



Appeal Decisions

Inquiry Held on 10 & 11 January 2023

Site visit made on 11 January 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal A Ref: APP/J0405/C/22/3291544

**Land at Red Furlong Farm, Twyford Road, Poundon, Buckinghamshire
OX27 9BG**

- 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 P Flannery against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice was issued on 31 December 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to parking commercial vehicles with associated development comprising the laying of hard standing including (but not limited to) gravel, tarmac and stone.
- The requirements of the notice are:
 - Step 1: Cease the parking of commercial vehicles on the land.
 - Step 2: Permanently remove all commercial vehicles not associated with the lawful use of the land, from the land.
 - Step 3: Permanently remove the hard standing materials laid at the site in order to facilitate the material change of use of the land. For the avoidance of doubt, this includes (but is not limited to) gravel, tarmac and stone.
- The period for compliance with the requirements is:
 - Step 1: One (1) month.
 - Step 2: One (1) month.
 - Step 3: Three (3) 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 as amended.

Summary of Decision: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/J0405/C/22/3291551

**Land at Red Furlong Farm, Twyford Road, Poundon, Buckinghamshire
OX27 9BG**

- 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 P Flannery against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice was issued on 31 December 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the laying of hard standing including (but not limited to) gravel, tarmac and stone.
- The requirements of the notice are:
 - Step 1: Cease laying hard standing or gravel, tarmac or stone materials on the Land.

Step 2: Permanently remove the hard standing materials from the Land. For the avoidance of doubt, this includes (but is not limited to) gravel, tarmac and stone.

Step 3: Remove all the debris and materials created by compliance with step 2 from the Land.

- The period for compliance with the requirements is:
Step 1: One (1) day.
Step 2: Three (3) months.
Step 3: Three (3) 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 as amended.

Summary of Decision: Appeal B is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C Ref: APP/J0405/X/22/3303887

Land at Red Furlong Farm, Twyford Road, Poundon, Buckinghamshire OX27 9BG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Flannery Plant Hire against Buckinghamshire Council.
- The application Ref, 22/00585/CPE is dated 11 February 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as: The use of the land and buildings for the storage of HGVs and events trailers, classic cars and exhibition stands.

Summary of Decision: Appeal C is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural Matters

1. Evidence at the Inquiry was taken either under oath and solemn affirmation.
2. An agreed and signed Statement of Common Ground (SOCG) was submitted at the Inquiry. The SOCG confirms that the application the subject of Appeal C seeks the grant of a Certificate for Lawful Development or Use (LDC) for the use of land and buildings for the storage of HGVs and events trailers, classic cars and exhibition stands on Land identified on a new plan attached to Appendix 3 to the SOCG¹. I have determined Appeal C based on that plan.
3. The Council accept in the SOCG that the Land identified in the enforcement notices (Appeals A and B) should not extend around the adjacent dwelling Red Furlong Farmhouse. No breach of planning control has taken place at this property and the Council accept that it forms a separate planning unit. Furthermore, at the Inquiry it was also accepted by the Council that, except for a small strip of land where an earth bund has been formed, the paddock to the rear of Red Furlong Farmhouse should also be excluded from the enforcement notices. I have amended the plans attached to the notices to reflect the agreed boundary changes to the Land.

¹ Appendix 3, SOCG LDC Drawing Ref: PF10709.03 Rev B.

Appeal C – Lawful Development Certificate

Main Issue

4. The appeal is made against the failure of the Council to give notice within the prescribed period for a decision on an application for a LDC. The Council subsequently advised that had they been in a position to make a decision on the application they would have refused it.
5. The main issue is whether the Council's deemed refusal to grant a LDC for an existing use or development was well founded. Section 191(4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the test is the balance of probability.

Reasons

6. Section 171B (3) advises that in the case of a breach of planning control consisting of the material change of use of land and/or buildings, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It is therefore necessary for the appellant to demonstrate, on the balance of probability, that the material change of use of the land and buildings took place on or before the 11 February 2012 with the use continuing for at least 10 years after.
7. The appellant's evidence of the use of the land and buildings for the storage of HGVs and events trailers, classic cars and exhibition stands relies on evidence given on oath at the Inquiry by Mr M Goodall, the former Managing Director of Inchemere Design Limited (IDL) and his written witness statement and Statutory Declaration (SD). IDL occupied the appeal site from November 2007 until September 2020.
8. Mr Goodall's evidence is that his company first started utilising the site for storage from March 2008 and continued to do so until September/October 2020 when they put the site up for sale. However, from 2018 they started to wind down their business transferring items stored to other premises in Northampton. IDL design, manufacture and hire out promotional builds, exhibits, driveable vintage vehicles and other promotional vehicles and trailers. The larger barn on the appeal site was used to store the smaller vans and vintage vehicles, with the smaller barn used to store promotional sampling bins and exhibition stands. Larger weatherproof vehicles and trailers were stored outside, initially on the sand manege. During the company's occupation of the site, they re clad the barns, erected some fencing and laid areas of hard standing around the buildings and on the manege area.
9. In addition to the oral evidence given during the Inquiry, documentary evidence comprising aerial images of the site, photographs of hard standing being laid, fencing erected and of vehicles and products stored at the site have been provided, together with a copy of the company's Goods Vehicle Operators Licence (GVOL) for the site.

