



Appeal Decisions

Inquiry held on 14-17 September 2021 and 18 October 2022

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

Decision date: 27 January 2023

Appeal A Ref: APP/L3815/C/19/3203215

Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

- 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 J Sullivan against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, reference number WE/41, was issued on 10 April 2018.
 - The breach of planning control as alleged in the notice is the change of use of the land to use for the storage of portable site office cabins, container cabins, portable toilet blocks and commercial vehicles.
 - The requirements of the notice are (i) Discontinue use of the land for the storage of portable site office cabins, container cabins, portable toilet blocks and commercial vehicles; (ii) Remove all the items mentioned in (i) above from the land; (iii) Remove the metal mesh fencing and supports in the approximate position shown on the attached plan; and (iv) Stop up the 'new' access by removing the hardcore and replanting a hedgerow across the gap in the approximate position shown on the attached plan.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Appeal B Ref: APP/L3815/C/19/3203219

Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

- 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 J Sullivan against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, reference number WE/40, was issued on 10 April 2018.
 - The breach of planning control as alleged in the notice is the change of use of the land to use as a civil contractor's yard.
 - The requirements of the notice are (i) Discontinue use of the land as a civil engineering contractor's yard; (ii) Remove all the associated plant and equipment from the land; (iii) Remove the two storey metal container office cabins and metal staircase in the approximate position shown on the attached plan from the land; (iv) Remove the skips and building waste from the land; and (v) Remove the associated motor vehicles from the land.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Appeal C Ref: APP/L3815/C/19/3203222

Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

- 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 J Sullivan against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, reference number WE/42, was issued on 10 April 2018.
 - The breach of planning control as alleged in the notice is the change of use of the land to use for the storage of metal skips, building materials, scaffolding equipment, lifting platforms, storage racks, engine parts, commercial vehicles, HGVs, redundant vehicles, truck bodies and use of the building shown hatched green on the attached plan for vehicle repair and servicing.
 - The requirements of the notice are (i) Discontinue use of the land for the storage of metal skips, building materials, scaffolding equipment, lifting platforms, storage racks, engine parts, commercial vehicles, HGVs, redundant vehicles and truck bodies; (ii) Remove all the items mentioned in (i) above from the land; (iii) Discontinue use of the building shown hatched green on the attached plan for vehicle repair and servicing; (iv) Remove from the building all the vehicles; and (v) Demolish the open fronted building shown in the approximate position on the attached plan and remove the resultant debris from the land.
 - The period for compliance with the requirements is four 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 (the Act).
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Decisions

Appeal A Ref: APP/L3815/C/19/3203215

1. The enforcement notice is varied by;
 1. the substitution of the plan referenced WE/41 attached to this Decision for the plan attached to the notice;
 2. the deletion of requirement (iv) in section 5 of the notice; and,
 3. the deletion of 'four months' in section 6 of the notice and the substitution instead of 'one year'.
2. The appeal is dismissed, the enforcement notice is upheld subject to the aforementioned variations, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/L3815/C/19/3203219

3. The enforcement notice is varied by the substitution of the plan referenced WE/40 attached to this Decision for the plan attached to the notice.
4. The appeal is dismissed, the enforcement notice is upheld subject to the aforementioned variation, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/L3815/C/19/3203222

5. The enforcement notice is varied by:
 1. the substitution of the plan referenced WE/42 attached to this Decision for the plan attached to the notice;
 2. the deletion of 'and use of the building shown hatched green on the attached plan for vehicle repair and servicing' in the breach of planning control in section 3 of the notice;

3. the deletion of requirements (iii), (iv) and (v) in section 5 of the notice.

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

Procedural matter

7. Costs applications have been made by Mr J Sullivan against Chichester District Council and Westbourne Parish Council. These applications are the subjects of separate decisions.

Background information

8. The Old Army Camp is a roughly rectangular area of land on the north side of Cemetery Lane. The three areas of land to which the enforcement notices relate are the eastern part of the overall area. The land that is the subject of Appeal A has a boundary to the lane and includes a vehicular access off the lane. To the north of the Appeal A land is an area in commercial use that is not subject to enforcement action. Beyond and to the north of this area is the land that is the subject of Appeal B, which includes part of the vehicular access. To the north of the Appeal B land is the land that is the subject of Appeal C. The four areas are bounded to the south, east and north by high coniferous trees.

9. To the west of the three areas of land to which the enforcement notices relate, and part of the Old Army Camp, is a private gypsy and traveller site consisting of two pitches (planning application ref. 16/03454/COU) and a site comprising four showperson plots, two gypsy pitches and two amenity buildings (planning application ref. 16/03656/FUL). To the west of the Old Army Camp is a West Sussex County Council gypsy and traveller site of nineteen pitches and a showman's site known as Ten Acres. To the east of the Old Army Camp is an unoccupied site with planning permission for five gypsy and traveller pitches.

10. Cemetery Lane has a junction with Foxbury Lane to the west at the edge of the village of Westbourne. Between the junction and the Old Army Camp and on the south side of Cemetery Lane is Westbourne Cemetery, a non-designated heritage asset that is within the Westbourne Conservation Area. The lane extends eastwards to a junction with South Lane at the edge of the village of Woodmancote. On the north side of the lane and to the east of the Old Army Camp beyond a field is Woodmancote Contractors Limited. The Old Army Camp and Ten Acres is within an area of flat countryside. Cemetery Lane is an unadopted highway and is a designated footpath and public right of way.

Planning policy

11. The Development Plan for the area includes the Chichester Local Plan 2015 (CLP) and the Westbourne Neighbourhood Plan 2021 (WNP).

