



Appeal Decisions

Site visit made on 4 October 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Appeal A Ref: APP/X2410/C/22/3290220

The New Barn, Rempstone Road, Wymeswold, Leicestershire LE12 6UE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Trevor Jones (True Plant Hire Ltd.) against an enforcement notice issued by Charnwood Borough Council.
 - The notice, numbered E/20/0576, was issued on 25 November 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of Land from Electrical Engineering (E(g)) to mixed use of Electrical engineering (E(g)) and Plant Hire and sales business (Sui Generis) and associated works.
 - The requirements of the notice are to:
 - I) Cease the use of the Land for the sale and hire of plant machinery and remove all plant machinery associated with the said unauthorised use from the Land. Restore the Land to its condition before the change of use took place, by taking the following steps as they are considered by the Council to be integral to the unauthorised change of use:
 - II) Remove from the area of the Land edged orange on the attached plan all surfacing and restore the ground to its original condition, as shown on the attached aerial photo dated 2017.
 - III) Remove from the Land the access barrier and security gate that divides the parking area and the storage area as shown highlighted red on the attached plan.
 - IV) Remove from the Land the 2x storage containers, portal frame and portaloo currently located to the rear of the buildings marked A and B on the attached plan.
 - V) Remove from the Land the storage container located in the courtyard marked C on the attached plan between the two buildings.
 - VI) Remove from the land the CCTV cameras and lighting not affixed to the existing buildings (A & B) and any structure erected to support them.
 - VII) Remove the wash down facilities for the maintenance of the plant machinery, including any tanking installed in the ground, and any other associated facilities from the Land.
 - VIII) Remove the concrete wall (shown on picture attached dated December 2020) located in the approximate location shown highlighted purple on the attached plan, from the agricultural field and regrade the Land back to its original state.
 - IX) Remove the bund from the Land, located in the approximate area edged green on the attached plan.
 - X) Remove the new access to the agricultural field, and replant the removed hedging using native species, highlighted in the approximate area in yellow on the attached plan.
 - XI) Remove the close boarded fencing on the boundaries of the agricultural field from the Land.
 - XII) Remove any materials from remedial works from the Land, leaving the Land in a clean and tidy condition.
 - The period for compliance with the requirements is: three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f), (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/X2410/W/21/3283830

The New Barn, Rempstone Road, Wymeswold LE12 6UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Trevor Jones (True Plant Hire Ltd.) against the decision of Charnwood Borough Council.
 - The application Ref P/21/0284/2, dated 8 February 2021, was refused by notice dated 18 June 2021.
 - The development proposed is The change of use of the buildings and land from a horticultural use to a plant hire business, with associated external storage, wash bay area and the provision of 3 storage containers, the change of use of part of the adjacent agricultural field for external storage purposes, with associated aggregate storage bays, site levelling, porous surfacing, bunding and the provision of fencing to the entire site.
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Decisions

1. Appeal A:

It is directed that the enforcement notice is corrected by:

Replacing the text in Section 3 (The matters which appear to constitute the breach of planning control) with the following:

Without planning permission, the material change of use of Land from Electrical Engineering (E(g)) and agriculture to a mixed use of Electrical engineering (E(g)) and Plant Hire and sales business (Sui Generis) and associated works.

It is directed that the enforcement notice is varied by:

(a) the deletion of the words 'native species' from Section 5X) and their replacement with 'species present in the existing hedgerow'

(b) the deletion of the words 'leaving the Land in a clean and tidy condition' from Section 5XII)

(c) the deletion of three months and the substitution of nine months as the period for compliance.

Subject to the correction and variations, the enforcement notice is upheld.

2. Appeal B:

The appeal is dismissed.