10. The aerial images provided, including those submitted by the Council, clearly show vehicles and trailers stored on the hard surfaced areas created around the site in June and December 2009, July 2013 and May 2018. Aerial images dated April 2017, May 2020 and February 2021 do not show any evidence of outside storage. The photographs provided by Mr Goodall dated March 2008 show that promotional vehicles were stored on the former sand manege, and there are photographs dated October 2008 showing classic campervans and promotional vehicles stored in the larger barn. The photographs which accompanied Mr Goodall's SD were initially undated. However, Mr Goodall confirmed in cross-examination that Photo 1, which shows classic motorbikes and cars stored, was taken in 2009, whilst Photos 2 & 3 he could date from the new Waitrose van and were taken in 2012. Photos 4 & 5 he believed to be taken in 2017, as they show a car which he knows he had at that time.
11. It is the Council's case there is insufficient corroborative evidence to demonstrate continuity of use. They point out that except for one photograph taken in 2017, there is no visual evidence of any storage on the site between 2013 and 2018. They do not consider the GVOL to be evidence of actual use, and none of the images show 40 vehicles stored outside which Mr Goodall's written evidence suggests to have been typically the case. Furthermore, they draw attention to site visit notes from a case officer who visited the site in February 2012 and noted there were no real signs of commercial activity on the site. In addition, an Inspector's decision letter dated December 2013, in relation to a refusal for housing on the site, stated that at the time of his site visit there was '*an apparent lack of activity on the site*'.
12. With the exception of the Planning Officer's site visit note in 2012 and the Inspector's decision letter, the Council does not have any evidence of their own that would cast doubt on the evidence provided by Mr Goodall. Furthermore, there is no evidence that the Council Officer or the Inspector entered the buildings or gained access to the surrounding yard through the gates which can be seen on the aerial images. It is clear from the photographs submitted that the buildings were used to store many of the promotional, graphic wrapped vehicles and classic cars/vans. Moreover, I have no reason to believe that Mr Goodall is not a truthful witness. His answers were clear and precise when he gave evidence on his company's use of the site whilst in its ownership. In answer to my questions at the Inquiry that he said he would visit the site on average two or three times a week to check that the vehicle's batteries remained charged, and perhaps take measurements for design wraps.
13. Mr Goodall explained that the application for housing on the site was not on his instigation but made by his planning consultant who felt that he could increase the value of the site if permission was granted for housing on it. Mr Goodall explained that the main use of the site was storage, thus it is not surprising that there was little evidence of commercial activity on the site. It was not a place of work for any employees, and I am not convinced that it would be usual for photographs to be taken regularly within a storage facility.
14. The aerial images and site photographs provide visual evidence of storage on the site between 2008 and 2018. Although I accept that there is no evidence of 40 vehicles stored outside, the aerial images in 2009 and 2013 do show between 20-30 vehicles and the photographs show a significant number of vehicles were also stored inside of the barns. Mr Goodall provided clear and unambiguous evidence regarding his company's use of the site between the

date of their purchase until it was put up for sale in 2020. Whilst I appreciate that the GVOL does not demonstrate actual usage, Mr Goodall explained at the Inquiry that it was an expensive licence to acquire, but necessary if you were operating heavy goods vehicles from the site. It seems unlikely that a licence would have been initially applied for in 2008 and renewed again in 2018 if the site was not in use by IDS.

15. There is no dispute that storage at the site was wound down from 2018 as IDL had made a decision to sell the site. Mr Goodall explained that they began to clear the site during 2018 and gradually move their stock to their premises in Northampton. Furthermore, the appellants accept that the site was vacant for a time before they purchased it. S191(2) of the Act states that uses are lawful because, amongst other matters, the time for enforcement action has expired. In this case the appellant is claiming immunity for a use that commenced in March 2008 and was used continually for that purpose for at least 10 years thereafter, i.e. at least until the end of March 2018. Although that storage use might have become dormant post 2020, it had not been abandoned.
16. The Planning Practice Guidance states that if the Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the application's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability². I accept that documentary evidence to corroborate the claimed use is relatively sparse. However, there is clear evidence that IDL were utilising the site for storage throughout the 10-year period claimed. Mr Goodall provided a comprehensive account of that use in his oral evidence. In the absence of any substantive evidence from the Council that would cast doubt on his version of events, I am satisfied that in the circumstances of this case that the appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the use in question is lawful.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of land and buildings for the storage of HGVs and events trailers, classic cars and exhibition stands was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Appeal A – Material Change of Use