12. The Old Army Camp is in the countryside outside any settlement. CLP policy 2 states that development outside settlements is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with policies 45 and 46. CLP policy 45 states that within the countryside development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements. CLP policy

46 relates to the re-use of existing buildings in the countryside. CLP policy 48 seeks to prevent adverse impact on the tranquil and rural character of the area.

13. WNP policy OA1 states that outside the settlement boundary development proposals will not normally be considered either appropriate or sustainable unless they comply with all other policy requirements of the development plan or it is sustainable development where the benefits demonstrably outweigh the harm. WNP policy LD2 seeks to preserve the heritage assets, both designated and non-designated, of the parish. Westbourne Cemetery is designated in the WNP to be a non-designated heritage asset and a local green space. WNP policy LGS1 states that the historic setting of the cemetery is very important to Westbourne residents.

Reasons

Appeal A

The ground (e) appeal

14. The land that is the subject of the enforcement notice in Appeal A includes the first forty metres of the access off Cemetery Lane, which is the sole means of access to all the land in commercial use at the Old Army Camp. All users of the land that is the subject of the three enforcement notices and of the land between the Appeal A land and the Appeal B land have an interest in the outcome of the Appeal A. If Appeal A is dismissed and the notice is upheld without variation the Appellant would be required, pursuant to a requirement of the Appeal A notice, to stop up the access. All users of the land would therefore have no access to the land they rent from the Appellant.

15. Section 172(2)(b) of the Act requires a copy of an enforcement notice to be served on "...any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice". On the basis of the above all commercial users of land at the Old Army Camp would be materially affected by the Appeal A notice, they would lose access to their premises, and the local planning authority did not serve the notice on all users. The Council argue, with regard to section 176(5) of the Act, that this should be disregarded because those persons who were not served have not been substantially prejudiced by the failure to serve them.

16. The prejudice to be considered is not that which would follow from the notice being upheld without variation but that which stems from the failure to properly serve the notice. Three companies, BMS Southern, A Van Portsmouth Limited and GB Autos, were occupiers of land at the Old Army Camp when the notice was issued but they were not served with the notice. Mr Girdler, owner of BMS Southern, and Mr Baker, owner of GB Autos, submitted witness statements and gave evidence at the Inquiry so they have not been substantially prejudiced by the failure to serve them with the notice.

17. A Van Portsmouth, owned by Mr N White, occupies a building on land between Appeal A land and Appeal B land. It is inconceivable, given that all users of land at the Old Army Camp use the sole access and probably come into contact with each other on a regular basis, that Mr White was unaware of the notice and of the requirement to stop up the access. Mr White had the opportunity to present evidence if he had so desired and the matter of the access being included in the enforced land has been fully aired by others, so he has not been substantially

prejudiced. No other companies who were not served with the notice were occupiers of land on the date of issue of the notice and remain so.

18. No party who has an interest in the land and who was not served with a copy of the enforcement notice has been substantially prejudiced by the failure to serve them with a copy of the notice. The ground (e) appeal thus fails.

The ground (b) appeal

19. The land that is the subject of the enforcement notice has two distinct elements separated by a metal mesh fence; one is the access track and the other is land that is in storage use. The Council maintains that the access track is ancillary to the primary storage use and that, therefore, it does not need to be mentioned in the alleged breach of planning control. However, the access track is ancillary to all the commercial uses of land at the Old Army Camp and, as a matter of fact, storage does not occur on it and therefore across the whole of the land. The Appellant seeks, on this basis, that the notice be quashed. But the remedy can be the variation of the notice to remove the access from the enforced land and to remove the requirement that the access be stopped up. To this extent the ground (b) appeal succeeds and the notice has been varied accordingly.

The ground (a) appeal

20. The main issues are; first, the principle of development at the Old Army Camp; second, the effect of the development on the character of the area and on the character of Westbourne Cemetery; third, the effect of the development on residential amenity; fourth, the effect of the development on highway safety; and fifth, whether any harm caused and any conflict with the development plan is outweighed by material considerations.

The first issue – the principle of development

21. The Appellant maintains that policies in the CLP are inconsistent with policies in the National Planning Policy Framework (NPPF) and that, therefore, the tilted balance and the presumption in favour of sustainable development is engaged. A minor inconsistency between a development plan policy and a policy in the NPPF cannot justify a conclusion that the development plan as a whole is inconsistent with the NPPF. Furthermore, the NPPF, or any other national planning policy guidance, does not provide that the provisions of the development plan are no longer applicable and does require that determination of the appeal must be made in accordance with the requirement of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended).

22. Mr Green, for the Appellant and in his proof of evidence, has compared many CLP policies with the NPPF rather than, more appropriately, comparing relevant policies. CLP policies 2 and 45 are relevant in this case and generally seek to direct development to appropriate locations in the District. These policies seek to restrict development in the countryside to those which require such a location. This approach is not inconsistent with the approach advocated for development in the countryside found in paragraph 85 of the NPPF. The tilted balance and the presumption in favour of sustainable development is not therefore engaged.

23. The appeal land is occupied by FG Speed Cabins who deal in second hand site cabins and other portable buildings. They collect and deliver portable buildings to and from sites as far afield as Manchester. In this regard the company does not meet any sort of local need and no claim is made that they require a countryside

location. These factors are afforded significant weight and the breach of planning control alleged in the enforcement notice, whether it be by FG Speed Cabins or any other company, conflicts with CLP policies 2 and 45.

