
Appeal Decision

Site visit made on 30 November 2021

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 22 June 2022

Appeal Ref: APP/W1145/C/21/3277745

Land at Huntshaw Barton, Huntshaw, Torrington, Devon EX38 7HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Edward Staines, of Staines Trailers Ltd against an enforcement notice issued by Torridge District Council.
 - The enforcement notice, numbered E/19/0235/UND, was issued on 28 May 2021.
 - The breach of planning control as alleged in the notice is (1) Without planning permission and within the last four years, unauthorised operational development consisting of engineering works to level the Land and the laying of stone and hard core on the area shown hatched in blue on the attached Location Plan; and (2) Without planning permission and within the last ten years, the unauthorised change of use of the land from agricultural to the mixed use of Use Class B2 (General Industrial) and Use Class B8 (Storage and Distribution) on the area shown hatched in blue on the attached Location Plan.
 - The requirements of the notice are: (i) Cease the use of the Land for the unauthorised mixed use of Use Class B2 (General Industrial) and Use Class B8 (Storage and Distribution); (ii) Remove all machinery, equipment and other items from the Land; and (iii) Remove the stone and hard core (including any subbase and membrane) from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The planning reference number on the Notice differs from that on the Council's Questionnaire. I have used that from the Notice.

The appeal on ground (a) and the deemed application

Reasons

3. An appeal made under Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
4. The Main Issues to be addressed are the effects of the development on:

- The character and appearance of the area;
 - The setting of listed buildings;
 - The living conditions of the occupants of neighbouring dwellings, by way of noise generation; and
 - Highway safety.
5. It should be noted that the Appellant acknowledges that the B2, 'General Industrial', use¹ has occurred on the land that is the subject of the Notice. He has, however, set out that his Ground (a) appeal does not seek permission for this use. He solely seeks permission for the B8, 'Storage or Distribution', use² that is undertaken there. The Ground (a) has been assessed on this basis.
6. The appeal site is situated at the western end of the small settlement of Huntshaw Barton, which lies within rolling open countryside. Access to the site is gained from the public road that runs through the village. This gives on to an extensive yard within which there are a range of buildings, most notable of which is a large steel shed. The yard was mostly open at the time of my visit, with parking and storage occurring in places across it.
7. The evidence suggests that Staines Trailers, which operates from this site, is a successful business. It commenced in the 1990s and is involved in the construction of steel framed buildings and trailers. I am told that it employs some 60 people and is looking to recruit further staff.
8. At my site visit, I was told that a decision on an application for a certificate of lawful proposed development³ was imminent, and that this would define the curtilage for the business. I waited for the decision to be made, to be fair to all parties, and this was actually made in January 2022. I was sent a copy of the certificate issued by the Council and a copy of the Officer's report relating to it.
9. The certificate was issued in respect of permitted development rights for the erection of an extension to a industrial/warehouse building, using the permitted development rights set out in Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the GPDO'). Of interest to this appeal, the Officer report stated that "the curtilage area identified in red on the submitted Location Plan is considered to be accurate". This Location Plan was attached to the issued certificate. The lawfulness of the main site is an important material consideration.
10. The land that is the subject of the certificate lies outside the area that the Council is enforcing against and, therefore, the Notice has no bearing on the activities carried out there.
11. For its most part, the curtilage that the Council has found to be lawful is well defined on the ground by boundary features. To the west and north it abuts agricultural land; to the south, open land that appeared to be used in association with a dwelling known as 'Pound House Barn'; and to the east by a dwelling known as 'Orchard Meadow'. Beyond these two dwellings are a number of other residential properties, some of which are listed, including the Grade II* listed Church of St Mary Magdalene. Its northern boundary is less clear. The Location Plan for the certificate shows this to run from a point a little

¹ As defined in the Town and Country (Use Classes) Order 1987 (as amended)

² Ibid

³ Council reference 1/0944/2020/CPL, made under S192 of the 1990 Act

to the north of the site's common boundary with 'Orchard Meadow' in a north-westerly direction until it meets a hedge. Given its planning status, this area can be used for purposes related to the primary use of the land, including storage.

