold the wedding cars to Mr Barratt at around that time. Furthermore, in cross-examination Mr Barratt said that mini-buses had operated from Swanwick, and wedding cars from Alma Street, Alfreton in parallel with Pye Bridge until 2018. Furthermore he now has a large coach operating from Wirksworth - about 15 kilometres to the west of Pye Bridge.
53. I also note that he has licences to run coaches and mini-buses from sites in other towns in the area - Belper, Somercoates, Middleton and Ripley - but says these are no more than nominated, and not necessarily in use. The Council argued that his operating licence for Pye Bridge issued by the Office of the Transport Commissioner was not granted until January 2010, suggesting the business could not have been run from there. However, subsequent correspondence confirms that the application was made on 14 July 2008, that issue of the licence was delayed, but that it actually came into force 28 days after the application date. It follows that Mr Barratt could lawfully run coaches and minibuses from Pye Bridge from mid-August 2008, about a year before the critical date. Nevertheless, as Mr Barratt said, having an operating licence did not necessarily mean coaches were operated from there. This does not provide reliable evidence that the operations took place from Pye Bridge.
54. I appreciate that advertisements were placed for coach and mini-bus hire in the BT Phonebook in February 2007 and subsequent years, but these all relate to the Swanwick address, and no mention is made of Pye Bridge. Advertisements were also placed for '*Jubilee Wedding Cars and Motor*' from 2011, invoiced to the Pye Road address, which chimes with the evidence on

⁷ Appendix 21 to Mr Barratt's supplementary statutory declaration. Invoice nos. 44, 16, 19 and 21.

when the wedding cars were acquired. Mr Barratt says these included coaches and mini-buses then stored on the appeal site, but that is by no means explicit, and no examples are put in to show the advertisements themselves.

55. Mr Barratt says he has operated coaches and minibuses from Pye Bridge since November 2007, his friend Mr Frost, and his assistant driver the late Mr Sellers say that they have been familiar with the operation since that time. However, there is virtually no documentary evidence to show this is the case. Mr Barratt has operated, and still operates, from other sites including Middleton, Wirksworth and Swanwick, as well as keeping at least one large bus in Wirksworth. Furthermore, he still probably keeps vehicles on some of his available licenced sites. This casts some doubt on where and at what times he has kept and run his PSVs from Pye Bridge, and there is virtually nothing to substantiate use of the Pye Bridge site prior to July 2009.
56. Looking at aerial photographs, the Council's overflight image of September 2009 shows the southern part of the site – where Mr Smith's collection of vehicle and parts had been – to be essentially clear apart for 3 vehicles, possibly minibuses, parked near the southern boundary.
57. To the west of that lorry body are containers of some kind, and to the south is hardstanding on which are several vehicles. These are not identifiable as to type. There are also quantities of what may be motor tyres and other stored motor parts to the eastern side of this area. I do not consider this or other information put in provides substantial evidence as to 10 years of continuous operation from Pye Bridge.

Storage of scrap vehicles and parts

58. Turning to the storage of scrap vehicles and parts, the appellant claims that some storage structures were inherited from the previous owner when he bought the site in 2007, when he had cleared away the scrap. He has repaired vehicles, and parts have been stripped from other vehicles on site which are predominantly for his personal use undertaken on an irregular basis. In his view, it follows that the site has been used for this purpose since before 2007.
59. Looking at aerial photographs, the Google Earth view of 2004 shows a grassed area to the back of the house, where is the garage, possibly a lorry body or container just to the north-west, and a few vehicles parked next to the house. The grassed area corresponds closely with the blue hatched area of hardstanding on the enforcement notice plan. Another Google Earth aerial image from April 2007 shows a similar general arrangement of the site, but with fewer vehicles and less in the way of stored parts. The grassed area is separated from the southern hardstanding by a transversely placed lorry body, with what is probably a container to its west. There are many fewer vehicles and less stored material.
60. In the Council's overflight aerial image of 12 September 2009 – about two months after the critical date for immunity – the garage and lorry body to the northern end remain in place. As does the transverse lorry body, which now has a container to its east, and a vehicle covered by a tarpaulin to its west – claimed to be the blue Ford tow-truck. Otherwise the picture is significantly

changed in that the southern hardstanding is clear apart from the three vehicles the appellant says are minibuses. There is no sign of stored parts or materials. The Google Earth image from December 2010 is broadly similar.

