



Appeal Decision

Site visit made on 20 September 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/N1920/C/21/3271545

**Land at Bushey Hall Farm, Bushey Mill Lane, Bushey, Hertfordshire
WD23 2AB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Padraig Supple against an enforcement notice issued by Hertsmeare Borough Council.
- The notice, numbered 18/0297/UCU, was issued on 22 February 2021.
- The breach of planning control as alleged in the notice is without planning permission the use of land and building (approximately edged black and hatched red on the attached plan) for the overnight storage and repair of vehicles associated with a haulage business.
- The requirements of the notice are to:
 - Cease the use of the Site for the storage and repair of vehicles and machinery associated with the haulage business.
 - Remove from the Site all vehicles and machinery associated with the haulage business.
 - Reinstall the topsoil and vegetative cover of the land where these have been removed;
 - Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the Site.
- The period for compliance with the requirements is: five months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. I understand that the site was subject of a previous enforcement notice that was quashed on appeal. That related to a wider range of uses on the site but was held to be invalid.
2. This enforcement notice relates to the whole of the area edged red on the site plan, but only alleges an unauthorised use has been taking place on the smaller area set out within the breach and identified on the plan. It requires the use to cease and for the vehicles and machinery associated with the unauthorised use to be removed. Given the area to which the notice relates, i.e. the area edged red, it has the effect that the whole of the area enclosed by the red line would be subject of the notice such that none of the site could be used for that purpose in the future. For these reasons, the area edged in red is the area subject of the notice.

3. The area in which the use is operating is described as approximately identified on the plan. That is sufficiently clear to identify the area on which the use has been taking place.
4. I accept that plans that are not to a common scale make it harder to identify the land to which they relate. However, in this case the area can be ascertained in relation to the physical features identified on the plan.
5. I consider that the plan identifying the area to which the notice relates and the alleged breach has taken place is precise, in accordance with Regulation 4(c) of the Town and Country (Enforcement Notice and Appeal) (England) Regulations 2002. I conclude that the enforcement notice is sufficiently clear that it is not invalid.

The Appeal on Ground (b)

6. An appeal on ground (b) is that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
7. The appellant suggests, under ground (b), that the issue relates to the use of the land by someone other than the landowner. The use described in the notice refers to a haulage business but does not specify a particular business. It is clear that this is intended to help clarify the use against which the enforcement notice seeks to take effect. In this case, this is the overnight storage and repair of vehicles associated with a haulage business. It is not limited to the particular business using the land at the time the notice was issued. Ownership of the business or land does not affect the terms of the notice. As the appellant points out, any planning permission or enforcement notice would run with the land.
8. For these reasons, I conclude that the matters described in the notice have occurred. As such, the appeal under ground (b) should fail.

The Appeal on Ground (c)

9. An appeal on ground (c) is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
10. There is no dispute that the overnight storage and repair of vehicles associated with a haulage business constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the use.
11. The appellant indicates that the overnight storage and repair of vehicles associated with a haulage business would comply with the planning permission granted under reference TP/07/0245 for the use of land for storage of touring caravans. That planning permission was subject to conditions.
12. My attention has also been drawn to a Certificate of Lawfulness of Existing Use or Development (LDC) reference TP/08/0896 relating to a variety of uses, including livery uses in building L that is now used as part of the use alleged in the notice. However, the use specified in the LDC of the area identified in the enforcement notice as used for the storage and repair of vehicles associated

with a haulage business appears to have been superseded by the implementation of the planning permission for the storage of caravans.

13. The first condition on planning permission reference TP/07/0245 limited the time period that the use could continue but was removed at appeal¹. However, another condition states that the land should be used solely for the storage of touring caravans.
14. I accept that the use for storage of caravans is a storage use and, as such, would fall within class B8 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). The condition did not directly follow that set out in the model conditions in Appendix A of Circular 11/95: Use of Planning Conditions. It does not mention the UCO in order to preclude other uses within that class. Neither does it expressly state that it does not allow uses other than the storage of caravans. I note that section 55(2)(f) of the Act enables the use of buildings or other land which are used for a purpose of any class specified in the UCO for any other purpose of the same class. However, the condition states that it restricts the use solely to the storage of touring caravans. Consequently, the storage of vehicles associated with a haulage business is impliedly excluded. For that reason, the land cannot be lawfully used for the storage of vehicles associated with a haulage business.
15. On the balance of probability, the condition is sufficiently precise and enforceable. It meets the tests for conditions set out in the National Planning Policy Framework (the Framework). As such, the planning permission only enables the use of the land for storage of touring caravans.
16. In addition, I note that the notice alleges use for the repair of the vehicles stored. The planning permission for storage of caravans appears not to have expressly permitted their repair. Nevertheless, it may be that some repairs would be incidental to the main use for caravan storage. However, this does not affect my conclusion that the storage and repair of vehicles associated with a haulage business is not in accordance with that planning permission.
17. Since no planning permission has been granted for the development alleged it thereby constitutes a breach of planning control.
18. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