The Enforcement Notice

3. The enforcement notice describes the breach of planning control as being the material change of use of Land from Electrical Engineering (E(g)) to mixed use of Electrical engineering (E(g)) and Plant Hire and sales business (Sui Generis) and associated works. However, the submissions made by both main parties refer to a change of use of part of an adjacent agricultural field as having taken place. I have referred back to the parties who have provided further background on the site history and who both offer the view that the notice could be corrected without causing them injustice. Therefore, I conclude that I can correct the notice under S176(1) of The Act to include reference to agriculture without causing injustice to either party.
4. Section 5X) of the enforcement notice includes the requirement that the removed hedging is replanted using native species. However, there is no

information before me as to what these species might be and there could potentially be ambiguity in what may or may not be considered to be native. Therefore, in the interests of providing greater clarity I shall vary the requirement to refer instead to 'species present in the existing hedgerow'.

5. Section 5XII) of the notice requires the leaving of the land in a clean and tidy condition, however this requirement is vague and goes beyond the purpose of the notice. I shall therefore remove reference to this from the notice.
6. I am satisfied that both of these variations can also be made without injustice.

Preliminary Matters

7. With respect to Appeal B, there is no plan showing elevational details of the development subject to the planning application. In the absence of this and because development has already taken place, I have made my assessment on the basis of what I observed during my site visit. Since it is concerned with the planning merits of the development that has occurred, I consider Appeal B first below.
8. The enforcement notice alleges a change of use from Electrical Engineering (E(g)) to a mixed use of Electrical Engineering (E(g)) and Plant Hire and sales business (Sui Generis), whereas the description of development given on the planning application form refers to the change of the use of the buildings and land from a horticultural use solely to a plant hire business. However, the enforcement notice reflects the position at the point it was served, and I have nothing to suggest that the allegation of a mixed use was wrong. With respect to the matter of horticultural use, the parties have provided clarification on the previous use, and I proceed on that basis.

Reasons: Appeal B

9. The main issues are (i) the impact of the development on the character and appearance of the area and (ii) whether the development accords with the policies of the development plan with reference to the location of new development.

Character and appearance

10. Although relatively close to the settlement of Wymeswold, the appeal site is located within the countryside and within an area that has a distinct rural feel. The land which surrounds it is predominantly open and devoid of built development and the absence of such is a strong contributor to the character and appearance of the area. There are two large buildings of longstanding on the site which have served commercial uses in recent times, with the appellant referring to outside activities including the use of cranes also previously taking place in addition to the presence of lorries and vans. However, the aerial photograph from 2017 does not show an outside use to the same extent or intensity as the current use. In contrast, the development that has taken place has introduced both external storage and built form onto a substantial area of land to the north and west of the buildings, facilitated by extensive hard surfacing. This has included an encroachment into an agricultural field.
11. There was a great amount of plant on the hard surfaced areas at the time of my site visit, consisting of vehicles and other machinery. Much is of a considerable size and collectively it combines to have a dominant and visually

incongruous impact in its rural surroundings. The extensive hard surfacing itself and the close boarded fencing which now encloses much of the site are also at odds with the rural character. The impact of the fencing would not be materially reduced even if it 'silvers' as suggested by the appellant and the fact it provides a degree of security does not justify its visual harm. Other elements of the development including the high concrete sectional wall and the three storage containers are of an industrial appearance which is incongruous in this rural location. The vehicle cover is a large marquee like structure which has the appearance of a temporary building, and for that reason contributes negatively to the appearance of the appeal site. As a result of these developments cumulatively, there has been significant harm caused to the character and appearance of the area.