61. The overflight image of 2 June 2013 shows a significantly different picture from those in 2009 and 2010. The grassed area is now all hardstanding, and the formerly transverse lorry body is at the southern end of the site. There is a portable building to the western side of the site, a lorry to the north of the lorry body as well as several vehicles – including the blue Ford tow-truck. There is what is probably a red lorry or lorry body to the south of the garage, and a large bus with three rooflights centrally placed to the west of that – possibly the 50-seater bus Mr Barratt refers to. There are numerous motor tyres and what maybe other motor parts strewn on the ground amongst the vehicles at the southern end, and unidentifiable materials to the west of the bus.
62. In subsequent images from 2016, 2019 and 2021 more vehicles appear, there is a significant increase in storage of items, another bus appears (with two rooflights), and the large, red-roofed vehicle or lorry body is no longer there.
63. Overall, this imagery suggests there was a significant change at some point before September 2009, with very few vehicles and much less storage than in 2007, leaving the entire site relatively clear and the northern area still part of the back garden to the house. It appears the appeal site was largely cleared by September 2009, and the three vehicles at the southern part of the site in the 2009 image had not been there in October 2007, close to the time Mr Barratt bought the site.
64. This change may well have been initiated around or soon after Mr Barratt bought the site in 2007, but the site remained in that state until at least September 2009. The northern hardstanding must have been laid at some time between a December 2010 image and that from 2013. It appears to me there was a significant break between when he bought the site and cleared away the scrap and the build-up of vehicles of various kinds and quantities of parts and waste.
65. As of September 2009 there was virtually nothing in the way of vehicles and/or parts that were inherited from the previous owner. Subsequently, other vehicles appear for no readily apparent purpose, as well as more or less unidentifiable collections of parts or materials heaped in the open. On my visit I saw these now comprise such things as motor tyres, empty oil or coolant containers, two cranes for a tow-truck, an old gearbox, and general rubbish.
66. In my view, the pattern of use becomes progressively more intense and disorganised after September 2009, with scrap vehicles and parts stored somewhat randomly across the site, even more-so after the hardstanding was laid. The Council do not pursue their contention that there was a break in the use in around 2013, but I am hardly surprised that objections to the development bringing it to the Council's attention did not occur until about that time, when the additional hardstanding had been laid, and more vehicles and stored parts appeared, and general activity may have increased as well.
67. Overall, as a matter of fact and degree I consider the character of the site changed significantly between September 2009, about 2 months after the enforcement notice was issued – when there was limited storage of vehicles at

the southern end of the site and 2013 when the hardstanding area had been extended, and other vehicles, parts and waste were kept there – some of which do not then move for several years.

The siting of portable buildings and lorry bodies for commercial storage.

68. The 2007 aerial shows the large lorry body placed transversely across the middle of the site with what may be two containers or portable buildings to the west of it. In the 2009 aerial image the large lorry body is in the same place with what is probably a container to the east of it. By 2013 the lorry body has been moved to the southern end of the site, and the shed is on the western boundary in its current position. The container attached to the garage appears in aerial photographs at some time between 2013 and 2016.
69. As noted above I am omitting the reference to 2 lorry bodies and substituting 1 lorry body. Furthermore, I am allowing the ground (c) appeal in respect of the remaining lorry body.
70. I understand from responses to the 2014 PCN that there were two 'box-cabins' (as the appellant calls them) – on site at that time, as well as the lorry body, the portable building introduced, and a 7.5-ton Ford 'historic' lorry.
71. As noted above, the shed, the container and the 'historic' lorry are used to store mixed commercial items – including engine parts and old oil and coolant drums, as well as domestic items and general waste.
72. It is likely the remaining container has been there since at least that time - over 10 years prior to issue of the notice. However, although there is now an element of commercial storage use there is no substantial evidence to show this has been the case for the requisite period
73. The 'historic' lorry does not appear in the 2009 aerial but is in its current position by 2013. As previously noted, the shed has only been on site since 2011/12, and the shed – which is not substantially fixed to the ground and is in my opinion not a building - until 2011/12.