The second issue – the character of the area and the character of Westbourne Cemetery

24. From its junction with Foxbury Lane, Cemetery Lane passes between paddock land to the north and a small paddock and Westbourne Cemetery to the south. The rural and tranquil character of the area, despite background traffic noise from the A27 to the south, remains for about 350 metres and walkers on the public footpath will appreciate the unrestricted views across farmland and the cemetery. The first intrusive element in these views is the County Council gypsy and traveller site but this is set back from the lane and is of low height and relatively dispersed scale. Adjoining this site to the east is the Ten Acres compound where caravans and other buildings of the showmen's site, again, are well screened, are set well back from the road and are of low height and scale.

25. To the east of the entrance into Ten Acres is the entrance into the Old Army Camp where concrete block walls on both sides of the entrance support metal gates. Further to the east and alongside the lane and behind a boundary fence and vegetation is the appeal land. A condition suggested by the Council would prevent the buildings being stacked, as they were at the time of the site visit. But the buildings would still be glimpsed through the open gates, during daytime operating hours, and they would be visually intrusive and alien features in the countryside for those using Cemetery Lane as a footpath. In this regard, those enjoying a walk in the countryside and using Cemetery Lane don't expect to come upon and see a site occupied by many cramped portable buildings.

26. Portable buildings are stored on the land in between being used on sites elsewhere. A feature of the use of the land is the comings and goings of large lorries transporting buildings to and from other parts of the country. This large vehicle activity adds to traffic associated with other developments on the lane, such as Woodmancote Contractors Limited, but does, individually, undermine the tranquillity of the area. This is particularly the case for Westbourne Cemetery where visitors come to find peace with those buried there. The use of the land for the storage of portable buildings contributes to the number of large lorries passing the cemetery and to a loss of peace and tranquillity in this designated local green space. The continued use of the land for the storage of portable buildings would have a significant adverse impact on the character of the area and on the character of Westbourne Cemetery. The use conflicts with CLP policy 48 and WNP policy LD2, and with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act) which requires the preservation, at least, of the character of the Westbourne Conservation Area.

The third issue – residential amenity

27. The static caravans on the County Council site and on Ten Acres are set back from the road as are the unoccupied permitted pitches to the east of the Old Army Camp. The Ten Acres caravans are surrounded by high fencing, for privacy and security reasons, and the pitches to the east are separated from development at the Old Army Camp by coniferous vegetation. Given that the appeal land is set close to the lane and that portable buildings would not be stacked if planning is granted, there would be no loss of outlook for nearby residents resulting from continued use of the land for the storage of portable buildings. Similarly, activity on the land, given the degree of separation, would not result in any loss of amenity

through noise and disturbance. The continued use of the land for the storage of portable buildings would not have any adverse effect on residential amenity.

The fourth issue – highway safety

28. The use of the land for the storage of portable buildings has, because FG Speed Cabins cannot operate without transporting buildings to and from the land, added to traffic, including heavy goods vehicles, on Cemetery Lane. The lane does not have footpaths but it is wide and straight and there is sufficient space for two vehicles to pass each other. There is therefore no concern for highway or pedestrian safety on the lane. All traffic to and from the Old Army Camp must move through the junction of the lane with Foxbury Lane. It is accepted by the Appellant and the County Highway Authority that the geometry of the junction is substandard, particularly for vehicles approaching from the north before turning into Cemetery Lane. Evidence indicates that drivers of rigid HGVs in particular are sometimes unable to turn into the lane from the north in one manoeuvre.

29. This requires drivers to reverse before completing the turn or to proceed beyond the junction to reverse into Lark Way before approaching the junction from the south. These manoeuvres will have, on occasions, interrupted the free flow of traffic on Foxbury Lane but there is no evidence to indicate that these interruptions have caused anything other than minor inconvenience. Visibility for drivers of vehicles exiting Cemetery Lane is good in both directions and there is no evidence to indicate that manoeuvres at the junction by any traffic, including HGVs, has caused any concerns for highway safety at the junction. It is noted that the County Highway Authority have not objected to the development of the Old Army Camp and that the District Council withdrew their original objection. The Parish Council have maintained a strong objection on highway safety grounds but, as a matter of planning judgment, their concerns are unfounded.

30. The use of the appeal land for the storage of portable buildings does not result in any adverse consequences for highway safety.

The fifth issue – the planning balance

31. The use to which the appeal land is being put does not require a countryside location and does not fulfil any local need. Furthermore, the storage of portable buildings on the land causes significant harm to the character of the area and to the character of Westbourne Cemetery. These factors are afforded substantial weight. The use of the land is thus in conflict with CLP policies 2, 45 and 48 and with WNP policy LD2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) therefore applies and requires that determination be made in accordance with the plan unless material considerations indicate otherwise.

32. The most significant material consideration put forward by the Appellant is that the Old Army Camp is previously developed land. Paragraph 85 of the NPPF encourages the use of previously developed land to support the rural economy but also requires that development is sensitive to its surroundings. The national policy set out in this paragraph also requires that "Planning policies and decisions should recognise that sites to meet local business...needs in rural areas may have to be found...beyond existing settlements..." (emphasis added). So the encouragement for the use of previously developed land is to meet the needs of local business and it has already been concluded that the use of the land is not meeting the needs of local business. This factor is afforded limited weight.

33. National policy, such as that found in paragraphs 84 and 85 of the NPPF, pulls, understandably, in different directions. It supports economic growth in rural areas whilst seeking to ensure that such growth is sensitive to its surroundings. The matter relating to previously developed land has already been addressed and there is nothing else in national policy to be afforded any positive weight.