12. A track runs from the northeast corner of the lawful site in a roughly eastward direction to serve land to the north of the listed Church of St Mary Magdalene. The track and land are outside the Appellant company's ownership.
13. The Notice relates to land that runs eastward from the lawful land's northernmost point for some distance, before running back to meet the track.
14. A considerable amount of material has been imported and tipped onto the land covered by the Notice to create a raised, flat hardstanding. Given the fall of the land away from Huntshaw Barton, at its greatest, the difference in levels between the hardstanding and the land on which it has been created is about 2m.
15. When I visited the land, the hardstanding was for the most part being used for the storage of a large amount of machinery and equipment that appeared to be associated with the business. Some of this was stacked and piled quite high. In addition, other items that seemed not to be associated with the business, such as a boat, were stored there.
16. That the hardstanding was created to benefit a thriving rural business which had lost access to a nearby storage facility is an important material consideration.

Character and Appearance

17. Although not covered by any formal designation, the landscape in which the site lies is very attractive. Its topography is of large rolling hills separated by deep wooded valleys. Small settlements and isolated farmsteads are scattered across the area, linked by a network of minor roads and lanes. The area's main land use is agriculture.
18. Huntshaw Barton lies on a spur of land, running east to west. The land falls steeply from this spur to small streams located to its north and south. As a result, public views of the land from the south are largely restricted to those from the Church of St Mary Magdalene. I address these below, in my assessment of the effects of the development on heritage assets.
19. The hardstanding is, however, seen in public views from the north. My attention was drawn to prospective vantage points on lanes in the area, as well as from the small collection of dwellings at Guscott. In the former, the tower of the Church of St Mary Magdalene provided a reference point for locating Huntshaw Barton in the landscape. However, as a consequence of the distances involved allied to intervening hedges and trees, the site was not easily seen in those views. The effects of the development on the landscape when seen from them were minimal.
20. However, the effect was quite different when the hardstanding was seen from Guscott. From here, the tipped land was readily discernible, and the plant and equipment stored thereon was not only clearly seen, but due to its variety and colour, was attention grabbing. The distinctly linear form of the hardstanding,

and the material stored thereon, running across the hillside is at odds with the rural scene, and harmful to it.

21. In addition to those vantage points, a public footpath runs from the Church of St Mary Magdalene northwards, immediately adjacent to the east end of the hardstanding. I walked some of its length prior to my site visit, and was able to appreciate what the effects of the development would be from further along its length. There is a lane on the western side of the lawful site that runs northwards alongside the appeal site. However, as the map showing public rights of way supplied by the Council did not include this, I did not walk it. However, if it is a public right of way, I was able to appreciate that views to the site would be gained from it. When seen from close-by, one can appreciate how the form and length of the hardstanding itself, forms a stark feature cutting across the contours of the land. Its impact is exacerbated by the plant and equipment stored on it.
22. I find that the hardstanding and its storage use have a significantly harmful effect on the quality of its landscape setting. This harm would not be sufficiently mitigated through landscaping. The linear nature of the raised hardstanding running across the hillside would nonetheless still be apparent, as would the plant, equipment and materials stored on it. Items stored there would be increasingly visible in the winter when the landscaping would be thinner or without leaf. In reaching this finding, I have taken account of the benefits that providing landscaping on the western side of the hardstanding might have on the area where the parking and storage of vehicles and equipment can occur lawfully.
23. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (Adopted October 2018) ('LP') sets out the spatial strategy for the rural area. In respect of the countryside beyond villages and rural settlements, in which the appeal site lies, support from the policy is limited to development, amongst other things, to that which is enabled to meet economic and social needs and that which is necessarily restricted to a countryside location. However, paragraph 4.10 of its supporting text makes it clear that this support is for appropriately located and scaled growth, and it is dependent on landscape quality not being compromised. Much the same approach to balancing economic benefits with, amongst other things, landscape protection is given in the support for small scale economic developments given by LP Policy DM14. LP Policy ST11 supports economic development in rural areas, as long as there is no conflict with other LP policies.
24. LP Policy DM15 supports farm diversification. However, this is not relevant to this proposal which I see as an extension to an industrial site, rather than a diversification of agricultural land.
25. In respect of these policies, the benefits of the development to a business that employs some 60 people carries considerable weight in the planning balance. However, the harm that I have identified is significant and I find that it outweighs the benefits of the scheme. As such, the development is contrary to the terms of LP Policies ST07 and DM14, as well as LP Policy ST14 that, similarly, seeks to protect local landscape harm and LP Policy ST11, given the conflict with the aforementioned policies. This harm would not be overcome through the use of conditions.