The Enforcement Notice

18. The alleged breach of planning control is stated in paragraph 3 of the notice as the material change of use of the land to parking of commercial vehicles with associated development comprising the laying of hard standing including (but not limited to) gravel, tarmac and stone. Taking into account the requirements of this notice at Step 3 and the contents of the enforcement notice the subject of Appeal B, which alleges the laying of the hard standing as operational development, it was agreed by the Council at the Inquiry that the breach of planning control in relation to the alleged material change of use would be

² PPG, Paragraph:006 Reference ID: 17c-006-20140306.

better described as: '*Without planning permission, the material change of use of the land to parking commercial vehicles facilitated by the laying of hard standing including (but not limited to) gravel, tarmac and stone.*'

Appeal A on ground (b)

19. The main issue is whether as a matter of fact the Land was in use for parking commercial vehicles. The burden of proof falls on the appellant to make out their case and the test is on the balance of probability.
20. It is the appellant's case that Flannery Plant Hire have not been using the Land for the parking of commercial vehicles, instead the site is in use for the storage of plant which is contracted out for use in the construction of two large infrastructure projects, HS2 and the East West Rail Link, which pass close to the appeal site. Mr M Flannery told the Inquiry that Flannery Plant Hire is one of three preferred suppliers for HS2. Given the nature and size of the plant and vehicles they hire out for these projects, Red Furlong Farm (RFF) is an ideal site to store these items when they are not out on hire, and it is essentially utilised as a "holding pen". There is insufficient space to store this plant safely at their depots in Wembley or Birmingham, and it makes commercial and environmental sense to instead store it at a site which is accessible to the two projects that the vehicles and plant are contracted out to.
21. It is common ground that the leading case on whether a use should be considered to be car parking or storage is *Crawley Borough Council V Hickmet Limited* [1998] 75.P&CR 500. It is necessary to examine the activity on the land and to assess the primary purpose to which the land is being put. The case confirms that the two concepts of parking and storage are distinct and mutually exclusive, and the difference lies in the circumstances in which the vehicle is being left. Parking is described in that case, which involved cars, as leaving the vehicle while it is in current use, whether that is long or short term, and that there is a distinction between temporary parking and long-term storage of new vehicles, which are not yet in use, in a compound. Furthermore, it was held that storage takes place when something is put away for a period of time because it is not needed, or its use is not contemplated in the short term.
22. I have had regard to the submissions made by both parties. I agree with the Council that the nature of the heavy commercial vehicles and plant stationed on the site is relevant and is distinct from the parking of a car whose use is generally contemplated 'everyday'. It is also relevant that the appellant, although reasonably expecting their plant and heavy commercial vehicles to be utilised in contracts throughout the year in association with HS2 and East West Rail Link, do not know exactly when and for how long they will be out on contract. Similarly, they do not know how long they will remain stationed at RFF. Their use is certainly contemplated, as Mr P Flannery confirmed in cross-examination that when vehicles/plant are no longer needed for HS2, they will be returned to their plant hire depots in either Birmingham or Wembley. Consequently, whilst stationed at RFF the vehicles are needed for use in the neighbouring projects and their future use is contemplated, in at least the medium term, and on occasion much more frequently. Mr M Flannery stated in cross-examination that at times there may be 10 movements a day of vehicles/plant to and from the site, whilst on many other days there may be no vehicular movements. He confirmed that contracts were not fixed, and

- vehicles could be on hire for days or a year. The length of a contract was never guaranteed but they need to ensure that they always had the plant/vehicles available for when it was needed on these large projects.
23. I am also mindful that the buildings on the site are utilised for the storage of attachments to the plant/vehicles, e.g buckets, etc. These are clearly not parked and are being stored when not in use. In addition, some of the vehicles/plant cannot be driven on the roads and are transported to and from their place of hire by a low-loader. Parking would not therefore best describe the stationing of those large vehicles/plant and their attachments on the appeal site.
 24. I appreciate that from the evidence before the Council when they served the notice, which the Council's Enforcement Officer stated at the Inquiry was taken from visits to the site when new hard standing was being laid, it appeared that the vehicles on the site were not static. On those visits they saw different vehicles, and some had been moved around the site. The Council therefore considered this to be a parking use.
 25. However, the Council did not serve a Planning Contravention Notice, whereby the actual use of the site could have been clarified. From the evidence before me, and from what I heard at the Inquiry, it seems to me that the site is being used for a very specific purpose, which for the reasons set out above, I would not characterise as parking, nor as a storage use. I consider the use of the appeal site to be best described as a 'holding pen for commercial vehicles and plant for use when not on contract to nearby national infrastructure projects, namely HS2 and the East West Rail Link'. Indeed, Mr M Flannery described the site's use as such in cross-examination.
 26. I therefore conclude that as a matter of fact and degree, the site was not in use for parking commercial vehicles but in sui generis use³ as described above. The ground (b) appeal succeeds to that extent.
 27. However, I am permitted by S176 of the 1990 Act to correct any error or misdescription in the enforcement notice if I am satisfied that this will not cause injustice to the appellant or the Council. I have taken into consideration the appellant's view that had the alleged breach been described as 'storage', they would have made an appeal on ground (d). However, I have found that on the balance of probability the use is not storage but sui generis use as set out above. From the appellant's evidence alone that use was commenced on the Land no earlier than February 2021, thus there would be no basis for an appeal on ground (d).
 28. I have also had regard to the Council's concern that their case on ground (a), the deemed planning application, has been directed to whether planning permission should be granted for commercial parking, not storage or any other use. From the evidence before me, including what I heard at the Inquiry, I am satisfied that both parties understood how the appeal site was being utilised by the appellant and that their evidence on ground (a) was directed at the character of the appellant's use, rather than the label of parking that the Council had given it in the notice. I do not therefore consider that my correction of the notice to describe the alleged breach as: 'Without planning permission the material change of use of the land to a holding pen for

