



Appeal Decisions

Hearing Held on 13 September 2022

Site visit made on 13 September 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal A: APP/E2001/C/21/3285707

Appeal B: APP/E2001/C/21/3285918

Appeal C: APP/E2001/C/21/3285919

Appeal D: APP/E2001/C/21/3285920

Appeal E: APP/E2001/C/21/3285921

Marsh Close, Gowdall Lane, Snaith, East Riding of Yorkshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Jim Stewart of RAM Tubulars Scotland Limited against an enforcement notice issued by East Riding of Yorkshire Council.
- Appeals B, C, D and E are made by Mr D Kelbie of D Kelbie Machinery Repairs Ltd, Mr O R Walker, Mr J A Walker and Mr D Kelbie against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 22 September 2021.
- The breach of planning control as alleged in the notice is material change of use of land to a mixed use of residential, storage and distribution, vehicle maintenance, adaptation and repair and retail.
- The requirements of the notice are:
 - 1) Cease the residential use of the land.
 - 2) Remove all domestic goods and chattels that facilitate residential use of the Land, including the bath, beds, settee, washing machine and tumble drier.
 - 3) The site shall not be opened or operated other than between:
07:30 - 18:00 Monday to Friday; and
07:30 - 13:00 on Saturdays.
There shall be no use on Sundays or Bank Holidays.
 - 4) Vehicle and goods deliveries and / or collections shall not take place:
before 07:30 hours or after 18:00 hours on Monday to Friday;
before 07:30 hours or after 13:00 hours on Saturday;
nor at any time on Sundays or Public Holidays.
 - 5) The rating level of noise from the installation and / or all plant associated with the site collectively shall not exceed the background noise level by more than 5 dB(A) at any time. Noise levels shall be taken at the boundary of the nearest noise sensitive premises. Measurements and assessment shall be made according to BS 4142:2014.
 - 6) Outside storage of plant and vehicles will be limited to 3 metres in height, with the exception of individual stored vehicles which may themselves be larger than this.
 - 7) There shall be no double stacking of vehicles.
 - 8) Foul water from the site shall only be discharged:
 - a) to the main foul sewer network; or
 - b) via a septic tank or package/sewage treatment plant to an appropriate soak-away or outfall.
 - 9) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hard-standing shall be

passed through trapped gullies and an oil interceptor designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor.

- 10) Facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.
 - 11) There shall be no vehicle or plant machinery repairs, maintenance and/or alterations carried out other than inside the existing building (identified as "Building 'A'" on the attached plan) and the building doors must be kept closed when any vehicle repairs are being undertaken.
 - 12) Along the length of the green line shown on the attached landscaping plan a one metre wide strip of land must be cleared of hardstanding and cultivated ready for hedgerow planting, incorporating top soil to ensure a suitable growing medium for nursery stock.
 - 13) A hedgerow comprised of common hawthorn (*Crataegus monogyna*) size 45- 60 cm whips must be planted in a staggered double row along the length of the area marked with the green line. The whips should be planted at a rate for 6-8 whips per linear metre, in accordance with best practice for hedgerow planting.
 - 14) All hedgerow plants must be individually protected with a staked spiral rabbit guard and the guard must remain in place for 3 years after planting with any guards becoming dislodged or removed being replaced.
 - 15) The hedgerow must be weeded according to best practice to ensure a one metre weed free area along the length of the hedgerow for the first 3 years after planting.
 - 16) Within the entirety of the blue area shown on the attached landscaping plan planting pits must be created at 5 metre spacings. The pits must each be excavated to a 1m x 1m x 1m area, rubble and hardcore must be removed from the pit, soil cultivated and topsoil added into the tree planting pit so as to create a suitable environment for new tree planting and establishment.
 - 17) Within the blue area shown on the attached landscaping plan, native standard trees (size 12 – 14 cm stem diameter) must be planted within the planting pits created at step (17) in accordance with BS 8545, including suitable staking for the size of the tree.
 - 18) A one metre weed free area must be maintained around each tree for the first 3 years after planting.
 - 19) For the first 5 years after planting any tree or hedgerow plant which dies or fails to establish must be replaced like for like with new live stock the following planting season.
- The periods for compliance with the requirements are:
 Steps 1 to 2 (inclusive) – 6 months;
 Steps 3 to 11 (inclusive) – 1 month;
 Step 12 and Step 16 – 2 months;
 Step 13, 14 and 17 – within the first tree planting season (November to March) after the notice comes into effect;
 Step 15 and 18 - prior to 1st May the first season after planting and continuing for 3 years thereafter; and
 Step 19 - the first planting season following the planting or the replacement planting as the case may be.
 - Appeal A is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act

1990 as amended. Appeals C, D and E are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as varied is upheld as set out in the Formal Decision.