Setting of Listed Buildings

Setting of the Church of St Mary Magdalene

26. In its Notice and statement, the Council refers to the effects of the development on the Grade II* listed Church of St Mary Magdalene and the Grade II listed Barton Farmhouse and associated barns. These buildings lie to the south of the site.
27. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) act 1990 (LBCA) sets out that in considering whether to grant planning permission for development which affects a listed building or its setting, the Secretary of State shall have special regard to the desirability of preserving its setting.
28. The Government's Planning Practice Guidance⁴ describes the setting of a listed building as "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."
29. The Church of St Mary Magdalene, which dates from the C14, is small; consisting of a nave and chancel finished in ashlar, a stone porch, and has a large stone tower at its west end. It stands in a small, treed churchyard on the north side of the road through the settlement.
30. Historically, the church would have played a vital religious and social role in the life of its parish. Given its position on the top of the spur of land, it and its tower, in particular, is a landmark that is seen from quite some distance away. In the manner of many rural churches, its physical and cultural attributes give it a wide-ranging setting.
31. Given its listed status, when considering the impacts of the hardstanding, very significant weight must be given to the conservation of its setting.
32. Only a small part of the hardstanding itself is visible from the church and its yard. However, I was able to clearly see various items stored on the hardstanding from these vantage points. Those more or less directly to the north of the church were particularly visible from the north end of the churchyard. The items stored further west on the hardstanding were little seen from the church and its yard due to the change in levels, intervening hedges, trees and buildings.
33. The storage undertaken to the north of the church had a jarring effect on what was otherwise a largely bucolic view from the churchyard, causing significant harm to its setting.
34. Notwithstanding trees in its yard, the church and its tower are prominent features when seen from Guscott, to the north. From here, a large portion of the hardstanding lies directly in front of the church. It and the items stored on it draw the eye and cause significant harm to the setting of the church.
35. There is an extant planning permission for the development of what is termed the piggery site, which lies between the church and the hardstanding. Outline planning permission was granted in 2000 for the erection of a quite large shed

⁴ Paragraph 013 of Planning Practice Guidance ID: 18a-013-20190723

for a workshop/office/store on the piggery site, with the reserved matters subsequently approved at appeal in 2008⁵. I was not given a copy of the appeal decision. However, as the Council does not dispute the quote provided by the Appellant, I take this to be accurate. The decision, however, was made under a quite different regime of heritage protection than is the case today and should not necessarily be seen as a reason to allow this appeal.