12. The appeal site is well screened by established boundary vegetation. But, nonetheless, the development has led to an encroachment into an area of countryside, with a resultant visual harm. The fact that the appeal site is screened does not overcome the encroachment that has occurred, and the benefit of the screening is likely to be much lesser in months when vegetation is not in leaf. The bund that has been constructed is of a limited height and although this means it does not cause any significant visual harm, it also means that it does not perform any meaningful screening of much of the plant, which is higher than it. Whilst the appellant draws attention to the fact that the appeal site is not located within an area defined as a valued landscape, this does not justify the harm that has been caused. I acknowledge that part of the site was already in commercial use, but there has been a substantial intensification of use leading to a materially greater visual impact. Therefore, the previous use also does not justify a harmful development.
13. For these reasons, I conclude that the development has caused significant harm to the character and appearance of the area. Consequently, it fails to accord with Policies CS2, CS10 and CS11 of the Charnwood Local Plan 2015 (LP) and Saved Policies CT/1 and EV/1 of the Borough of Charnwood Local Plan 2004 (CBLP), where they seek to protect character and appearance. There would also be a conflict with the aims of the National Planning Policy Framework (the Framework), where it seeks to achieve well-designed places and to recognise the intrinsic character and beauty of the countryside.

Location

14. There is support in Policy CS10 of the LP for the sustainable growth and expansion of businesses in rural areas both through the conversion of existing buildings and well designed new buildings. However, in all cases the scale and character of the development must be designed so as to cause no detriment to the character and appearance of the countryside. I have found with respect to the first main issue that the appeal development fails to achieve this. Policy CS11 of the LP seeks to support and protect the character of the landscape and countryside, which again the development does not do. Saved Policy CT/1 of the CBLP requires there to not be a significant adverse environmental impact and a demonstration that the development could not be located within or adjacent to an existing settlement. There is therefore a conflict with the development plan in terms of location.
15. Paragraph 81 of the Framework sets out that planning decisions should help create the conditions in which businesses can invest, expand and adapt.

Paragraph 83 requires that planning decisions should recognise and address the specific locational requirements of different sectors, including for storage and distribution operations at a variety of scales and in suitably accessible locations. Paragraph 84 states that planning decisions should enable sustainable growth and expansion of all types of business in rural areas, through the conversion of existing buildings and well-designed new buildings. Paragraph 85 requires that planning decisions recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

16. The appellant highlights that there are considerable constraints on where a business of this nature can be located, as it requires a large external area for the storage of plant, little office or welfare space and a preference to be away from residential properties. Access is also required to the road network and the base needs to be close to markets for the hiring of plant in areas such as Nottingham, Leicester and Melton Mowbray. Whilst there is reference to assessments of alternative sites by the appellant, no such details have been provided. As a result, there is no substantive evidence before me to demonstrate that there are no possible alternative locations for the plant hire business that could reasonably both meet its needs and ensure compliance with the policies of the development plan. There is also nothing to demonstrate that an industrial or other site would not be an economically viable option to run the business from.
17. For the above reasons, I conclude that the development fails to accord with Policies CS1, CS10 and CS11 of the LP and Saved Policy CT/1 of the CBLP, where they collectively seek to protect the countryside and to guide development towards established settlements. In the absence of evidence to demonstrate otherwise, I am not persuaded that the business has an inherent need to be located in this rural location and I have found that there is harm to character and appearance in it being here. It is also not apparent that it needs to be located on the appeal site to meet either local business needs or community needs. Therefore, the development does not find support in those policies of the Framework that have been identified.

Other Matters

18. My attention has been drawn to many examples of business operations that are in what would also appear to be rural locations, some of which seem to have been subject to expansion in recent years. However, I do not have any details of the circumstances of those cases, and many are in different local authority areas meaning that they will have been subject to different development plan policies. It is also suggested that there are business operations taking place in former farm buildings close to the appeal site, but again I have no information before me in respect to that site or with regard to its planning history. These other examples therefore offer only limited weight in support of the appeal development.
19. The business employs approximately 30 people, and it generates economic benefits. This is an aim of both the LP and the Framework but these benefits may too be achieved on an alternative site. The appellant considers that the moving of the business would have an impact on sustainability considerations, in particular on employee travel distances to work. However, there is evidence

in their appeal statement that employee locations are widely dispersed. Alternative locations may therefore be equally accessible to its employees, especially by the more varied range of modes of transport usually available in settlements. Consequently, I am not persuaded that the same economic benefits and travel sustainability could not be achieved on another site, and this is a neutral consideration.

