



Appeal Decision

Inquiry held on 26-27 April and 6-8 and 12 December 2022

Site visit made on 6 December 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 January 2023

Appeal Ref: APP/Q3630/C/18/3196414

262-264 Chertsey Lane, Staines upon Thames

- 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 Nicholas Payne against an enforcement notice issued by Runnymede Borough Council.
 - The enforcement notice was issued on 23 January 2018.
 - The breach of planning control as alleged in the notice is the material change of use of the land from agricultural use to storage use including but not limited to unit load devices, vehicles associated with the storage use, pallets, storage containers, metal sheeting and gallery carts.
 - The requirements of the notice are 1. Cease the use of the land for storage; and 2. Remove from the land any items stored in connection with the use of the land for storage including but not limited to unit load devices, vehicles, pallets, storage containers, metal sheeting and galley carts.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected by:
 - a. the substitution of the plan attached to this decision for the plan attached to the notice;
 - b. the deletion of 'gallery' in the breach of planning control in section 3 of the notice and the substitution instead of 'galley'.
2. Subject to the corrections the enforcement notice is quashed.

Procedural matters

3. It was agreed by the main parties, at the Inquiry, that the enforcement notice should be corrected by the substitution of the plan attached to this decision for the plan attached to the notice. Following agreement to this correction the Appellant withdrew his ground (c) and (f) appeals. The notice has also been corrected to remedy a spelling mistake in the breach of planning control.
4. All witnesses at the Inquiry, except Ms Appleby, gave evidence under oath.
5. An application for an award of costs has been made by the Appellant against the Council. This application is the subject of a separate decision.

Reasons

Background information

6. The principal building at 262-264 Chertsey Lane, which was formerly a filling station and garage, is set back from the road behind a covered forecourt and a wide grass verge. The Appellant's business, Airbase GSE Limited, use the building for the repair and maintenance of a variety of storage equipment used in the airline industry; such as unit load devices, dollies and galley carts. The equipment is brought to the site, mainly from Heathrow Airport, and is stored on land around and to the rear of the building before and after it is repaired and maintained in the building. The workshop is at the rear of the building, which also has offices, a kitchenette, toilets, a boardroom, a staff restroom, and a parts store.

7. The site to the rear of the building extends up to the rear gardens of dwellings on Holland Gardens. The distance between the building and the rear gardens is about 70 metres. The site also extends northwards behind the rear gardens of dwellings on Chertsey Lane. This part of the site is generally overgrown and has remained so since the Appellant purchased the site in 2002. In the south-west corner of the site, which is about 0.63 hectares, is a Nissen type hut. The site, including the two buildings, is the extent of the Appellant's ownership. He moved his business to the site in November 2007. Between 2002 and 2006 the site was leased and operated as a garage and car sales business.

8. The Council issued an enforcement notice on 12 July 2004 alleging the change of use of the part of the site to the rear of the building, including that between the rear gardens of dwellings on Holland Gardens and Chertsey Lane, to 'storage and/or parking of motor vehicles, plant and machinery and the storage of redundant building materials and scrap'. The notice was appealed and in his decision the Inspector noted that "A new fence...had been erected to separate the land in question from the commercial uses that front Chertsey Lane" which "...has been located so that there is some slight incursion into the main area of land...".

9. The incursion into the enforced land "...is to allow parking space for cars awaiting service or MOT tests at the rear of the garage building". The Inspector concluded that "...the parking area created by the erection of the fence should remain in place because it is necessary to have enough parking spaces..." He corrected the plan attached to the notice to exclude the parking area from the enforced land but otherwise upheld the notice. The requirements of the notice, the cessation of the use of the land and the removal of 'all motor vehicles, plant and machinery parked and/or stored thereon', were complied with. The fence that was erected remains and was referred to as the 'dog-leg fence' during the Inquiry.

10. The land that is the subject of the enforcement notice in this appeal is not the whole of the site; it is land, though not all of it, to the west of the dog leg fence and the rear gardens of dwellings on Chertsey Lane to the north of the workshop building. The principal part of the land is the overgrown land between the rear gardens of dwellings on Holland Gardens and Chertsey Lane. The east boundary of the secondary part of the land is about 20 metres from, and about parallel with, the dog-leg fence. This part of the enforced land includes the Nissen type hut.

11. The front part of the site, principally the part of the site that is not the subject of the enforcement notice but including land to the west of the dog leg fence in storage use, was the subject of an application for a Lawful Development Certificate (LDC). That application was partially granted on 12 December 2017 and

established as lawful a 'mixed B2 and B8 use with ancillary offices'. The LDC was revoked on 6 February 2019 because in the application it was stated that the use had commenced in November 2006, whereas it had, in fact, commenced in November 2007. There was no challenge to the nature of the use from November 2007. An application for an LDC for the same use was submitted on 21 June 2019 but this is in abeyance pending the outcome of this appeal.