³ Sui generis – of its own kind.

commercial vehicles and plant for use in national infrastructure projects, namely HS2 and East West Rail Link, facilitated by the laying of hard standing including (but not limited to) gravel, tarmac and stone', would cause any injustice to either party. To that effect I have corrected the description of the alleged breach in the notice and corrected the requirements to align with that new description.

Appeal A on ground (c)

29. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The appellant considers their use of the appeal site to be a storage use. On that basis and considering the nature of IDL previous use of part of the site for storage, the appellant does not consider that their use of the land and buildings amounts to a material change in its use.
30. However, for the reasons set out in ground (b) above, I have found that the land is not in a storage use. There has been a material change in the definable character of the site's planning land use from its previous use by IDL to one which is now used for a specific purpose as a holding pen for commercial vehicles and plant for use in nearby national infrastructure projects. The onsite and offsite impacts of the alleged breach (as corrected) are such that the character of the new use is materially different from the previous use. There is no planning permission granted by the local planning authority for that material change of use and that change of use is not permitted under any provision of the Town and Country Planning (General Permitted Development) (England) Order 1995, as amended. A breach of planning control has occurred and Appeal A on ground (c) fails.

Appeal A on ground (a), deemed planning application

31. The terms of an appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. Consequently, taking into account my corrected description of the alleged breach of planning control in the notice, the deemed planning application seeks permission for the material change of use of the land to a holding pen for commercial vehicles and plant for use in nearby national infrastructure projects, namely HS2 and East West Rail Link, facilitated by the laying of hard standing including (but not limited to) gravel, tarmac and stone.

Main Issues

32. The main issues in this case are:

- Whether the development is acceptable in principle in this location, having regard to local and national planning policy; and
- The effect on the character and appearance of the area, including the effect on the historic landscape.

Reasons

Location

33. The appeal site lies in an area of open countryside between the settlements of Twyford and Poundon. It comprises former agricultural buildings, and prior to the appellant's acquisition of the site, it was in used for storage by IDL. It can be seen by my decision on Appeal C, that I found the previous use by IDL for

the storage of HGVs and event trailers, classic cars and exhibition stands on a large proportion of the appeal site to be lawful.

34. In accordance with the National Planning Policy Framework (the Framework), Policy S1 of Vale of Aylesbury Local Plan (LP) requires all development to comply with the Framework's principles of sustainable development. Furthermore, new development should contribute positively to meeting the vision and strategic objectives for Aylesbury Vale. Policy S1 states that where there are no policies relevant to the application then the Council will grant permission unless material considerations indicate otherwise. In assessing development proposals, Policy S1 states that consideration will be given to, amongst other things: delivering strategic infrastructure; giving priority to the reuse of vacant or underused brownfield land; minimising impacts on local communities; and minimising impacts on heritage assets, landscapes and biodiversity.
35. Considering the lawful use of the site there is no dispute that the site is brownfield land, and at the time when the site was acquired by the appellant it was vacant. The reuse of vacant brownfield land is a consideration that attracts positive weight in Policy S1. Furthermore, whilst I accept that a refusal to grant planning permission for this development would not prejudice the delivery of HS2 or the East West Rail Link, the provision of plant and commercial vehicles that are used in the construction of those national infrastructure projects certainly supports their delivery.
36. We heard much at the Inquiry about the appellant's preference to station their commercial vehicles and plant close to HS2 to prevent them having to be transported from their hire depots in Wembley or Birmingham between contracts. Not only do those depots not have enough space to accommodate such large commercial vehicles and plant, but it is also the appellant's view that it makes both economic and environmental sense for these vehicles/plant not to have to be transported between contracts to and from London or Birmingham. Transportation of large vehicles/plant is predominantly on a low-loader.
37. I have had regard to the evidence given by the Council's Senior Planning Officer at the Inquiry, and his point that even if the heavy plant is not transported from the hire depots between contracts, the low-loader will still have to make that journey to transport them from RFF to site. However, there are clearly environmental benefits accrued from reducing the length and number of journeys made which involve slow and abnormal loads. Benefits include reduction in energy use and pollutants. Furthermore, not all the plant and vehicles need to be transported on a low-loader and therefore once they are on site they would only need to be moved between the site and the HS2 compound rather than making longer journeys between Flannery's existing depots.
38. I have also taken into consideration the written representations made by local residents, and those I heard orally at the Inquiry from the Chairman of Twyford Parish Council and the Local Councillor for Grendon Underwood Parish. Understandably, considering the amount of disruption caused by the ongoing construction of HS2 and the East West Rail Link in the local area, including local road closures, increase in heavy vehicle movements and plant on the roads, and damage of the road surfaces, the local community do not wish to see any