20. Whilst the development makes use of an existing commercial rural building, the works that are subject to the planning application extend substantially beyond just re-using the building, and result in the significant harm to the character and appearance of the area that I have identified. The fact the building has been re-used does not justify the harm caused as a whole. It may also be possible that some agricultural machinery could be stored on the land if it were to be in agricultural use, but that would not be in association with a plant hire business use and would not be likely to be comparable in its intensity or visual impact. These considerations also do not offer support to the appeal development.
21. It is common ground between the main parties that the development does not cause harm to the living conditions of local residents or cause harm to highway safety, and I find no reason to take a different view. There is also no suggestion that harm is caused to air quality, ground water or wildlife, and I further note that there has been no objection from statutory consultees or from the Parish Council. However, the absence of objections in these regards does not justify an otherwise harmful development.

Planning Balance and Conclusion – Appeal B

22. The development has caused significant harm to the character and appearance of the area and does not accord with development plan policies relating to development within the countryside. Whilst a number of other considerations have been advanced by the appellant including those relating to the policies of the Framework, for the reasons I have set out these do not, individually or collectively, outweigh the conflict with the development plan. Therefore, I conclude that Appeal B should be dismissed.

Reasons: Appeal A

Ground f)

23. Section 173(4) of the Town and Country Planning Act 1990 (as amended) (The Act) sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the cessation of the unauthorised use and the removal of the unauthorised development in its entirety. This is consistent with the purpose of remedying the breaches of planning control in accordance with s173(4)(a).
24. Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive. In that respect, the appellant considers that the provision of an access barrier and security gate (requirement III), the provision of CCTV cameras and lighting (requirement VI), the new access to the agricultural field (requirement X) and the close boarded fencing

(requirement XI) could reasonably be required to serve the buildings and appeal site, should they be used for agricultural and/or electrical engineering purposes.

25. However, it appears to me that all of the items raised by the appellant are associated with the material change of use described in the notice and can be regarded as part and parcel of the unauthorised development that has been carried out. Consequently, the removal of these items is an appropriate and necessary step in order to remedy the breach of planning control. With that in mind, while it might be that these items could facilitate other uses as well, I do not regard their removal as excessive.
26. The appellant also considers that the new access and close boarded fence have not resulted in harm to character and appearance of the surrounding area and that the fence provides good security. However, an appeal has not been made under s174(2)(a) of The Act which would represent the making of a deemed planning application. As a result, I am not able to consider the planning merits of the case as part of my determination of this appeal. Although the fencing was included in the Appeal B proposal, I concluded that it was harmful. Accordingly, for the above reasons the appeal on ground f) must fail.

Ground g)

27. The appellant considers that the period of three months for compliance with the notice is too short, as there would be a substantial amount of physical and structural work alongside the need for the business to find suitable premises in order to relocate. Staff may be lost in the process. The appellant therefore considers that a minimum of 12 months would be required. The Council refers to an extension to a period of 6 months in its Statement of Case, but the appellant has reiterated their view that at least 12 months would be needed.
28. There would indeed be a substantial amount of work needed to be undertaken to ensure compliance with the enforcement notice and it is unlikely that this could be achieved within the 3 months currently allowed for. However, I am not convinced that a period as long as 12 months would be needed, as there is no detailed and evidenced explanation as to how that figure has been arrived at. In my judgement, based on the limited information before me, a period of 9 months would be reasonable in order for the appellant to comply. Therefore, the appeal on ground g) succeeds and I will vary the notice accordingly.

Conclusion – Appeal A

29. For the reasons given above, I conclude that Appeal A should succeed on ground g) only. I shall therefore uphold the enforcement notice with a correction and variations.

Graham Wraight

INSPECTOR