34. With regard to the needs of the business, and in this case the business is FG Speed Cabins, very little effort has been made to find an alternative location for the business in a more appropriate location, which would be open land in an industrial or business park anywhere within their extensive area of activity. In this regard Mr Green, for the Appellant, accepted in cross-examination that it was no part of his case that an alternative location could not be found. Furthermore, given the nature of the business, relocation would simply require taking portable buildings to another location and is unlikely to be seriously damaging to the economic viability of the business. This factor is not afforded any weight.

35. With regard to the economic contribution of the business and to the effect of dismissing the appeal on the livelihoods of its employees no case has been made that the business would not continue, just that it would be difficult to find alternative premises. The business is likely therefore to continue to contribute to the economy and to employ workers, whether this be existing or other workers. For these reasons these factors are not afforded any positive weight. The fallback position mentioned in closing on behalf of the Appellant is only relevant to the ground (a) appeal in Appeal C.

36. Of the material considerations put forward by the Appellant only the re-use of previously developed land is afforded any weight, and this weight is limited. It does not, as a matter of planning judgement, outweigh the substantial weight that is afforded to the in principle objection to the use of the land in this countryside location and to the significant harm that would be caused by the continued use of the land for the storage of portable buildings on the character of the countryside and on the character of Westbourne Cemetery.

37. The Appellant is seeking, as an alternative to permanent use of the land for the storage of portable buildings, a temporary permission for the use for a period of three years. It is a matter of common sense and of case law that a temporary permission would cause less harm than a permanent use. But the harm caused over such a period, particularly that relating to the tranquillity of Westbourne Cemetery, would not be outweighed by the limited weight afforded to the re-use of previously developed land over the same period.

Conclusion

38. The continued use of the land for the storage of portable buildings does not require a countryside location and does not fulfil any local need. Furthermore, the use of the land causes significant harm to the character of the area and to the character of Westbourne Cemetery. The use of the land thus conflicts with CLP policies 2, 45 and 48 and with WNP policy LD2. Material considerations do not indicate that determination of the appeal should be made other than in accordance with the development plan. The ground(a) appeal thus fails.

The ground (f) appeal

39. The ground (f) appeal relates to requirement (iv) of the enforcement notice which has been deleted pursuant to the successful ground (b) appeal. The ground (f) appeal does not therefore need to be considered.

The ground (g) appeal

40. Four months is an inadequate period of time for the occupant of the land to locate, secure, and move to alternative premises. But a breach of planning control should be remedied as soon as is reasonably possible and the two year period requested by the Appellant is unreasonable and would be akin to granting a temporary permission for the unauthorised use of the land. One year strikes an appropriate balance between the need of the business to relocate and the need to remedy the breach as soon as is reasonable. To this extent the ground (g) appeal succeeds and the enforcement notice has been varied accordingly.

Appeal B

The ground (b) appeal

41. The land to which the enforcement notice relates includes part of the access track. The access track is not just ancillary to the use of the enforcement land but is ancillary to the use of other land at the Old Army Camp. The land identified on the plan attached to the notice also includes part of the area to the south which is in an entirely different use to that alleged in the notice, and also encroaches into a building also not in use as a civil engineering contractor's yard. These draughting errors and the inclusion of part of the access track do not justify quashing the notice which can be varied accordingly. The ground (b) appeal, to this extent, succeeds and the notice has been varied accordingly.

The ground (a) appeal

42. The main issues are; first, the principle of development at the Old Army Camp; second, the effect of the development on the character of the area and on the character of Westbourne Cemetery; third, the effect of the development on residential amenity; fourth, the effect of the development on highway safety; and fifth, whether any harm caused and any conflict with the development plan is outweighed by material considerations.

43. It has already been concluded, in the ground (a) appeal in Appeal A, that the tilted balance and the presumption in favour of sustainable development is not engaged. Determination of the appeal must therefore be made in accordance with the requirement of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended).

The first issue – the principle of development

44. The appeal land, on the date of issue of the enforcement notice, was occupied by Connect Civil Engineering, a civil engineering contractor. This business subsequently vacated the land which is now used by other businesses for different uses. But planning permission can only be granted for what is alleged in the notice; use of the land as a civil engineering contractor's yard. Such a use of the land does not meet any sort of identified local need and no claim is made that the use requires a countryside location. These factors are afforded significant weight

and the breach of planning control alleged in the enforcement notice conflicts with CLP policies 2 and 45.

The second issue – the character of the area and the character of Westbourne Cemetery

45. The appeal land is set well back from Cemetery Lane and vehicles and activity associated with a civil engineering contractor's yard would be screened by the building and activity on the land to the south that is not the subject of enforcement action. The land is also screened in views from the east by boundary vegetation. The use of the land as a civil engineering contractor's yard would not have any adverse effect on the character of the area.

46. A civil engineering contractor's yard is used to support civil engineering works on sites elsewhere. The land would therefore be used to store materials and equipment that would be transported to and from those sites. Civil engineering equipment is sometimes large and requires the use of heavy goods vehicles. This type of vehicular activity and activity by other vehicles associated with the yard would be in addition to traffic associated with other developments on the lane, such as Woodmancote Contractors Limited. But vehicular activity associated with the civil engineering contractor's yard would, individually, undermine the tranquillity of the area. This would be particularly the case for Westbourne Cemetery where visitors come to find peace with those buried there. The use of the land as civil engineering contractor's yard would lead to a loss of peace and tranquillity in this designated local green space. The use of the land as a civil engineering contractor's yard would have an adverse impact on the character of Westbourne Cemetery. The use conflicts with CLP policy 48 and WNP policy LD2, and with Section 72(1) of the LBCA Act.