The hard standing/surfacing to facilitate commercial use.

74. The appellant argues that if not regarded as permitted development, the hardstanding should be considered under the 4-year rule rather than the 10-year rule on the basis that it is operational development.
75. However, the hardstanding is integral to the bus operation – enabling vehicles to access the site and be parked, cleaned and manoeuvre there. Without this facility it would be difficult to run the operation. The hardstanding is very much part and parcel of the operation as a whole and has enabled the change to a mixed use to happen. It is well-established law that in such a case the 4-year rule set out in s.171B(1) of the Act may not apply, and the s.171B(3) 10-year rule is more appropriate. I consider this to be the case here.
76. The appellant claims removal of the hardstanding shown cross-hatched blue on the plan attached to the notice would remove existing rights and contravenes the *Mansi* principle that an enforcement notice should not preclude an existing

lawful use. However, I have found on ground (c) that the placing of the hardstanding is not lawful, and the *Mansi* principle should not be applied.

Conclusion on ground (d)

Overall, I consider it has not been shown that on the balance of probabilities the uses for coach and mini-bus parking and dispatch; two portable buildings (the shed and the container) used for commercial storage; storage of scrap vehicles and vehicle parts, and the creation of a hard standing/surfacing to facilitate the commercial use have subsisted continuously for a period of at least 10 years before issue of the notice. The ground (d) appeal therefore fails.

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

77. This ground is that planning permission should be granted for all or part of the matters stated in the enforcement notice.
78. I note the appellant has limited his ground (a) appeal to the element of coach and mini-bus parking and dispatch.
79. The appeal site lies within the Green Belt. Paragraph 137 of the National appeal to Planning Policy Framework (NPPF) – ‘Protecting Green Belt land’ sets out the great importance the Government attaches to Green Belts; that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping the land permanently open, and that the essential characteristics of Green Belts are their openness and permanence.
80. NPPF paragraphs 147 and 148 state that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
81. NPPF paragraph 149 states that the construction of new buildings in the Green Belt should be regarded as inappropriate but sets out a number of exceptions including buildings for agriculture and forestry. These exceptions are subject to the riders that they should not have a greater impact upon openness of the Green Belt than the existing development.
82. NPPF paragraph 150 sets out other forms of development that are not inappropriate in the Green Belt, provided they preserve openness and do not conflict with the purposes of including land within it. These include material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds), and local transport infrastructure which can demonstrate a requirement for a Green Belt location.
83. I consider the main issues to be:
 - Whether the alleged material change of use is appropriate development within the Green Belt, and its effect upon Green Belt interests in the light of prevailing national and local planning policy.
 - The effect of the alleged material change of use on the character and appearance of the appeal site and the area in the vicinity.
 - The effect of the alleged material change of use on living conditions for occupants of nearby dwellings in terms of noise and general disturbance.

- Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
84. The alleged change to a mixed use of the site does not fall within any of the categories of development that are not inappropriate set out in NPPF paragraph 149. Although the appellant argues this could be regarded as limited infilling in villages in 149(e), I note paragraph 145 relates to construction of *new buildings* in the Green Belt, and not to changes of use.
85. Furthermore Policy EV1 of the Ashfield Local Plan Review of 2002 (the Local Plan), seeks to protect Green Belt interests. It was adopted long before publication of the NPPF, and it is argued is not entirely consistent with NPPF advice. Notably, paragraph 149(e) says the construction of new buildings is inappropriate in the Green Belt subject to the exception of limited infilling in villages. Notably, Policy EV1(iv) may permit buildings for infilling in various villages, including Jubilee, as long as there is no harm to village character. However supporting text advises that whereas infill development generally relates to residential development it may also apply to infill for various purposes including commercial.
86. Notwithstanding this criticism, the policy overall relates to *new buildings* - as does NPPF paragraph 149 - and supporting text cannot be regarded as modifying that, particularly to the extent of including material changes of use. I do not consider this inconsistency affects the thrust of Policy EV1 in any significant way or is contrary to advice set out in the NPPF.
87. Regarding the need for a Green Belt location for transport infrastructure, it is apparent that Mr Barratt runs - and has run - his operation from several sites in the area other than Pye Bridge, some of which - such as Alfreton and Wirksworth - are not within the Green Belt. Indeed, Mr Barratt says he is unable to keep his large Wirksworth based coach on the Pye Bridge site, which is not suitable for it. Nothing of significance was put forward to suggest a requirement for a Green Belt location, and I consider none has been demonstrated.
88. The site is prominent in the settlement, readily seen from the higher vantage points along Alfreton Road, particularly on approach from the east, and from directly opposite the site, as well as from the track along its boundary. The land to the south and east of the site has been restored from its former state as a large open-cast mine and is now open fields going down to the Erewash valley. On the eastern side of the access track a small open area of grass and trees has been set aside for nature conservation purposes. Before Mr Barratt's ownership the site behind the house was in large part the open grassed back garden, with a hard-surfaced area behind that was distinctly separated.
89. The present appearance of the appeal site is dominated by the large coaches, the minibus, a lorry and other smaller commercial type vehicles - some in a poor state of maintenance - as well as the rather dilapidated garage and portable container, and ill-maintained fencing. These features are crammed onto the site in a disordered way. The part of the site immediately to the east of the house and adjacent to the road has been partly excavated and there are several vehicles and the former hot-food trailer parked there.

90. The long back gardens of houses to the west of the appeal site have a considerable number of sheds, shacks and other structures, some of considerable size. I could not get a good view of these as they are largely concealed by the back and side fences. Those gardens I could see had a mixture of lawns, and areas of hardstanding. One had a caravan parked there. While some of the back gardens have numerous structures, these are not of great height and little visible above the fences. To the fronts I saw that many of these houses have hard-surfaced parking areas.
91. Given the conspicuous nature of the appeal site, crammed with vehicles, structures and disused items I consider the development causes very significant harm to openness. Furthermore, the activity on the site resulting from buses and minibuses coming and going with the attendant noise and exhaust fumes exacerbates any sense of openness, particularly in contrast with the calm atmosphere of the countryside to south and east and other back gardens.
92. The appellant sought to establish a baseline against which to judge the effect on openness in terms of the harmful nature of back garden structures and activities and the presence of hardstandings on the frontages. While some aspects of the structures may be unattractive, they are by no means prominent, and no account is taken of the proximity to countryside. In any case even if the presence of other structures and hardstanding has an effect on openness, this cannot justify the further serious effect the state of the appeal site has on openness.
93. As regards the change of use within the Green Belt, this development is in no way akin to a use for outdoor sport or recreation, or to a cemetery or burial ground. Furthermore, it does not preserve openness. The site is not actually part of the countryside, but given its proximity to, and visibility from the immediately adjacent countryside and open areas the development fails to safeguard the countryside from encroachment.
94. I conclude on the first main issue that the development is inappropriate in the Green Belt, causes very significant harm to openness and does not assist in safeguarding the countryside from encroachment. The development does not accord with the development plan, notably in terms of saved Policy EV1 of the Ashfield Local Plan Review of 2002 (the Local Plan), which seeks to protect Green Belt interests.
95. Pye Bridge comprises a linear arrangement of predominantly residential development along both sides of this stretch of Alfreton Road, consisting mainly of modest terraces and semi-detached dwellings with long back gardens. I saw one shop but otherwise virtually no commercial activity. There is open countryside at either end of the settlement, and to the rear of the houses to both north and south. As a whole it has the character of a former but restored mining village, but now set in rural surroundings.
96. As noted above, the appeal site is conspicuous from Alfreton Road, which is elevated above the part of the site to the rear and east of no. 249. The gap between nos. 245 and 249 opens up this view, and the rear part of the site is particularly noticeable against the backdrop of trees and open fields.
97. In my opinion the presence of the various vehicles and dilapidated structures is an alien intrusion into this mainly residential scene with its rural backdrop.