further increase in such traffic within their area. The absence of footways and lighting along the road between Poundon and Twyford where the appeal site is situated is also a safety concern for local residents. I noted on my site visit the location of the bus shelter close to the road's junction with Main Street, Poundon, where vehicles traveling between the site and the HS2 compound would pass.

39. However, the Highway Authority has not raised any safety concerns. The site access is wide with good visibility, and although there are no footways or street lighting on the adjoining lane, abnormal loads and plant will be travelling slowly and would be well lit in hours of darkness. Moreover, we heard from Mr P Flannery that when an abnormal load is to be transported, he is required to apply for a permit from the Police. The Police dictate the route to be taken between sites and the time of travel. It is expected that local highway constraints and residential communities are a consideration when the Police place conditions to be adhered to on any permit issued. Furthermore, HS2 also provide routing information for contractors which must be adhered to, and such traffic is prohibited from travelling through the village of Twyford.
40. The appeal site is not located close to any residential properties, and no concerns have been raised in relation to noise and disturbance from the movement of plant or vehicles within the site. I have great sympathy for the plight of local residents whose previous rural environment is temporarily suffering from major construction works in the area. However, it seems to me that there are clear environmental benefits from having a temporary holding pen for heavy vehicles and plant involved in these strategic projects. If a holding pen is not located in the countryside close to the projects where they are needed, heavy commercial vehicles and plant would have to be transported longer distances on the roads from the hire depots, and possibly pass through more residential and built-up areas on route, with greater disruption and environmental harm. Furthermore, I am also mindful of the site's lawful use. Although I heard from third parties that that use had not resulted in significant traffic movements, taking into account the number and of size of vehicles which it is evident from photographs were stored and therefore transported to and from that site, there has clearly have been some large commercial vehicular activity associated with that lawful use, which is a material consideration in the determination of this appeal.
41. The unauthorised development in this case is supporting the delivery of specific national infrastructure projects in a specific location for a temporary period. For the reasons given above, I therefore find that subject to a condition granting a consent for a temporary period the development is acceptable in principle in this location and there is no conflict with Policy S1 of the LP, the aims of which are set out above.

Character and Appearance

42. The appeal site is situated in open countryside. It is surrounded by arable farmland characterised by open fields enclosed by hedgerows. The Aylesbury Vale Landscape Character Assessment for this area (Twyford Vale and Poundon-Charndon Settled Hills) identifies the low settlement level, historic field and hedge row pattern and ridge and furrow, to be key components of its landscape character.

43. The site itself comprises three buildings which retain their original agricultural appearance in terms of form, design and use of materials. The buildings and the hard standing around them are well screened from the road by a mature hedgerow and a small area of woodland to the south of the site. Views from the road are predominantly restricted to those from the site access. There is a mature hedgerow along the rear boundary of the site which separates the yard from the neighbouring fields and provides some screening of the buildings and yard from views from the public footpath which crosses the adjoining field. In addition, the 3.5 m fence that was erected by Mr Goodall in 2018 within the southwestern part of the site provides some additional screening of the yard from the fields.
44. The existing mature hedgerows around the site mean that views of the hard standing from the public highway are limited. Moreover, it is not unusual for farmyards within the countryside to have significant areas of hard standing within them, particularly where it forms a means of access to the highway. Considering the scale and type of some of Flannery's plant/vehicles stationed at the site, including large excavators and dumpers, there is no doubt that some of those vehicles, or parts of them, would be visible from outside of the site and seen above the hedgerows. However, it would not be uncharacteristic for a farmyard to have machinery and plant within it. Whilst I appreciate that these vehicles are visual detractors within the landscape, the limited views and appearance of those vehicles in an otherwise established and well screened yard would not have a significantly harmful effect on the overall character or appearance of the area. I am also mindful that the number and type of vehicles/plant stored at any one time will fluctuate as vehicles are off-site on contract. Moreover, the use is only intended to be temporary and consequently there would be no permanent visual harm.
45. The presence of heavy commercial vehicles and plant on the rural roads approaching and accessing the site has an urbanising effect on the countryside and there is resultant harm on the rural character, including the peace and tranquillity that one would normally associate with a countryside location. However, the evidence at the Inquiry was that vehicle movements to and from the site would not be significant. Considering the specific use which is sought for by the deemed planning application, and which is only for a temporary period, the harm identified would be limited.
46. The Council has also raised concerns regarding the impact of the development on the historic landscape. There is evidence of ridge and furrow in the neighbouring field which is considered by the Council to be a non-designated heritage asset. Paragraph 203 of the Framework requires that the effect of the development on the significance of a non-designated heritage asset should be taken into account in determining the application. In considering applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
47. The Council consider the significance of the ridge and furrow to be its evidential value as a good example of an historic agricultural practice. From the evidence before me and observations on my site visit, I see no reason to disagree.
48. The unauthorised development, including the hard standing which has been laid, is not however on land where the ridge and furrow is evident. As such,