The third issue – residential amenity

47. The static caravans of the private gypsy and traveller site and on showperson plots are to the west of the land, beyond the shared access, and the previously mentioned unoccupied permitted pitches are to the east. The static caravans to the west are surrounded by high fencing, for privacy and security reasons, and the pitches to the east are separated from development at the Old Army Camp by coniferous vegetation. Given the proximity of the static caravans to the land and despite intervening fencing and vegetation, activity on the land has the potential to result in noise causing disturbance to nearby residents. A condition suggested by the Council would prevent use of the land outside normal working hours and there would therefore be no activity on the land in the evenings, on Saturday afternoons or on Sundays.

48. But activity on the land during operating hours is wholly outside and therefore has the potential to cause noise and disturbance. Between the land and the static caravans to the west are buildings, the shared access and fencing. Distance and physical features are likely to attenuate noise and disturbance to an acceptable level for residents of caravans to the west. But the land adjoins the unoccupied pitches to the east and the intended static caravans on these pitches would be only a few metres from potentially noisy activity on the land. The existing vegetation on the intervening boundary would not attenuate noise and disturbance to any significant degree and there is no space to supplement this soft landscaping. A condition could be imposed to require the erection of an acoustic fence on the boundary. But given the immediate proximity of the pitches to the land a fence would be unlikely to provide any significant attenuation of noise. The use of the land as a civil engineering contractor's yard would therefore be likely to

have a significant adverse effect on residential amenity for future residents of static caravans on the permitted pitches to the east of the land.

The fourth issue – highway safety

49. For the reasons given in relation to this issue in the ground (a) appeal in Appeal A the use of the land as a civil engineering contractor's yard would not result in any adverse consequences for highway safety.

The fifth issue – the planning balance

50. The use to which the appeal land would be put does not require a countryside location and does not fulfil any local need. Furthermore, the use of the land as a civil engineering contractor's yard would cause harm to the character of Westbourne Cemetery and would have a significant adverse effect on the amenities of intended residents of static caravans to the east with planning permission. These factors are afforded substantial weight and the use of the land conflicts with CLP policies 2 and 45 and with WNP policy LD2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) therefore applies and requires that determination be made in accordance with the plan unless material considerations indicate otherwise.

51. The most significant material consideration put forward by the Appellant is the fact that the Old Army Camp is previously developed land. Paragraph 85 of the NPPF encourages the use of previously developed land to support the rural economy but also requires that development is sensitive to its surroundings. The national policy set out in this paragraph also requires that "Planning policies and decisions should recognise that sites to meet local business...needs in rural areas may have to be found...beyond existing settlements..." (emphasis added). So the encouragement for the use of previously developed land is to meet the needs of local business and it has already been concluded that the use of the land is not meeting the needs of local business. This factor is afforded limited weight.

52. National policy, such as that found in paragraphs 84 and 85 of the NPPF, pulls, understandably, in different directions. It supports economic growth in rural areas whilst seeking to ensure that such growth is sensitive to its surroundings. The matter relating to previously developed land has already been addressed and there is nothing else in national policy to be afforded any positive weight.

53. There is no current use of the land as a civil engineering contractor's yard so the needs of a business, the economic contribution of a business and the livelihoods of employees are not relevant matters. Neither is the fallback position mentioned in closing on behalf of the Appellant which is only relevant to the ground (a) appeal in Appeal C.

54. Of the material considerations put forward by the Appellant only the re-use of previously developed land is afforded any weight, and this weight is limited. It does not, as a matter of planning judgement, outweigh the substantial weight that is afforded to the in principle objection to the use of the land in this countryside location and to the significant harm that would be caused by the use of the land as a civil engineering contractor's yard on the character of Westbourne Cemetery.

55. The Appellant is seeking, as an alternative to permanent use of the land as a civil engineering contractor's yard, a temporary permission for the use for a period of three years. It is matter of common sense and of case law that a temporary permission would cause less harm than a permanent use. But the harm caused

over such a period, particularly that relating to the tranquillity of Westbourne Cemetery, would not be outweighed by the limited weight afforded to the re-use of previously developed land over the same period.

Conclusion

56. The use of the land as a civil engineering contractor's yard does not require a countryside location and does not fulfil any local need. Furthermore, the use of the land would cause significant harm to the character of Westbourne Cemetery and to the amenities of intended residents of static caravans on permitted pitches to the east. The use of the land conflicts with CLP policies 2, 45 and 48 and with WNP policy LD2. Material considerations do not indicate that determination of the appeal should be made, as a matter of planning judgement, other than in accordance with the development plan. The ground (a) appeal thus fails.

The ground (g) appeal

57. The alleged unauthorised use of the land has ceased and it can be assumed, as the land is now in alternative use, that all requirements of the enforcement notice have been complied with. There is therefore no need to vary the period for compliance with the requirements of the notice. The ground (g) appeal thus fails.

Appeal C

The ground (b) appeal

58. The breach of planning control does not allege a mixed use but alleges two matters; the change of use of the land to use for storage and the use of a building on the land for vehicle repair and servicing. The use of the building for vehicle repair and servicing in this context is uncontroversial but the Appellant maintains that the land had been, on the date of issue of the enforcement notice, in use for two separate uses; partly for the storage of lorries, referred to as Area 3, and partly for steel fabrication by BMS Southern, referred to as Area 4. Credible and convincing evidence, given by Mr Girdler under oath both in writing and verbally at the Inquiry, confirms that BMS Southern occupied part of the enforcement land on the date of issue of the notice. The omission of this primary use of part of the land from the breach of planning control can be remedied, without causing injustice, by excluding from the land that part still in use by BMS Southern, Area 4.