Furthermore, the commercial bus and minibus operation has introduced a form of activity that is also out of place amidst what must ordinarily be the relatively low-key domestic activity of private cars coming and going. I consider the development causes very significant harm to the character and appearance of the settlement. The development does not accord with the development plan, particularly with respect to Local Plan Policy ST1 which includes aims to prevent development that causes harm to the character, quality, amenity or safety of the environment. Furthermore, Policy NP 9 of the adopted Selston Neighbourhood Plan 2017-2032 (SNP), which seeks to support local businesses includes aims to ensure the scale, design and form of any business development should be in keeping with its surroundings, and Policy NP 2, which seeks to ensure development respects local character.

98. Turning to the third main issue, the site access lane and gates are adjacent to no. 145 Alfretton Road. Its situation at the bend in the road gives windows to the front of the house a full view and well within earshot of the access at close range, as have houses on the opposite side of the road. Buses are in their nature large and noisy vehicles, mostly with diesel engines.
99. I consider running of bus and minibus services from the site introduces an uncalled for noisy activity, particularly in such close proximity to the dwelling to the east of the lane and others on the opposite side of the road. The lane rises towards the road and the exit from the lane to the west rises further to the brow of a relatively steep hill. This means that vehicles leaving will be in a low gear on leaving the lane and continue in such a gear, particularly when going westward. Engines will be at higher revs and produce greater noise than in normal running mode.
100. The appellant argued that there could be similar numbers of vehicle movements generated by vehicles from other houses to the west of the site. Five or six of these have a usable vehicular back access. However, most of the vehicles are likely to be saloon cars producing a significantly lower noise level than a diesel bus or minibus. In any case, this is not a reason to increase the number of movements and exacerbate any harm caused.
101. Buses and minibuses coming and going along the road and lane – the latter which clearly has little in the way of traffic – will in my view be visually disturbing for nearby residents – and again be an undesirable increase over any existing domestic traffic. Particularly so for bus/minibus movements at night when headlights will probably create a significant degree of nuisance.
102. I note that concerns have been raised on possible contamination caused by potential fuel spills and vehicle washing on the site. I have no specific evidence on this matter, but consider it may cause contamination problems, and adds a modicum of weight to my views on possible harm to residential amenity.
103. I conclude on the third main issue that the alleged material change of use causes significant harm to living conditions for occupants of nearby dwellings in terms of noise and general disturbance. The development does not accord with the development plan, particularly in relation to the aims of Local Plan Policy ST1 to prevent harm in terms of amenity.
104. Turning now to other considerations it is argued that the bus operation satisfies demand for further bus services in the Selston/Pye Bridge area, where Mr Barratt is the only operative. Also it provides sustainable transport options

for local residents including those who are disabled, school children, and local organisations.