there has been no direct harm to this agricultural landform. I accept that there are views of the appeal site from the public right of way which passes through the field where the ridge and furrow is fully appreciated. However, considering the agreed significance of the non-designated heritage asset, the visual impact of heavy commercial vehicles and plant within the yard from the public right of way and at a distance, would not have a harmful effect on the significance of the ridge and furrow. The effect would be neutral.

49. I conclude that the unauthorised development does not have a harmful effect on the historic ridge and furrow landscape and there is no conflict with the Framework in this regard. However, the presence of heavy commercial vehicles and plant associated with the development has a harmful effect on the character of the countryside. For the reasons given above, the extent of that harm would not be substantial, and the temporary permission sought would further reduce that harm. However, there is conflict with Policies S3 and NE4 of the LP which, amongst other things, seek to ensure that new development does not compromise the character of the countryside between settlements or harm the relative tranquillity of the countryside.

Conditions

50. The Council suggested several conditions which were discussed along with others at the Inquiry. I have considered those conditions against the Framework and Planning Practice Guidance. As a result, I have amended some for accuracy, consistency and omitted others.
51. I have imposed a condition which limits the duration of the permission to five years. I appreciate that the appellant sought a longer period, however I am mindful that the planning circumstances which surround the development are likely to have changed in relation to the construction requirements for HS2 and the East West Rail Link by the end of five years, and consequently a period of five years is considered suitable for the development at this time. A temporary permission is reasonable and necessary given the harm identified to the character and appearance of the countryside.
52. A condition requiring the submission and agreement of a site layout/management plan is necessary to ensure that suitable areas and space within the site are identified for the stationing and manoeuvring of vehicles/plant in the interests of traffic management and to safeguard the character and appearance of the area.
53. The purpose of condition 2 below is to require the Appellant to comply with a strict timetable for dealing with the site layout which needs to be addressed to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the use would have to cease.

54. To minimise disturbance to local communities I have imposed a condition to prevent the movement of vehicles, plant or machinery on Sundays or Bank Holidays.
55. I have imposed a condition to remove permitted development rights for the installation of fences and to prevent the installation of external lighting to safeguard the character and appearance of the countryside.
56. Taking into consideration the sui generis use hereby permitted it is not necessary to impose conditions to restrict vehicle repairs or to prevent the importation of waste or construction materials.

Planning Balance and Conclusion

57. I have found that there would be some harm to the character and appearance of the countryside. Although the harm that I have identified would not be substantial, there would be conflict with the development plan in that regard. However, considering the identified environmental benefits of the development, including the reuse of vacant brownfield land, having regard to the lawful use of the site and specific purpose and temporary nature of the development proposed, which supports the delivery of infrastructure of national importance, I conclude that in the circumstances of this case the benefits of the development outweighs the conflict with the development plan.
58. For the reasons given above I conclude that Appeal A should succeed on ground (a). I shall grant temporary planning permission for the use as described in the notice, as corrected. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Appeal B – Operational Development

The Enforcement Notice

59. The notice alleges operational development comprising the laying of hard standing. The Council accepted at the Inquiry that Step 1 of the requirements of the notice which states "Cease laying hard standing or gravel, tarmac or stone materials on the Land" was excessive and unnecessary. The breach of planning control would be remedied by compliance with Steps 2 and 3 alone. I have corrected the notice and removed Step 1.

Appeal B on ground (b) and ground (c)

60. The main issue on ground (b) is whether hard standing was laid as a matter of fact. The appellant does not dispute that new hard standing was laid when they acquired the site in 2021. Furthermore, it is accepted by the appellant in closing submissions that the crushed stone and aggregate laid exceeds maintenance and repair and is operational development.
61. Document 7 submitted at the Inquiry shows the extent of the hard standing laid in 2021. Considering the lawful use of the site, the Council now accept that the hard standing around the curtilage of the two original buildings on the site is lawful⁴ and benefits from planning permission granted by Class J of Part 7, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, that lawfulness does not extend to the full extent of the new hard standing that has been laid which is

⁴ SOCG, dated 10 January 2021.

beyond the curtilage of those buildings, in the south-eastern part of the site. From the evidence before me, the appellant does not appear to dispute the Council's findings.