59. The Appellant maintains that Area 3 had been in use for the storage of commercial vehicles and HGVs rather than for the storage of a long list of items as stated in the allegation and in a requirement of the enforcement notice. He has not provided any evidence to indicate that only commercial vehicles and HGVs have been stored in Area 3 and it is likely that other items have been stored on the land alongside the vehicles. If none of the items mentioned in the requirement, in addition to vehicles, are on the land if the notice is upheld then the notice is no more onerous than it would be if the requirement only required the removal of commercial vehicles and HGVs. In this regard there is no need to vary the notice.

60. The ground (b) appeal succeeds in relation to Area 4 and the enforcement notice has been varied to exclude that area from the scope of the notice, and by the deletion of requirement (v).

The ground (c) appeal in Appeal C

61. Planning permission 09/00091/FUL for the 'Extension of existing showmen's site to accommodate storage of rides and equipment on existing hardstanding adjacent to northernmost building' is extant for the land that is the subject of Appeal C. The Appellant maintains that the storage of commercial vehicles and HGVs, the alleged breach of planning control, is permitted by this extant planning permission. But condition two of the permission makes it clear that the site shall not be used other than as an extension of a travelling showman's storage site and there is no evidence to indicate that the commercial vehicles and HGVs stored on the site on the date of issue of the enforcement site were associated with any travelling showman's use of the site. The use of the land for the storage of HGVs and commercial vehicles not associated with such a use is in breach of condition two and planning permission does not exist for the use of the land for the storage of commercial vehicles and HGVs. The ground (c) appeal thus fails.

The ground (d) appeal

62. The ground (d) appeal relates to the use of the building on the land for vehicle repair and servicing. For the ground (d) appeal to succeed the Appellant must have submitted sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of the building for vehicle repair and servicing occurred more than ten years before the date of issue of the enforcement notice. The critical date is 10 April 2008. The evidence must show that the use has subsisted continuously and uninterrupted for the ten year period.

63. The Appellant relies, principally, on witness statements made by himself and by Mr Sharp and Mr Baker, and on their evidence given under oath at the Inquiry. The Appellant purchased the Old Army Camp in May 2013 and at that time the building was in use by Mr Sharp for vehicle repair and servicing, under his business name Stokes Motors. Mr Sharp first used the building in the second half of 2007 and he occupied the building rent free because he also serviced and maintained vehicles stored on the land to the rear owned by the previous owner, Mr Howard. Mr Sharp ceased his use of the building in June 2013 because the Appellant required the payment of rent, which he thought "...was too high".

64. Shortly afterwards Mr Baker took up use of the building for his business, GB Autos. He "...came back from Africa in 2012 and moved the business onto the site...in 2013"... "I moved straight in as someone was moving out". Photographs attached to his witness statement taken on 3 July 2013 show equipment and items consistent with use of the building for vehicle repair and servicing. Whilst there is no documentary evidence, in the form of invoices or delivery notes for instance, to support the witness evidence there is no reason not to regard the evidence of Mr Sharp and Mr Baker, given under oath, as truthful. Their evidence is consistent and convincing. The Appellant has provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the building has been in continuous use for vehicle repair and servicing since before 10 April 2008. The ground (d) appeal thus succeeds and the enforcement notice has been varied by the deletion of the relevant part of the alleged breach of planning control and by the deletion of the relevant requirement.

The ground (a) appeal

65. The ground (a) appeal, given the conclusions in the ground (b) and (d) appeals, relates to the use of land, known as Area 3, for the storage of metal skips,

building materials, scaffolding equipment, lifting platforms, storage racks, engine parts, commercial vehicles, HGVs, redundant vehicles, truck bodies.

66. The main issues are; first, the principle of development at the Old Army Camp; second, the effect of the development on the character of the area and on the character of Westbourne Cemetery; third, the effect of the development on residential amenity; fourth, the effect of the development on highway safety; and fifth, whether any harm caused and any conflict with the development plan is outweighed by material considerations.

The first issue – the principle of development

67. The appeal land had been, on the date of issue of the enforcement notice, in use, primarily, for the storage of lorries by the Appellant. This use ceased and, in August 2021, the land was occupied by Comslink Civil Engineering. But planning permission can only be granted for what is alleged in the notice; use of the land for 'the storage of metal skips, building materials, scaffolding equipment, lifting platforms, storage racks, engine parts, commercial vehicles, HGVs, redundant vehicles, truck bodies as a civil engineering contractor's yard' (referred to hereafter as 'the storage of lorries'). Such a use of the land does not meet any sort of identified local need and no claim is made that the use requires a countryside location. These factors are afforded significant weight and the breach of planning control alleged in the enforcement notice conflicts with CLP policies 2 and 45.

The second issue – the character of the area and the character of Westbourne Cemetery

68. The appeal land is set well back from Cemetery Lane and the storage of lorries, in views along the shared access track, would be screened by buildings on the site and by activity on the land to the south that is not the subject of enforcement action. The land is also screened in views from the east by boundary vegetation. The use of the land for the storage of lorries would not have any adverse effect on the character of the area. Use of the land simply for the storage of lorries and other items would not result in any significant vehicular activity on Cemetery Lane and would not thus have an adverse impact on the character of Westbourne Cemetery. The use of the land for the storage of lorries does not conflict with CLP policy 48 and WNP policy LD2.

The third issue – residential amenity

69. The static caravans of the private gypsy and traveller site and on showperson plots are to the west of the land, beyond the shared access, and the previously mentioned unoccupied permitted pitches are to the east. The static caravans to the west are surrounded by high fencing, for privacy and security reasons, and the pitches to the east are separated from development at the Old Army Camp by coniferous vegetation. Given the proximity of the static caravans to the land and despite intervening fencing and vegetation, activity on the land has the potential to result in noise causing disturbance to nearby residents. A condition suggested by the Council would prevent use of the land outside normal working hours and there would therefore be no activity on the land in the evenings, on Saturday afternoons or on Sundays.