The ground (b) appeal

12. The Appellant, in making a ground (b) appeal, is questioning whether the alleged breach of planning control had occurred on the date of issue of the enforcement notice. The breach of planning control alleges the making of a material change in the use of land. To assess whether a material change in the use of land has occurred it is first necessary to identify the correct planning unit. The leading case for determination of the planning unit is *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207. The judge suggested that there are three broad categories of distinction. Firstly, a single planning unit where the unit of occupation has one primary use and other activities are incidental or ancillary, secondly, a single planning unit that is in a mixed use where neither use is incidental to the other, and thirdly, the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated uses.

13. The unit of occupation is the site; all that is owned by the Appellant. The Council argues that the site is two planning units; one being the workshop building and land immediately around it in B2 light industrial use, and the other land to the rear that is in B8 storage use. This cannot be correct, as a matter of common sense, because the storage use only exists to support the business activities of Airbase GSE Limited. In this regard, an item of airline equipment will only be brought to the site if it is in need of repair or maintenance; it will not be brought to the site simply to be stored. The dog-leg fence may have resulted in there being two distinct and separate areas of the site but that fence, on the Appellant's evidence, was retained for security purposes. Fundamentally, the storage use of part of the site is wholly related to the primary purpose of the business. The site does not, as the Council suggests, fall within the third *Burdle* category.

14. The Appellant argues that the single planning unit is in a mixed B2/B8 use; the pending LDC application is made on this basis. But this also cannot be correct because the storage use is not a primary use; it only exists because the airline equipment brought to the site must be stored before and after it is repaired or maintained in the workshop building. In this regard it is worth setting out some extracts from the Appellant's witness statement; "The area of land behind the workshop has been used to store pallets, Dollys and ULDs before and after they are repaired or maintained"; "Some companies will drop off and collect the vehicles or equipment that need repairing or servicing but sometimes we have to go out and collect them ourselves and deliver them back to the airport"; "Having the workshop to carry out the work and the land to store the vehicles and equipment before and after they are worked on is essential to the business" (emphasis added).

15. There is nothing in evidence to indicate that items of airline equipment are brought to the site to be simply stored. Items are brought to the site for repair and maintenance and their storage before and after that work is incidental to the principal use. The storage use is, in this regard and as a matter of planning judgement, functionally related and incidental to the primary use of the site, which is a B2 light industrial use. The incidental storage use of part of the site takes up

more land than the primary use but this is simply a consequence of the nature of the primary business activity. The site is a single planning unit in, principally, B2 light industrial use with incidental storage.

16. Land between the rear gardens of dwellings on Holland Gardens and Chertsey Lane has remained unused whilst Airbase BSE Limited has been operating from the site. This part of the site, about 0.2 hectares, was last used for agriculture and is part of the enforced land. It is larger than that part of the enforced land that is used for storage, which is about 0.17 hectares. The alleged breach of planning control is the "...material change of use of the land from agricultural use to storage use...". This is factually incorrect because more than half of the land has not been used for storage but has remained in dormant agricultural use. The enforcement plan could be varied to exclude the land in agricultural use from the enforced land, though it must be mentioned that the extent of the storage use within the enforced land, on the date of issue of the enforcement notice, is not recorded on any plan. In the alternative, the breach of planning control could be varied to be the "...material change of use of the land from agricultural use to a mixed use of agriculture and storage use".

17. The Council has suggested that the breach of planning control, and the requirements of the notice, if necessary, could be varied without causing injustice to the Appellant, to reflect any conclusion on what is the correct description of the use of the enforced land. But they have not attempted to set out what any variations should be, probably because there are inherent difficulties in doing so. Whether the breach of planning control and the requirements of the notice should or could be varied without causing injustice to any party is a moot point. Because it is fundamentally important in determination of the ground (b) appeal to return to the alleged breach of planning control; the "...material change of use of the land from agricultural use to storage use...".

18. Setting aside the matter mentioned above regarding agricultural use of part of the enforced land, there is no dispute that part of the enforced land had been used for storage on the date of issue of the enforcement notice. The storage use of the enforced land is essentially an extension of the same use of land to the east and whether or not there has been a material change in use of land must have regard to the history of storage use of the planning unit.

19. It matters not whether regard is had to the storage use of land within the planning unit, which is the unit of occupation, or whether regard is had to the storage use of land beyond the dog-leg fence, which the Council maintains is a separate planning unit, or whether the planning unit is in B8 storage use, in a mixed B2/B8 use or in a B2 use with incidental storage. Storage commenced on land to the rear of the workshop building, beyond the dog-leg fence, when Airbase GSE Limited operations became established in early 2008. Storage commenced immediately beyond the fence and spread gradually westwards as the demands of the business increased. Aerial photographs submitted in evidence by the Council confirm that this gradual spread of storage occurred.