62. For the reasons given above, hard standing has been laid as a matter of fact and the appeal on ground (b) fails. The appeal on ground (c) succeeds to the extent that the hard standing laid within the curtilage of the buildings and identified on the plan attached at Appendix 4 to SOCG is lawful.

Appeal B on ground (a), deemed planning application

Main Issue

63. The main issue is the effect on the character and appearance of the countryside, including the historic landscape.

Reasons

64. Having regard to my findings on ground (c), it is only the area of hard standing that has been laid outside of the curtilage of the buildings which is unlawful. I am also mindful that this area of hard standing has been laid on land where I found the storage of HGVs and events trailers, classic cars and exhibition stands to be lawful (Appeal C).
65. The hard standing is formed from crushed stone and provides a suitable porous base to facilitate the use of the site for the stationing of vehicles which is lawful. It is also visually related to the existing built development on the site. Moreover, the existing screen fencing, boundary hedgerows and trees which surround this part of the appeal site provide an effective screen for the hard standing, such that it is not visible from public vantage points nor from anywhere outside of the appeal site. Its impact on the visual qualities of the surrounding countryside is thus neutral.
66. Considering the lawful use of the site and the temporary planning permission granted in Appeal A, the creation of the hard standing is reasonably necessary to facilitate the permitted use in this location. For the reasons given above, it does not have a harmful effect on the character or appearance of the surrounding countryside. Furthermore, there is no harm to the historic landscape. The ridge and furrow is outside of the appeal site and there is no visual connection between the hardstanding which has been laid in the south-eastern corner of the appeal site and this non designated heritage asset.
67. I conclude that the development does not have a harmful effect on the character or appearance of the countryside or historic landscape. There is no conflict with the development plan, including Policies NE4 and S1 of the LP, which seek to protect the countryside from development that would compromise its character and distinctiveness. I also find no conflict with the design and heritage aims of the Framework.

Conclusion

68. For the reasons given above, and taking into account all other matters raised, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Formal Decisions

Appeal A

69. It is directed that the enforcement notice be corrected:

- by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
- by the deletion of all the wording in paragraph 3 and the substitution of the wording *"Without planning permission the material change of use of the land to a holding pen for commercial vehicles and plant for use in national infrastructure projects, namely HS2 and East West Rail Link, facilitated by the laying of hard standing including (but not limited to) gravel, tarmac and stone"*;
- by the deletion of all the steps in paragraph 5 and the substitution of the wording *"Step 1: Cease the use of the land as a holding pen for commercial vehicles and plant for use in national infrastructure projects, namely HS2 and East West Rail Link; and Step 2: Remove all vehicles and plant associated with the use from the Land."*; and
- by the deletion of Step 3 from paragraph 6.
- Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use of the land as a holding pen for commercial vehicles and plant for use in national infrastructure projects, namely HS2 and East West Rail Link on the land shown edged black on the plan annexed to this decision, subject to the following conditions:
 - 1) The use hereby permitted shall be for a limited period being the period of five years from the date of this decision. The use hereby permitted shall be discontinued on or before 10 February 2028.
 - 2) The use hereby permitted shall cease and all vehicles and plant brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme to include a site management/layout plan, including details of areas for parking, turning and manoeuvring of vehicles shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 3 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall be implemented in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Movement of vehicles, plant or machinery within or to and from the site shall only take place on Mondays – Saturdays and not at any time on Sundays or on Bank or Public Holidays.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected along the north-western boundary of the site.
- 5) No external lighting shall be erected on the site other than in accordance with details that have been submitted to and approved in writing by the local planning authority.

Appeal B

70. It is directed that the enforcement notice be corrected:

- by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; and
- by the deletion of Step 1 in paragraphs 5 and 6 and re-numbering of Step 2 and Step 3 in paragraphs 5 and 6 as Step 1 and Step 2. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the laying of hard standing including (but not limited to) gravel, tarmac and stone on the land shown edged black on the plan annexed to this decision.

Appeal C

71. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Jack Smyth Of Counsel

He called

Mr M Goodall former Managing Director of Inchemere Design Limited

Mr M Flannery	Managing Director of P Flannery Plant Hire (Oval) Limited.
Mr P Flannery	the Appellant, Corporate Director of P Flannery Plant Hire (Oval) Limited.
Mr P Frampton BSC(HONS), TP, MRICS, MRTPI of Framptons,	Chartered Town Planning Consultants.