36. There is no dispute that the development was commenced and there remains an extant permission on which further work might be undertaken at any time. This building would lie between the church and the hardstanding and would greatly affect the former's setting. In this respect, I take account of the ancillary outside storage, as well as the parking and manoeuvring of large and small vehicles that would result from the development taking place.
37. As the piggery site is not in the control of the Appellant, he has no control over whether or when the development might be completed. As such, it is not a true fallback position, but is a material consideration that I have to take into account in my assessment of the effect on the setting of the listed church.
38. Some 14 years have passed since the approval of the reserved matters, and little work on the scheme has been undertaken. Furthermore, I have been given no evidence as to if and when work would be likely to recommence, and the building finished. If it had been built, or if it were to be for that matter, it would undoubtedly mitigate some of the harmful effects caused by the storage of equipment and materials on the hardstanding when seen from the church. However, in views from the north, that storage would be in front of the building on the piggery site. The church tower would still be visible behind that building and the equipment and materials on the hardstanding would be seen within the setting of the church. Whilst the effect would not be as harmful as the case is presently, the setting of the church would still be harmed.
39. The Appellant has made it clear in his statement that he does not seek planning permission for the B2 aspect of the development referred to in the Notice. As there would be few vehicle movements related to the storage use he seeks permission for, which of itself would be inherently quiet, there would be no harm to the tranquility of the setting of this rural church.
40. I was able to see that prior to the construction of the hardstanding, the land on which it has been formed had a positive effect on the significance of the listed church – especially when seen from the north. For the reasons above, this has been harmed by the development. This harm is, in the words of paragraph 201 of the National Planning Policy Framework ('the Framework'), less than substantial. Paragraph 202 of the Framework sets out that this harm should be weighed against the public benefits of the proposal.
41. That the hardstanding serves a successful local business that employs some 60 people, and is undoubtedly important to the business, is a public benefit that carries considerable weight. However, the very significant weight that I must give to the conservation of the setting of the listed church outweighs these public benefits.
42. For the above reasons, I find that the development causes harm to the setting of the Grade II* listed Church of St Mary Magdalene as it adversely affects the

⁵ PINS Reference APP/W1145/A/07/2050304

ability to appreciate its significance. Therefore, the development is contrary to the terms of LP Policies ST15, DM07 and DM14 that, amongst other things, seeks to protect and respect northern Devon's historic environment and the setting of heritage assets in line with Government policy in the Framework.

Setting of Barton Farmhouse

43. Barton Farmhouse is a two-storey property that is constructed from cob and stone that has been rendered; it dates from the C17. It stands to the west of the church, sharing an access with a number of dwellings that would appear to have been formed from former agricultural buildings. It appears that these were within its farmyard and, as a matter of fact and degree, I find that they are 'curtilage listed'.
44. The setting of the Farmhouse, due to its common use and working relationship with the barns and the land beyond them, would have been fairly extensive. By reason of the change of use of the barns to dwellings set in individual curtilages, the setting of the Farmhouse has diminished in extent and significance.
45. Notwithstanding this, I was able to see items stored on the hardstanding from immediately outside Barton Farmhouse and its former outbuildings. As such, I find that the development is within the visual setting of the Farmhouse individually and the group as a whole.
46. Even with the changes to the barns that I have referred to, there is still a duty under S66(1) to preserve the setting of Barton Farmhouse, both individually and as part of a group with the former barns. The equipment and materials stored on the land projected above the boundary of the converted barns' curtilages and had a jarring impact when seen from them and Barton Farmhouse. This had an adverse effect on the settings of these buildings.
47. Again, this harm is less than substantial. As I said above, the benefits of the development, which is undoubtedly important to a business that employs a significant number of people, is a public benefit that carries considerable weight. Given my findings on the reduced significance of Barton Farmhouse and its former outbuildings, I find here that the public benefits outweigh the harm.
48. As such, I find that, in respect of the settings of these buildings, the development passes the test in S66(1) and accords with the terms of LP Policies ST15, DM07 and DM14.

Living Conditions

49. The Council's reasoning on this issue in the Notice was based on the B2 use to which the hardstanding had been briefly put. In the light of the Appellant appealing only against the B8 use, the Council reconsulted its Environmental Protection Officer. Its response was that there would be no objection to the development, subject to conditions regarding the timing of the use of the hardstanding and that no power tools were used. This was based on its view that use of the hardstanding during "noise sensitive periods" would be likely to cause disturbance to residents. Had I been approving the scheme, such conditions would have been reasonable and necessary, given the proximity of the hardstanding to dwellings.

50. The evidence before me shows that the adverse effects of the B2 use in close proximity to dwellings would cause significant harm. However, in the light of the positions taken by both parties, I find that the effects of the B8 use would not and I do not dismiss the Ground (a) for this reason.