20. Aerial photographs of April 2013 and April 2015 show storage use of the former agricultural land beyond the dog-leg fence up to the east boundary of the enforced land. The introduction of storage changed the character of the land in this location and the Council accepts that the storage use of land between the dog-leg fence and the enforced land had become immune from enforcement action through the passage of time before the enforcement notice was issued. The

Council has not argued in evidence presented before and at the Inquiry that there has been a material change in the use of land through intensification. But this possibility is the only route to justifying a conclusion that there has been a material change in the use of the enforced land which, on any assessment, is in the same planning unit as the land to the east up to the dog-leg fence.

21. In *Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd [2012] EWCA Civ 1473* the Court of Appeal held that 'What must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the use that it amounts to a material change of use'.

22. Storage on the enforced land is the same as that on the land to the east up to the dog-leg fence. In general terms, the items stored are the same, the method of storage is the same, the height of storage is the same, and the activity associated with the storage is the same. The character of the storage use on the enforced land is generally the same as the character of the lawful storage use on land to the east. Complaints to the Council by local residents have been made throughout the period when the land to the west of the dog-leg fence has been in use for storage. These complaints were, and remain, about the off-site effects of the use of the site on residential amenity and are aimed at the storage use as a whole rather than at the storage use of the enforced land.

23. The use of the enforced land for storage has extended the lawful storage use of land to the east, within a single planning unit on either main party's assessment. The scale of storage, overall, has increased but this has not led to a rise in materially different planning circumstances such that the increase in storage has resulted in such a change in the definable character of the use that it amounts, as a matter of fact and degree, to a material change of use. The alleged breach of planning control, the material change of use of the land from agricultural use to storage use, has not occurred. The ground (b) appeal succeeds and the ground (a), (d) and (g) appeals do not therefore need to be considered.

Other matters

24. The Rule 6(6) party maintains that the enforcement notice issued in 2004 and upheld in 2005 remains extant. With reference to the second requirement of that notice they also maintain that the land to the west of the dog-leg fence should remain free of 'all motor vehicles, plant and machinery parked and/or stored thereon'. Neither this matter, nor any other matter raised by the Rule 6(6) party and local residents, has any bearing on the outcome of the ground (b) appeal.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Rudd	Barrister instructed by Green Planning Studio Ltd
He called	
Mr R Miller	Cargo Operations Manager at Airbase GSE Ltd
Mr J Harrison	Workshop Supervisor at Airbase GSE Ltd
Mr N Payne	Owner of Airbase GSE Ltd
Mr M Green BA	Partner of Green Planning Studio Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Parker	Barrister instructed by Mr E Alozie, Solicitor to Runnymede Borough Council
He called	
Ms S Murphy	Planning Enforcement Officer
Ms K Appleby BSc(Hons) DipTP MRTPI	Senior Planning Officer

FOR LOCAL RESIDENTS:

Mr A McInulty	Local resident
He gave evidence and called	
Mr E Iliopolous	Local resident
Mr D Huggett	Local resident
Ms G Mace	Local resident

DOCUMENTS

- 1 Opening statement on behalf of the Local Planning Authority.
- 2 Opening statement on behalf of local residents.
- 3 Opening submissions on behalf of the Appellant.
- 4 Witness statement of Mr Miller.
- 5 Witness statement of Mr Harrison.

- 6 Witness statement of Mr Payne.
- 7 Witness statement of Mr Iliopoulos.
- 8 List of conditions suggested by the Council and condition suggested by the Appellant.
- 9 Enforcement Notice dated 12 July 2004.
- 10 Amended enforcement plan.
- 11 Email from Agent dated 12 December 2022 regarding description of development.
- 12 Title deed for title no. SY105511.
- 13 Letter from EA to the Council dated 29 May 2019.
- 14 Letter from EA to the Council dated 14 October 2021.
- 15 Email from Ms Appleby to EA dated 7 October 2021.
- 16 Note by Ms Appleby.
- 17 Closing submissions on behalf of the Rule 6 Party.
- 18 Closing submissions on behalf of the Local Planning Authority.
- 19 Closing submissions on behalf of the Appellant.
- 20 Costs application on behalf of the Appellant.
- 21 Council's response to the Appellant's costs application.
- 22 Response on behalf of the Appellant to the LPA costs response.



Plan

This is the plan referred to in my decision dated: 06 January 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at 262-264 Chertsey Lane, Staines-upon-Thames

Reference: APP/Q3630/C/18/3196414

Scale: not to scale