19. The reasons for issuing the enforcement notice refer to the effect of the uses on the living conditions of occupiers of nearby houses, the character and appearance of the area, the setting of a nearby Grade II listed building and the Green Belt. Consequently, the main issues are:
- Whether the development comprises inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the use on the character and appearance of the surrounding area;

¹ Appeal reference APP/N1920/A/08/2063920

- the effect of the overnight storage and repair of vehicles associated with a haulage business on the living conditions of neighbouring occupiers of dwellings on Mill Way with particular regard to light, noise and disturbance;
- whether the use affects the setting of the listed building at Bushey Hall Farm; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Green Belt

20. The Framework states that the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and substantial weight should be given to any harm to the Green Belt. Certain forms of development are not inappropriate development in the Green Belt provided they preserve openness and do not conflict with the purposes of including land within it, including the re-use of buildings provided that the buildings are of permanent and substantial construction, and material changes of use of land. Policies SD1 and CS13 of the Local Plan Core Strategy Development Plan Document (CS) and Policy SADM26 of the Site Allocations and Development Management Policies Plan (SADM) relate to development within the Green Belt. They seek to avoid inappropriate development in the Green Belt unless very special circumstances exist and state that visual impact should be minimised and development should not be harmful to the openness of the Green Belt.
21. The proposal comprises the change of use of land and building from the storage of caravans to storage and repair of vehicles associated with a haulage business. My attention has not been drawn to any changes to the building, so the change in use of the building has not affected the openness of the Green Belt, nor of the reasons for including land within it.
22. The vehicles associated with the haulage business are generally larger than caravans. They access and egress the site more regularly. This means more activity within the Green Belt that affects the visual openness of it. However, the spatial effect is more modest when vehicles are away from the site during the day.
23. My attention has not been drawn to any restrictions on the number of caravans allowed to be kept on the site. The caravan storage was limited by the area to which the planning permission applies. Nevertheless, I consider that the spatial and visual effects of the vehicles associated with the haulage business result in harm to the openness of the Green Belt. They also result in development encroaching into the countryside and contribute to the sprawl of development around Bushey, such that the use harms the purposes of including land within the Green Belt.
24. The use of the land for storage of vehicles associated with the haulage business harms the openness of the Green Belt and conflicts with the purposes of including land within it. As such, I conclude that the re-use of a building associated with this use and the material change of use of the land is

inappropriate development. As a result, it conflicts with Policies SP1 and CS13 of the CS, Policy SADM26 of the SADM and the Framework.

Character and appearance

25. The site is located on a farmyard and constitutes a diversification of the uses at that yard. It does not include new built development. The use introduces additional large vehicles onto the site, including parking them in the open hardstanding on the edge of the site closest to the neighbouring dwellings.
26. That additional storage of vehicles and machinery materially alters the character and appearance of the site. The use replaces the smaller caravans that were permitted to be parked in this area with large vehicles and introducing the repair use. I note that some of the neighbouring dwellings are separated from the site by a mature tree screen. However, the large vehicles and use of the site for repairs appear incongruous in this location and harms the character and appearance of the area.
27. It also introduces those vehicles onto the surrounding roads accessing the site, including through the neighbouring residential area. The route from the site toward north Watford includes width restrictors with a bypass lane marked "bus only". This suggests that all of the large vehicles to and from the site would pass through the residential area. This has some effect on the character of the surrounding area.
28. For these reasons, I conclude that the use of land and building for the overnight storage and repair of vehicles associated with a haulage business harms the character and appearance of the area. As such, it does not comply with Policies SP1 and CS12 of the CS, Policy SADM11 of the SADM and the Framework that seek development to be appropriate in scale, appearance and function to the local context and avoid prejudicing the characteristics and features of the natural and built environment.

Living conditions

29. The area of the appeal site used for the storage and repair of vehicles associated with a haulage business is located to the side of the farmyard at Bushey Hall Farm. There are trees along part of the boundary with a narrow open area separating the appeal site from the rear gardens to houses on Mill Way. Beyond Bushey Hall Farm, when viewed from the houses on Mill Way, is Bushey Hill Lane with a bridge over the A4008 Stephenson Way.
30. The use comprises vehicles coming and going from the site and includes the repair of vehicles within the yard area and open building. Given the proximity to the houses on Mill Way, any noise from the use of the yard travels to those houses and their gardens. I note that some noise measurements have been provided that provide some evidence of background noise, particularly from vehicle traffic on Bushy Mill Lane and the A4008 Stephenson Way, and noise from the use of the site and I have taken these into account. The hedge on part of the boundary reduces the transmission of noise to some of the houses on Mill Way. Nevertheless, noise from vehicles moving around and the repair use results in some noise and disturbance, particularly at the beginning and end of the working day.
31. The lights of vehicles moving, particularly during winter months, are seen from the houses. The hedge restricts the visibility of lights to some extent and any

lights moving around the site are seen with the backdrop of streetlights and movements on the surrounding road network. Nevertheless, these will not wholly overcome the effect of lights moving around the site on neighbouring occupiers of dwellings on Mill Way.

32. I note that I could attach a condition to restrict vehicle movements and the repair use to certain hours. This would restrict the effects of light, noise and disturbance outside those hours. On balance, if I were to grant planning permission, such a condition would provide sufficient mitigation to overcome the effect of the development on the living conditions of occupiers of the dwellings on Mill Way.