Appeal Site and Surroundings

1. The appeal site is a roughly rectangular-shaped parcel of land which is mainly covered in hard surfacing. The approved use is a haulage yard with workshop and office building. It is situated within flood zone 3 and there are residential properties in close proximity on the opposite side of Gowdall Lane. It is situated outside the defined settlement limits of Snaith according to the Local Plan.
2. At the time the Enforcement Notice was served the property was being run for commercial business purposes with the occupant also living in a caravan and in the main building on site. That occupant no longer has an interest in the land, the residential use has ceased and the current owners no longer wish to pursue residential use. Nonetheless, as part of the alleged breach of planning control in the Notice, I am required to consider the whole of the mixed use as part of this appeal, including residential.

Appeal A on Ground (b)

3. The ground of appeal is that the breach of control alleged in the enforcement notice had not occurred. In order to succeed on this ground it would need to be demonstrated that the material change of use of the land to a mixed use of residential, storage and distribution, vehicle maintenance, adaptation and repair and retail had not occurred at the time the Notice was served.
4. In support of his appeal on ground (b) the appellant merely states that the Council has not provided any evidence that the matters have occurred. Therefore, the appellant has not shown that the matter had not occurred and the appeal on ground (b) must fail.

Appeal A on Ground (c)

5. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The Council argues that each of the activities the subject of the Notice constitute development under the meaning of s55 of the Act, for which planning permission is required. Since there is no planning permission for such activities a breach must have occurred.
6. It is my understanding that planning permission references 2/0224/PA and 2/950/79 granted permission for a haulage contractor's depot with a workshop and office building. Irrespective of whether the approved use is a B8 storage and distribution or sui generis mixed use, it is clear to me that the mixed use comprising residential, storage and distribution, vehicle maintenance, adaptation and repair and retail is a materially different use from that which is approved. Consequently, since no planning permission is in place for such development, the matter alleged constitutes an unlawful breach of planning control. Appeal A on ground (c) must fail.

Appeal B on ground (a)

7. The ground of appeal is that planning permission should be granted. It is agreed between the main parties that, subject to conditions, the mixed use of the site for storage and distribution, vehicle maintenance, adaptation and repair, retail and use of the caravan as a security/welfare office is acceptable. It is also agreed that the unauthorised residential use has ceased and there is no longer an intention to resume residential use of the site. Insofar as the residential use is concerned, the enforcement has been complied with.
8. Therefore, given the agreement on the above matters, I will conditionally grant planning permission for part of the matter the subject of the enforcement notice; namely a material change of use of the land to a mixed use of storage and distribution, vehicle maintenance, adaptation and repair and retail.
9. The Council's latest list of suggested conditions are set out in paragraph 8 of the Statement on behalf of the Local Planning Authority. I have considered these in light of Framework and relevant guidance. There is no dispute between the main parties with respect to suggested conditions 3, 4, 8, 9 and 15 which relate to restrictions to operating hours and vehicle movements, restricting plant machinery repairs, maintenance and alterations to a specific part of the site, noise level restrictions and development to be carried out in accordance with the Enforcement Notice Plan.
10. In addition, the main parties agreed that suggested condition 1 goes beyond the alleged breach of planning control and requirements of the Notice and is therefore superfluous to requirements and should be deleted. Condition 1 as set out below is required in order to ensure the permanent cessation of the residential use.
11. Policy ENV6 of the East Riding Local Plan Strategy Document Adopted April 2016 (the LP) relates to managing environmental hazards. The appellant disputes the requirement for a flood risk assessment and mitigation condition because the site has been used for purposes which include the storage of vehicles. It is accepted that, being in Flood Zone 3, the site is at risk at flooding from the nearby River Aire. The river is more than 400 metres from the site boundary and the land between them is relatively flat. The river is not protected by flood banks and therefore in these circumstances there is little risk of a sudden flood risk event, but instead slow encroachment may occur instead. It is my understanding that the appellant is linked to the Environment Agency's flood alert system and would have advance warnings of rising river levels and time to evacuate the premises, if necessary.
12. However, in the absence of a more detailed flood risk assessment, I am concerned that the premises is at potential risk of flooding and consequently, measures should be in place to mitigate such potential risk. I understand that mitigation measures should be proportionate to that risk but in the absence of more detailed evidence I do not know whether or not the existing arrangements are adequate to manage risk or whether more detailed provisions are required on site. As such, a suitably worded condition requiring a flood risk assessment and suitable mitigation measures is required in accordance with Policy ENV6 of the LP and the Framework.