105. I appreciate that the operation may provide a useful transport service to those in the locality of Selston, Pye Bridge and elsewhere. Furthermore, trips can and have been available for local people including those who are disabled, school children, and organisations of various kinds.
106. I accept that bus services are a more sustainable form of transport than private vehicles, almost by definition. However, location in Pye Bridge does not make a bus service any more sustainable. In fact, possibly rather less so than a location closer to larger centres of population where there are more schools and other groups needing transport, including charities and leisure and disabled groups. In that context Mr Barratt's larger bus, kept and operated from Wirksworth appears the more sustainable option.
107. As to its contribution to the local economy, again it may be helpful in the very limited area of Selston and Pye Bridge and provide a modicum of employment there. However, again the operation from Wirksworth and possibly Mr Barratt's other available operational sites appear better placed, and the pool of potential assistant drivers is also widened. In terms of the social aspect of sustainability, Mr Barratt's service is clearly of benefit to the community at large. However, I note that many of the trips – possibly the great majority – have been to schools in the wider area including those in Alferton, Ilkston, Belper and Swanwick. These cover a wide catchment, by no means local to Selston/Pye Bridge.
108. As I note above, bus services are more sustainable than private cars almost by definition, and more environment friendly. But the wide area over which this service is available, and its availability from other locations does not make Pye Bridge any better an option, and as I have said, possibly less so.
109. The Inquiry considered conditions that might be imposed if I were to allow the ground (a) appeal and grant planning permission. Mr Barratt's basic proposal was that he could accept any conditions that would enable him to continue running the bus service from the appeal site. The concept of '*volumetric exchange*' was introduced. As I understood it this means that reduction in the overall volume of vehicles and structures on the site would have the effect of mitigating the impact on openness and make this Green Belt location acceptable.
110. I accept that a reduction in the number of vehicles, limitation on their dimensions and removal of structures may improve the appearance of this site. However, a key part of the use is the operation of the bus service itself. I have found this causes very significant harm to the character of the area, and to residential amenity. These aspects would be little – or not at all – reduced by such measures, except for the limited benefit of preventing power jet washing on the site.
111. Hours of operation could be controlled and may be helpful in limiting harm to residential amenity. However, the exception proposed for Saturday night operation on 30 nights per year to allow operation until late in the evening would do little to reduce such harm. Again, such conditions would not address harm to the character and appearance of the area.

112. The SNP contains objectives to promote better public transport links between the villages and the towns beyond, and Aspiration Policy AP 2 seeks to improve bus services by working with the County Council and local bus operators to improve bus services. Furthermore, one of the promoted projects of the Plan is to continue to work with 'Our Centre' to maintain and extend Community Transport provision in the parish, for which the Parish Council will use various funds. 'Our Centre' is a local organisation that provides pre-booked local transport for groups.
113. I appreciate that Mr Barratt's operation provides a useful and apparently well-used form of community transport, serving a range of schools and local groups. However, he does not provide public transport services or regular links to settlements in the area. As far as I know 'Our Centre' is an autonomous organisation structured to serve the wider area. Further, Barratt's Coaches provides its services from other centres than Pye Bridge and can probably continue to do so. There is no necessity for the service to the wider area to operate from a Green Belt site.
114. As to SNP aims of Policy NP 9 to support small-scale home based businesses, this cannot be regarded as a small-scale business and I have found it causes harm to residential amenity.
115. Looking at other considerations as a whole, I accept that provision of community bus services in the area is clearly desirable, and bus transport is environment friendly compared with use of private cars. However, location in Pye Bridge and the Green Belt is by no means necessary for Mr Barratt, and one of his other operation bases may well be more suitable, and equally accessible for schools and local groups. While planning conditions may reduce visual impact to an extent, openness would remain reduced, and mitigation of residential amenity would be limited.
116. Taken as a whole these other considerations are not enough to outweigh the very considerable harm to Green Belt and other interests caused by this development.
117. As I note previously there is no ground (a) appeal against other allegations of the notice. However, in my view these other elements are integral to the overall change from residential use to the mixed residential/commercial use. Had a ground (a) appeal been made against these it would probably have been dismissed.
118. Overall, I find there is significant harm to the openness of the Green Belt, and that the development does not safeguard the countryside from encroachment. Furthermore, there is significant harm to the character and appearance of the appeal site and area in its vicinity, and to living conditions for occupants of nearby dwellings in terms of noise and general disturbance. I do not find that the harm to the Green Belt by reason of inappropriateness, and other harm, are clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify this development. The appeal on ground (a) therefore fails.

Other matters

119. The appellant argues that the notice is unclear in that it does not specify the vehicles to be removed from the site by - for instance - their registration

numbers. Should the appeal be dismissed he could not be certain what he needed to do. This could lead to him to fail to comply with the notice and be open to criminal prosecution.