Highway safety

51. The heart of this issue is to what extent, if at all, the development that is the subject of the Notice would, in the words of paragraph 111⁶ of the Framework, "result in an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".
52. The Council refers to the three consultation responses made by the Local Highway Authority (HA) with regards to application 1/0399/2019/FUL (the 2019 application) in its submissions. However, what was proposed there does not appear to be the same development as that referred to in the Notice; it sought permission for 'Proposed extension to shed and formalisation of B2 (General Industrial) use (amended description, revised plans, transport and noise reports)', which is quite different from the creation of a hardstanding for storage for that business.
53. The situation at the time of the application was greatly different than that which is the case now. This is encapsulated in the HA response, which states "I believe it is crucial to determine what, if any, changes there would be between the extant planning use for the development site compared to the reasonable likely increase for the formalising of the B2 (General Industrial) use, which is what is proposed". Whilst that was the case at that time, the Council has subsequently issued a certificate of lawfulness for the B2/B8 use of the main part of the Staines Trailers' site.
54. The question is, therefore, would the use of the hardstanding lead to an increase in traffic movements that would lead to the results set out in paragraph 111. Given the description of development in the 2019 application, and that the Council considered that the use of the site was as an agricultural contractor's business, there is little doubt that the establishment of the B2 use of the site was at the heart of the HA's comments.
55. The Council has not brought forward substantive evidence to show that the creation of a hardstanding for storage purposes would result in increased traffic generation that would result in paragraph 111 harm. It needed to, for the Notice to be upheld on this issue. I drove the roads in the area that were referred to in submissions, including those running east from Huntshaw Barton to the B3232. Whilst I found the HA's description of the roads to be largely accurate, this does not provide evidence of harm arising from the B8 use. I have taken the comments made by third parties on this matter into account, including the photographs they have submitted. With regards to the latter, as I have little evidence of their context nor that the vehicles shown were specifically related to the B8 use of the land, I can only give them limited weight.
56. The Appellant states that as the hardstanding provides space for long vehicles to turn and therefore enter and leave the site in forward gear, this would provide a highway benefit. However, I have not been given evidence to show

⁶ Paragraph 109 of the February 2019 version of the Framework at the time that the evidence was submitted

that such manoeuvring cannot be undertaken on the existing large yard area. Therefore, I cannot find that this is a benefit.

57. On the basis of what has been put before me and what I saw at my site visit, I find that the use of the hardstanding for storage purposes ancillary to the lawful use of the Staines Trailers' site would not lead to an unacceptable risk to highway safety, nor that impacts on the road network would be severe. In the light of this, I find that the development accords with the terms of LP Policy DM05 that relates to highway safety and the terms of the Framework.

Fall-Back Position

58. The Appellant puts forward a fall-back position that he could create a hardstanding in the field under the terms of Class B of Part 6 of the GPDO. This hardstanding, he says, could be used for the storage of equipment related to the use of the agricultural holding. Save for being told that it is about 4.5ha in area, I have no information regarding the holding.
59. PD rights in Class B(e) allow for the provision of a hard surface on an agricultural unit. I have no information as to whether the land is actually an agricultural unit, in the manner required in Class B. In addition, no evidence of the scale and design of the hardstanding has been put before me. Therefore, I cannot assess whether the external appearance of the premises would be materially affected, a requirement of B.1.(b), nor could I be sure that what was proposed was "reasonably necessary" for the purposes of agriculture on the unit – if it is one.
60. I therefore give very little weight to this fall-back position.

Alternative Scheme

61. The Appellant has submitted an alternative scheme that he says might be assessed under either this ground or Ground (f). The scheme that has been put forward is part of the matters referred to in the Notice and, given the Ground(a) appeal, should be considered. This consideration should, again, take into account the public benefits that support for the business would bring.
62. This scheme entails the cessation of the unauthorised use of a sizeable area of the land at the eastern end of the land covered by the Notice. In essence, this is to the north of the church and the piggery site. The levels on this land would be restored, with part of it being seeded in meadow grass and part being returned to arable use.
63. The boundary for the retained hardstanding would run north-westwards from a point a little way north of the north-eastern end of the gardens to the converted barns to meet the east-west line of the existing hardstanding. The area of hardstanding to the south of this revised boundary would remain and would be used for B8 purposes.
64. On the north side of the northern boundary and a small length alongside the revised northeast boundary it is proposed to undertake woodland planting. This would appear to involve the sloping flank of the hardstanding and part of the field below. The plans propose a hedge with trees to be planted at the top of the bank; with more trees, set out in a schedule of species and to include heavy standards 3-3.5m high for immediate screening, lower down.