70. But activity on the land during operating hours is wholly outside and therefore has the potential to cause noise and disturbance. Between the land and the static caravans to the west are buildings, the shared access and fencing. Distance and physical features are likely to attenuate noise and disturbance to an acceptable level for residents of caravans to the west. But the land adjoins the

unoccupied pitches to the east and the intended static caravans on these pitches would be only a few metres from potentially noisy activity on the land. The existing vegetation on the intervening boundary would not attenuate noise and disturbance to any significant degree and there is no space to supplement this soft landscaping. A condition could be imposed to require the erection of an acoustic fence on the boundary. But given the immediate proximity of the pitches to the land a fence would be unlikely to provide any significant attenuation of noise. The use of the land as a civil engineering contractor's yard would therefore be likely to have a significant adverse effect on residential amenity for future residents of static caravans on the permitted pitches to the east of the land.

The fourth issue – highway safety

71. For the reasons given in relation to this issue in the ground (a) appeal in Appeal A the use of the land for the storage of lorries would not result in any adverse consequences for highway safety.

The fifth issue – the planning balance

72. The use to which the appeal land would be put does not require a countryside location and does not fulfil any local need, and would have a significant adverse effect on the amenities of intended residents of static caravans on land to the east with planning permission. This factor is afforded substantial weight and the use of the land conflicts with CLP policies 2 and 45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) therefore applies and requires that determination be made in accordance with the plan unless material considerations indicate otherwise.

73. The most significant material consideration put forward by the Appellant is the fact that the Old Army Camp is previously developed land. Paragraph 85 of the NPPF encourages the use of previously developed land to support the rural economy but also requires that development is sensitive to its surroundings. The national policy set out in this paragraph also requires that "Planning policies and decisions should recognise that sites to meet local business...needs in rural areas may have to be found...beyond existing settlements..." (emphasis added). So the encouragement for the use of previously developed land is to meet the needs of local business and it has already been concluded that the use of the land is not meeting the needs of local business. This factor is afforded limited weight.

74. National policy, such as that found in paragraphs 84 and 85 of the NPPF, pulls, understandably, in different directions. It supports economic growth in rural areas whilst seeking to ensure that such growth is sensitive to its surroundings. The matter relating to previously developed land has already been addressed and there is nothing else in national policy to be afforded any positive weight.

75. There is no current use of the land for the storage of lorries so the needs of a business, the economic contribution of a business and the livelihoods of employees are not relevant matters. Neither is the fallback position mentioned on behalf of the Appellant because it has been found, in the ground (d) appeal in Appeal C, that the existing use of the building on the enforcement land is lawful.

76. Of the material considerations put forward by the Appellant only the re-use of previously developed land is afforded any weight, and this is limited. It does not, as a matter of planning judgement, outweigh the substantial weight that is afforded to the in principle objection to the use of land in this countryside location.

77. The Appellant is seeking, as an alternative to permanent use of the land for the storage of lorries, a temporary permission for the use for a period of three years. It is matter of common sense and of case law that a temporary permission would cause less harm than a permanent use. But the harm caused over such a period would not be outweighed by the limited weight afforded to the re-use of previously developed land over the same period.

Conclusion

78. The use of the land for the storage of lorries does not require a countryside location and does not fulfil any local need. Furthermore, the use of the land have a significant adverse effect on the amenities of intended residents of static caravans on permitted pitches to the east. The use of the land is in conflict with CLP policies 2 and 45. Material considerations do not indicate that determination of the appeal should be made other than in accordance with the development plan. The ground (a) appeal thus fails.

The ground (f) appeal

79. The ground (f) appeal relates to requirement (i), (iv) and (v) of the enforcement notice. The conclusion reached in the ground (c) appeal renders requirement (i) not to be excessive. Requirements (iv) and (v) have been deleted pursuant to the successful ground (b) and (d) appeals. Otherwise the requirements of the notice are not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

80. The alleged unauthorised use of the land has ceased and it can be assumed that, as the land is now in alternative use, all requirements of the enforcement notice have been complied with. There is therefore no need to vary the period for compliance with the requirements of the notice. The ground (g) appeal thus fails.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Rudd	Barrister instructed by Green Planning Studio
He called	
Mr J Sullivan	Appellant
Mr B Poingdestre	Tenant of Old Army Camp
Mr J Sharp	Past tenant of Old Army Camp
Mr G Baker	Tenant of Old Army Camp
Mr Eames	Tenant of Old Army Camp
Mr Girdler	Tenant of Old Army Camp
Mr Orszak	Tenant of Old Army Camp
Mr J Hurlstone MCIHT CMILT	Principal of The Hurlstone Partnership
Mr M Green	Principal of Green Planning Studio

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Fraser	Barrister instructed by Ms N Golding, Principal Solicitor of Chichester District Council
He called	
Mrs Archer MRTPI	Enforcement Team Manager

FOR WESTBOURNE PARISH COUNCIL:

Mr F Campbell	
Gave evidence and called	
Mr P Russell MCIHT	Principal Director of Bright Plan Ltd
Mr R Briscoe	Parish and District Councillor
Mrs P Jarvis MRTPI	Principal of PJPC Ltd

INTERESTED PERSONS:

Mrs Harrison	Local resident
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DOCUMENTS