13. It is my understanding that foul water from the caravan and toilets in the main on-site building drains to the mains sewer adjacent to the highway. In addition, waste water from the kitchen and toilets in the offices discharge to a portaloo which is emptied by a commercial contractor every 2 weeks. The appellant contends that these arrangements operate satisfactorily, but I am concerned that in the absence of further detailed evidence, the portaloo arrangements may be liable to fail. As such foul water should be discharged to the main foul sewer network and a condition with wording to that effect should be added in accordance with Policy ENV6 of the LP.
14. In addition, in order to ensure satisfactory drainage of water from the site and to ensure that no contamination of local watercourses occurs, in accordance with Policy ENV6 of the LP, a detailed scheme of trapped gullies and an oil interceptor should be installed on the site. I recognise that the site has consent to operate as a haulage yard, but the activities taking place on site, including vehicle maintenance may result in surface contamination which should be mitigated before being discharged into the local drainage system.
15. In the interests of protecting the character and appearance of the area a condition is necessary to ensure only limited double stacking of vehicles. The Council has suggested 2 conditions in this regard; one limiting outside storage of plant and vehicles to 3 metres in height and another prohibiting double stacking of vehicles when stored on the site. However, the appellant has suggested an alternative condition which restricts double stacking of vehicles on the appeal site other than on trailers awaiting delivery for export and that the number of trailers so stacked shall not exceed 6 at any time. The Council agrees that this amended condition is sufficient to mitigate potential harm.
16. In order to minimise any potential detrimental effects on the natural environment through the risk of pollution a condition relating to the storage of oils, fuels and chemicals on impervious surfaces surrounded by impervious bund walls is required. Further details of volumes, filling points, vents, gauges and sight glasses should also be provided for in accordance with Policy ENV1 of the LP.
17. In the interests of providing a well-designed landscaping scheme for the site and to protect the local environment for local residents in accordance with Policy ENV1 of the LP, a detailed landscaping scheme should be implemented, incorporating cultivation, planting, protection and weeding requirements. Such landscaping should be carried out within the first planting season following approval and any plants, which within a period of five years, die, are removed, or become seriously damaged or diseased, shall be replaced.
18. I understand that security is an important consideration for the appellant and a lighting scheme may be required in order to protect the premises in the future. There is no evidence of complaints from local residents with respect to lighting, but in order to comply with Policies ENV1 and S4 of the LP, any new lighting should be controlled in the interests of the living conditions of local residents and in order to protect the character and appearance of the area.
19. Finally, for the purposes of clarification I shall attach a plans condition confirming the extent of this planning permission.

Appeals A, B, C, D and E on ground (f)

20. Ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since in this case the notice requires residential use to cease, removal of all domestic goods and chattels that facilitate residential use the purpose with respect to the residential use is to remedy the breach. However, with respect to other parts of the mixed use on the site there are a range of measures required. Therefore, with respect to other elements of the mixed use the purpose is remedy injury to amenity.
21. As a consequence of my decision on ground (a) to grant planning permission for part of the development and the effect that such a decision requirements the requirements of the Notice will be overridden other than requirements 1 and 2 which relate specifically to the residential part of the unauthorised mixed use.
22. There is no argument that requirement 1 to cease the residential use of the land should remain as that is the principal part of the alleged breach of planning control which is attacked by the Notice. With regard to requirement 2 to remove all domestic goods and chattels that facilitate the residential use of the land, the appellant has suggested that in order to clarify this particular requirement, it would be suitable to add the words "in the building" after the words "the Land". The effect of such variation would be to clarify that the items to be removed are all items that were present within the main building on site. Since the Council has no objection to the retention of the caravan on the site, so long as it is not used for residential purposes, this variation is appropriate in this case. To that limited extent the appeals on ground (f) succeed.

Appeals A, B, C and D on ground (g)

23. The ground of appeal is that the time given to comply with the requirements is too short. With respect to requirements 1 and 2, the timescale given is six months. The six months given would be sufficient to cease the residential use of the land and remove all domestic goods and chattels that facilitate from the residential use of the Land. Therefore, the appeals on ground (g) fail.