65. The drawing shows a range of agricultural vehicles parked on this revised hardstanding and the immediately adjacent lawful yard area. Given that the agricultural land only runs to 4.5ha, it is most unlikely that there would be a need for these vehicles, which, for example, includes 7 tractors. I have, therefore, taken this as being indicative of the amount of equipment that might be stored on the land.
66. The only section through the land shown on the drawing is at its eastern end, away from the area that would be used for storage. As such, the drawing does not provide evidence of how far the effects of storing equipment and vehicles on the land would be mitigated by the proposed landscaping. On the basis of what I saw, my view is that, notwithstanding that the planting scheme would include standards and some evergreen species, the proposed landscaping would not adequately mitigate the ill-effects on the landscape when viewed from across the valley.
67. The ill-effects would particularly arise from the use of that part of the proposed area of hardstanding away from the land that benefits from the certificate of lawfulness. Vehicles and equipment stored on the western part of the proposed hardstanding would be seen against the backdrop of similar items on the lawful land and their effects would be mitigated.
68. Whilst the revised scheme reduces the ill-effects on the qualities of the landscape, when judged against what has been constructed, it would still result in significant harm and would be contrary to the policies that I refer to, above. The scheme makes the assessment between the harm I identify and the public benefits far more finely balanced. However, even this eastwards extension of the commercial storage use would cause harm that would outweigh the benefits.
69. Removing the hardstanding and the storage use from land to the north of the listed church, and restoring land levels in that area would overcome the harm to the setting of the church that I have identified. The use of the land to the north of the listed buildings around, and including, Barton Farmhouse would remain. Again, this would be less than substantial harm and, again, I find that the public benefits would outweigh the harm.
70. Given my findings on the effects on living conditions and highway safety from the larger scheme, it is axiomatic that I again find that there would be no harm arising in their regard.

Other Matters

71. I have received correspondence in support of the Council's position. Some of the points they raise are addressed in my comments on the main issues. However, they also raise points that are not included in the Council's reasons for issuing the notice. One of these is the effect on outlook from neighbouring dwellings. I viewed the site from them and was able to see equipment stored there. My view accords with that of the Council, this was not sufficiently harmful to refuse planning permission. With regards to noise generation, that would have been an issue had the Appellant been pursuing a case for the B2 use. I have not been given sufficient evidence to show that the reported noise has been generated by the B8 use. However, as I have said, this is a matter that might have been controlled through condition if the appeal had been allowed. With regards to light pollution from floodlights, I did not see any

floodlights on the land that is the subject of the Notice. It appears that this light pollution originates from the lawful land and is not a matter for this appeal.

Conclusion on Ground (a)

72. I have found that the development, as built, causes significant harm to the character and appearance of the area and the setting of the Grade II* Church of St Mary Magdalene. Whilst I found that the scheme caused no harm to the setting of other listed buildings, the living conditions of the occupiers of neighbouring dwellings and does not cause highway safety issues, neither these nor the public benefits outweigh the harm that I have identified. The alternative scheme put forward overcame the harm to the setting of the listed church. The decision on that was far more finely balanced, but I find that the harm to the character and appearance of the landscape is not outweighed by the benefits of the scheme.

73. For the reasons set out above, the Ground(a) appeal is dismissed.

Ground (f)

74. The alternative scheme that was put forward has been addressed under Ground (a). I have also been asked to consider whether there is any alternative which would achieve the purposes of the Notice with less cost and disruption to the Appellant. I can see no obvious alternative and, were there one, this would require the availability of accurate drawings on which to base a well-reasoned decision.

75. The Ground (f) appeal fails.

Roy Curnow

Inspector