- 1 Opening Statement on behalf of the Local Planning Authority.
- 2 Opening of Statement for Westbourne Parish Council.
- 3 Chichester Local Plan: Key Policies.
- 4 Statement of Common Ground between the Council and the Appellant.
- 5 Minutes of Cabinet Meeting held on Tuesday 5 July 2022.
- 6 Appeal Decision APP/L3815/W/20/3255114.
- 7 Westbourne Conservation Area: Character Appraisal.
- 8 Extract from TD 41/95.
- 9 Extract from TA 22/81.
- 10 Non Designated Heritage Asset Identification and Assessment.
- 11 Suggested Conditions.
- 12 Amendments required to Notices to meet concerns of Grounds B, C, E and F.
- 13 Witness Statement of Mike Eames.
- 14 Witness Statement of Benjamin Poingdestre.
- 15 Witness Statement of James Sharp.
- 16 Witness Statement of Graham Baker.
- 17 Witness Statement of Jimmy Sullivan.
- 18 Additional Evidence for Westbourne Parish Council dated September 2021.
- 19 Closing Statement for Westbourne Parish Council.
- 20 Closing Statement on behalf of the Local Planning Authority.
- 21 Closing Statement on behalf of the Appellant.



Plan

This is the plan referred to in my decision dated: 27 January 2023

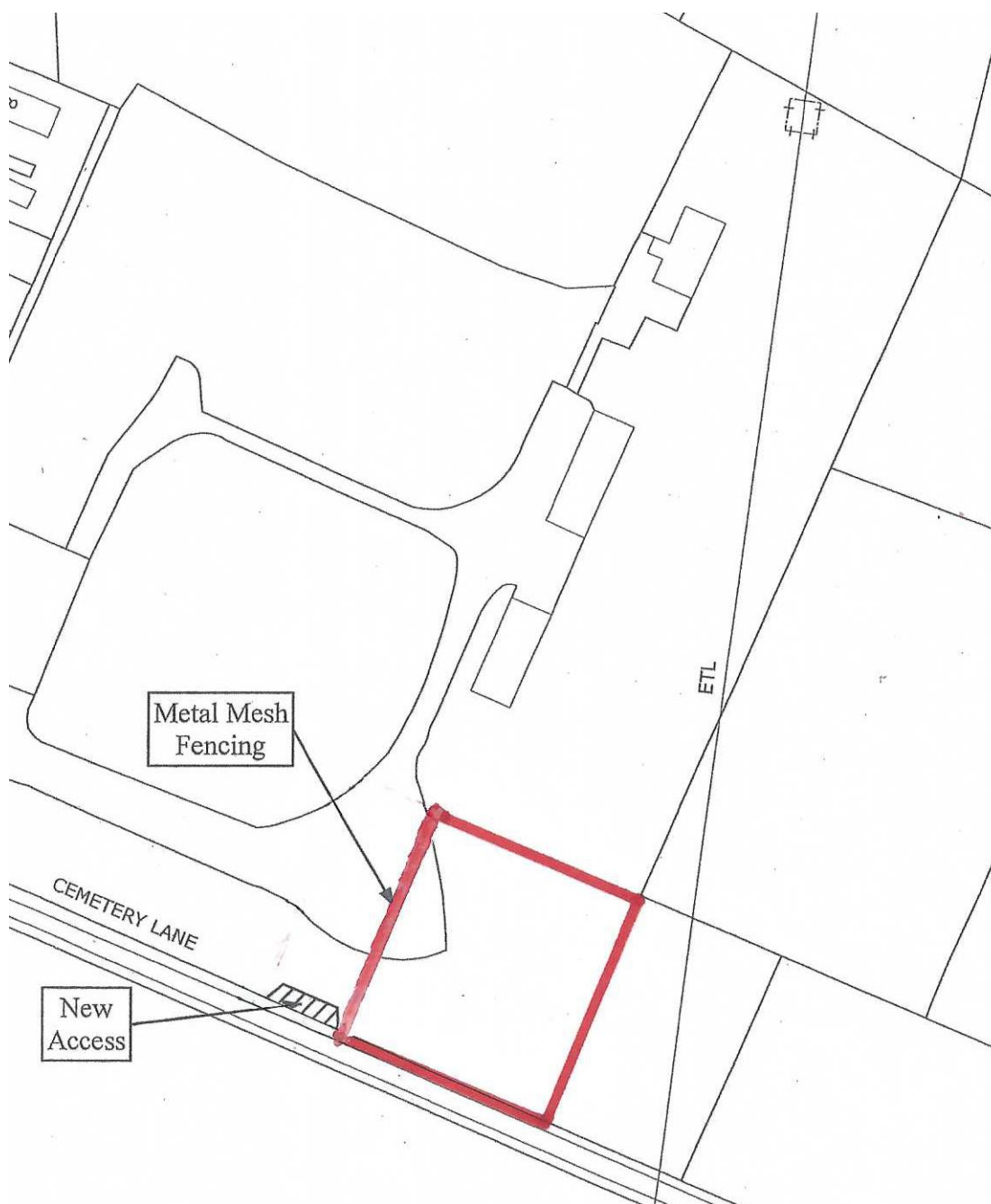
by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

Reference: APP/L3815/C/19/3203215

Enforcement Notice Ref. No. WE/41

Scale: not to scale





Plan

This is the plan referred to in my decision dated: 27 January 2023

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

Land at Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

Reference: APP/L3815/C/19/3203219

Enforcement Notice Ref. No. WE/40

Scale: not to scale





Plan

This is the plan referred to in my decision dated: 27 January 2023

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

Land at Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

Reference: APP/L3815/C/19/3203222

Enforcement Notice Ref. No. WE/42

Scale: not to scale