Conclusion

24. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with a variation and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as is inconsistent with the permission which I will grant by virtue of s180 of the Act. In other words, subject to the variation, the requirements of the Notice will be overridden by the grant of planning permission.

Formal Decision

25. It is directed that the enforcement notice be varied by:

- The addition of the words "in the building" after "the Land," in Step 2 of section 5 of the Notice 'What you are required to do'. .
26. Subject to this variation, the appeal is allowed insofar as it relates to the material change of use of the land to a mixed use of storage and distribution, vehicle maintenance, adaptation and repair and retail and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended subject to the following conditions:
1. There shall be no residential use of any building, caravan or structure within the site. The caravan shall be used as a security office and welfare facilities only and shall, at no time, be used as overnight accommodation or a person's main or sole place of residence.
 2. The site shall not be open or operated other than between the following hours:

07:30 – 18:00 Monday to Friday

07:30 – 13:00 Saturday

At no time on Sundays and Bank/Public Holidays.
 3. Vehicle and goods deliveries and/or collections shall not take place outside of the following hours:

07:30 – 18:00 Monday to Friday

07:30 – 13:00 Saturday

At no time on Sundays and Bank/Public Holidays.
 4. Within one month of the date of this decision, a site specific flood risk assessment shall be submitted to and approved in writing by the Local Planning Authority. These details shall include mitigation measures appropriate to the flood risk within the site. The approved scheme shall be implemented within three months of approval and shall be retained throughout the lifetime of the development.
 5. Foul water from the site shall only be discharged into the main foul sewer network.
 6. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstanding shall be passed through trapped gullies and an oil interceptor designed and constructed to have capacity compatible with the site being drained. Roof water shall not pass through the interceptor.
 7. There shall be no vehicle or plant machinery repairs, maintenance and/or alterations carried out other than inside the existing building (identified as "Building 'A'" on Plan 1 attached hereto) and the building doors must be kept closed when any vehicle repairs are being undertaken. Any vehicle that is too large to enter the building shall have maintenance carried out to the north of Building A. Any change to the buildings to include the installation of externally mounted/vented plant

or equipment including vents or flues shall be with the prior written consent of the Local Planning Authority.

8. The rating level of noise from the maintenance/repair, installation and / or all plant associated with the site collectively shall not exceed the background noise level by more than 5 dB(A) at any time. Noise levels shall be taken at the boundary of the nearest noise sensitive premises. Measurements and assessment shall be made according to BS 4142:2014.
9. There shall be no double stacking of vehicles stored on the site other than on trailers awaiting delivery for export and that the number of trailers so stacked shall not exceed 6 at any one time without the prior written agreement of the local planning authority.
10. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.
11. Within the first planting season following approval, the following works shall be undertaken and completed:
 - A one metre wide strip of land, along the length of the green line shown on the Landscaping Plan attached hereto, cleared of hardstanding and cultivated ready for hedgerow planting, incorporating top soil to ensure a suitable growing medium for nursery stock;
 - A hedgerow comprised of common hawthorn (*Crataegus monogyna*) size 45-60 cm whips planted in a staggered double row along the length of the area marked with the green line on the Enforcement Notice. The whips should be planted at a rate for 6-8 whips per linear metre, in accordance with best practice for hedgerow planting;
 - All hedgerow plants must be individually protected with a staked spiral rabbit guard or rabbit-proof fencing. The implemented measure shall remain in place for 3 years after planting with any guards becoming dislodged or removed being replaced.
 - The hedgerow must be weeded according to best practice to ensure a one metre weed free area along the length of the hedgerow for the first 3 years after planting.

These works shall be carried out as approved within the first planting season following approval in writing by the Local Planning Authority. Any