33. In the absence of a condition restricting vehicle movements and repair to certain hours, I conclude that vehicles associated with a haulage business moving around the yard and the repair of those vehicles would have a material harmful effect on the living conditions of neighbouring occupiers of dwellings on Mill Way with particular regard to light, noise and disturbance. For these reasons, I conclude that the development does not comply with Policy SP1 of the CS and the Framework that seek development to be appropriate in scale and function to the local context and provide a high standard of amenity for existing residents including preventing existing development from being adversely affected by unacceptable levels of noise pollution.

Listed building

34. The site plan attached to the enforcement notice identifies an area comprising the farmyard and adjacent land. To the opposite side of the farmyard to the unauthorised use is Bushey Hall Farm House. That is a detached house with 17th Century origins, although with some rebuilding in the 18th Century and altered and extended in the 19th Century. It is a rendered building with timber sliding sash windows and is listed grade II. The significance of the building is its farmhouse character within the yard at Bushey Hall Farm.

35. The building and land subject of the storage and repair of vehicles associated with a haulage business are separated from the listed building by other former agricultural buildings making up the yard. These buildings are utilitarian structures constructed to serve farming operations. The use results in large vehicles within the yard and building, but that is not dissimilar to the large vehicles that can be used within agricultural operations. Whilst this use differs from that of an agricultural yard, it is located some distance from the listed building and reflects, to some extent, an agricultural use.

36. For these reasons, on balance I conclude that the storage and repair of vehicles associated with a haulage business does not affect the setting of the grade II listed building at Bushey Hall Farm House. Consequently, it does not affect the significance of the building as a heritage asset. As such, it does not conflict with Policies SD1 and CS14 of the CS or the Framework that seek to conserve or enhance the historic environment of the Borough, including listed buildings and their settings.

Other considerations

37. The haulage business occupying this area results in diversification of the farm yard and makes use of the existing building and area of the yard that might otherwise be redundant. That use supports the operation of this business that

employs eight people, which provides economic and social benefits to the local population.

Conclusion

38. I have found that the storage and repair of vehicles associated with a haulage business harms the openness of the Green Belt and conflicts with the purposes of including land within it. As such, the re-use of a building associated with this use and the material change of use of the land constitutes inappropriate development. In addition, it harms the living conditions of occupiers of nearby dwellings and the character and appearance of the area.
39. The use provides accommodation for a small business that provides employment opportunities, contributing to the economic viability of the area and providing social benefits. I note that an appropriately worded condition to restrict the hours of operation could overcome the effect of the development on the living conditions of occupiers of nearby dwellings. However, these matters can only attract modest weight. As such, the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by other considerations, either individually or cumulatively, sufficient to demonstrate very special circumstances. Therefore, the proposed development is contrary to Policies SD1 and CS13 of the CS and the Framework that seek to protect the Green Belt from inappropriate development.
40. For the reasons set out above, on balance I conclude that the development does not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

41. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to cease the use of the site for the storage and repair of vehicles and machinery associated with the haulage business, remove associated vehicles and machinery and reinstate the land, including removal of materials, debris, waste and equipment, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
42. The appellant suggests that the requirements should be amended to be proportionate. They suggest that the requirements should cease only the repair of vehicles and removal of related materials, debris, waste and machinery. However, this would not require the cessation of the storage of vehicles associated with the haulage business, nor any physical works to the land that have resulted from operation of the use.
43. I note that, since an appeal on ground (a) has been made, there is a deemed application for planning permission before me. Hence, I am able to consider granting planning permission for part of the existing development to remain, if that were an obvious alternative that would overcome the planning difficulties. However, I have concluded as part of the appeal under ground (a) that the storage and repair of vehicles associated with a haulage business does not

comply with relevant development plan policies. Allowing part of it to remain would not fully remedy the breach of planning control.

44. For these reasons, I conclude that the appeal under ground (f) should fail.

The Appeal on Ground (g)

45. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The notice requires the uses to cease within five months. The appellant suggests a period of ten months would be more reasonable.

46. I have concluded that the use results in a material harmful effect on the living conditions of neighbouring occupiers of dwellings on Mill Way with particular regard to light, noise and disturbance. To extend the period of compliance would result in that harm, and the harm to the openness and purposes of the Green Belt and character and appearance of the area, continuing for a longer period.

47. The relocation of this small business would be difficult, in terms of finding appropriate alternative accommodation. I understand that the business employs eight people, whose livelihoods may be affected if such accommodation cannot be found within the period specified in the notice. I note that similar matters were considered in relation to another appeal² relating to a mix of commercial, light industrial and storage uses and associated operational development where it was concluded a reasonable period for compliance would be ten months. However, the scale of that development appears to be significantly larger and the main issues identified in that ground (a) appeal differ from those in this case.

48. Taking all of the above into account, on balance I consider the harm caused by the continued operation of the use means the period of compliance is reasonable in this instance.

49. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

50. 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.

AJ Steen

INSPECTOR

² Appeal reference APP/N1920/C/19/3232056