120. If vehicles were to be explicitly defined, and then removed it would mean he could then bring other vehicles onto the site used for the same purposes against which the notice would not bite. It is possible for me to amend the notice in this way, but it would then be necessary to add a clause to say that other (undefined) vehicles for commercial purposes could not subsequently be brought onto the site. This would have the effect of continuing the claimed uncertainty, and so on.
121. It is the appellant who will have the best knowledge of what is happening on a site, and a Council cannot reasonably monitor in any detail the goings-on on a piece of land. It is for the appellant to make a judgment as to whether he is bringing vehicles onto the site to be used commercially, and possibly opening himself to criminal proceedings. Overall, I do not consider it necessary, or helpful to list specific vehicles in the enforcement notice.

The appeal on ground (f)

122. This ground is that the requirements of the notice are excessive, and that lesser steps would overcome the Council's objections. Regarding coach and minibus despatch, the imposition of conditions is suggested as a lesser step. This is a ground (a) matter, and I have reviewed it under that ground.
123. Regarding storage of commercial vehicles in association with the coach and minibus parking and despatch business it is argued that an argument is again raised of lack of clarity due to specific vehicles not being listed. This is not a lesser step, and I have dealt with this in other matters.
124. As to storage of scrap vehicles and parts it is argued this is not a material change of use. However, the overall change of use to a *sui generis* mixed use is not disputed overall, and I have dealt with this matter under ground (c).
125. On the question of portable buildings and lorry bodies, the appellant again claims these are not part of any commercial use. This is not a lesser step, and I have determined that they are, at least in part, under the appeals (c) and (d).
126. Regarding the hardstanding, it is argued that the appellant has permitted development rights under the GPDO to lay hardstanding or put down further hardstanding. This matter has been dealt with under ground (c).
127. Overall, I consider the alleged material change of use has taken place, cessation of the mixed use and removal of the various elements is necessary to remedy the breach of planning control, and no lesser steps are put forward that would achieve this. The appeal on ground (f) therefore fails.

The appeal on ground (g)

128. The appellant suggests that the compliance period be extended from 4 months to 6 months to give adequate time to deal with the requirements. The Council say they believe 4 months to be adequate but have no substantial objection to this extension.

129. I consider the appellant would have a great deal of work to do in the 4 month period, which he would probably need to do in parallel with running his bus operation. In this context it would be reasonable to extend the period to 6 months. I shall vary the notice accordingly.

Conclusions

130. For the reasons given above I conclude that the appeal should not succeed except to the limited extent under ground (g), and that a reasonable period for compliance would be 6 months. I shall vary the enforcement notice accordingly, with the other variation and the correction referred to above, prior to upholding it as varied and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sasha Blackmore	of Counsel, instructed by Neil Arbon, Associate Director, Caulmert Ltd.
She called:	
Christopher Frost	Friend of the appellant.
Neil Barratt	The appellant.
Neil Arbon BA(Hons) DipTP MRTPI	Chartered Planning Consultant Associate Director, Caulmert Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Heather Sargeant	of Counsel, instructed by Ashfield District Council Legal Services.
She called:	
Bob Woollard BSc(Hons) MA MRTPI (Adopting Sara Coleman's evidence).	Director of Planning and Design Group (UK) Ltd.
Mick Morley BSc(Hons) PGDip MRTPI (Adopting Hannah Wood's evidence)	Development Team Manager Ashfield District Council.

DOCUMENTS

- 1 Opening for the Council
- 2 Introductory evidence of Mr Woollard and Mr Morley (2 docs.)
- 3 Opening for the appellant.
- 4 List of appendices to Mr Arbon's proof of evidence.
- 5 Agreed Statement of Common Ground.
- 6 Photograph of Mr Barratt's site in Swanwick.
- 7 Summary of Ms Wood's proof of evidence.
- 8 Schedule of proposed planning conditions (2 docs.)