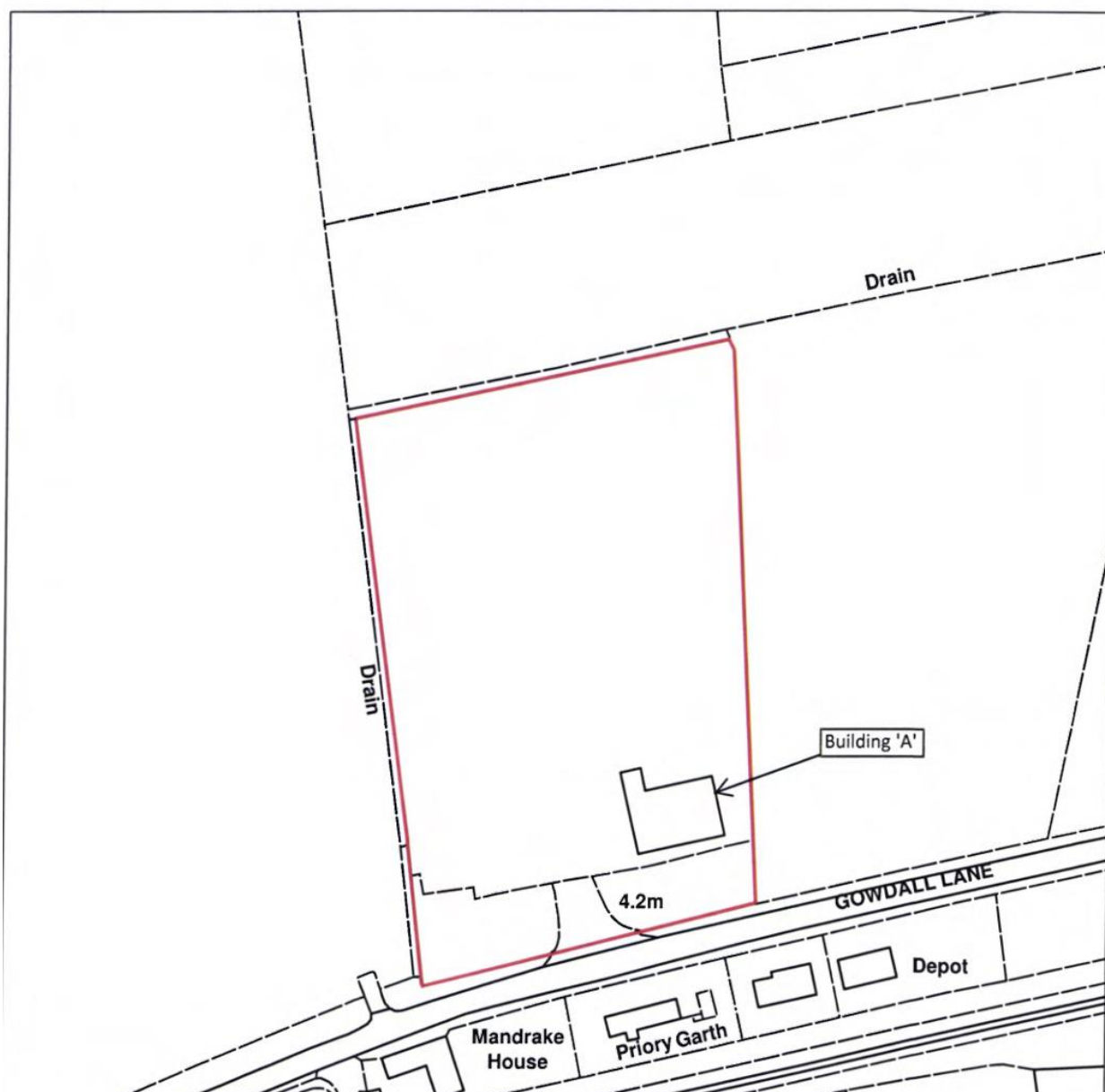
trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

12. No new lighting shall be installed on the site until an external lighting scheme has been submitted to and approved in writing by the LPA. The lighting scheme shall specify the design and location of all external permanent lighting units and the measures to be taken to minimise glare and light spillage from the site. The scheme shall be in accordance with the Institute of Lighting Engineers Guidance Notes For The Reduction Of Obtrusive Light (GN 01/20). Any change shall be with the prior written consent of the local planning authority.
13. The development hereby permitted shall be carried out in accordance with Plan 1 dated 10 November 2020 attached to this decision.
27. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the residential use and planning permission is refused in respect of the residential use on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR

PLAN 1



LANDSCAPING PLAN



Scale 1:1,250

m 0 5 10 20 30 40 50 60 70 80

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Organisation	ERYC
Department	Planning
Comments	
Date	10 November 2020
PSMA Number	100023383

APPEARANCES

FOR THE APPELLANT:

Jennifer Hubbard	Planning Consultant
George Sanderson	
Walker Brothers	

FOR THE LOCAL PLANNING AUTHORITY:

Hazel Walsh	Planning Enforcement Team Leader
Robert Naismith	Principal Planning Enforcement Officer
Callum Rowley	Principal Planning Officer