FOR THE LOCAL PLANNING AUTHORITY

Daisy Noble	Of Counsel, instructed by Laura Lee Briggs, Buckinghamshire Council.
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She called

Olivia Stapleton, MRTPI	Compliance & Enforcement Team Leader (North & Central) Buckinghamshire Council.
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Alex Armour	Senior Planning Officer (South Area) Buckinghamshire Council.
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THIRD PARTIES

Councillor Mr F Mahon	Buckinghamshire Councillor for Grendon Underwood Ward.
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Mr Landells	Chairman of Twyford Parish Council
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Documents submitted at the Inquiry

1. Signed and dated Statement of Common Ground
2. Aerial Photographs on behalf of the Council.
3. Photographs of previous storage use, dated March 2008 on behalf of the Appellant.
4. Plan which formed part of the application for a training centre, Drg No: 5612.01B, on behalf of the Appellant.
5. Email correspondence from M Goodall in relation to works undertaken to the barns on the appeal site, dated January 2023.
6. Application form for LDC for extension, LPA ref: 11/0269, including case officer report.
7. Aerial Photo annotated by the Council to show the hardstanding laid at the site in 2021.



Plan

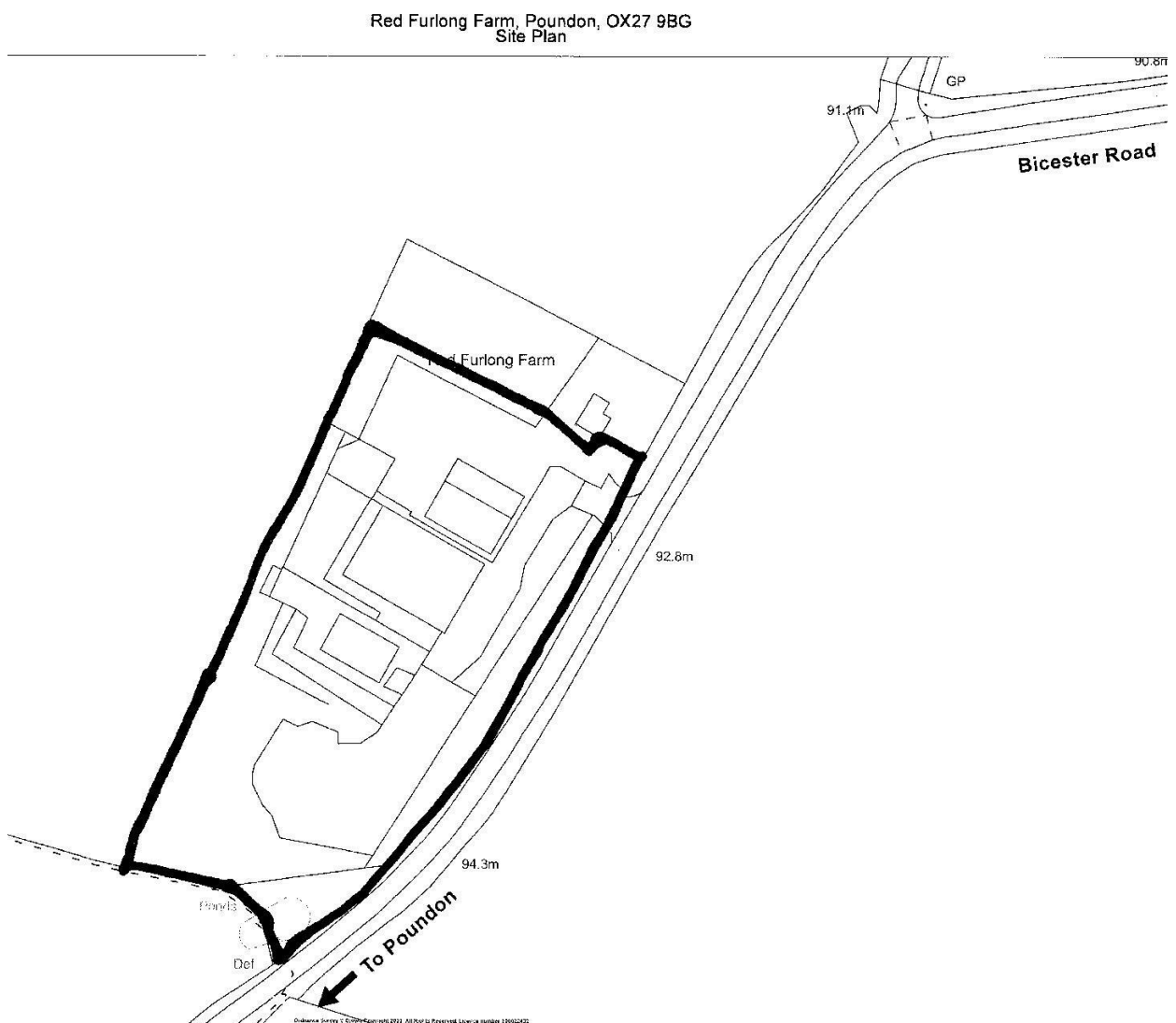
This is the plan referred to in my decisions dated: 10 February 2023

by **Elizabeth Pleasant DipTP MRTPI**

Land at: Red Furlong Farm, Twyford Road, Poundon, Buckinghamshire OX27 9BG

References: APP/J0405/C/22/3291544 & APP/J0405/C/22/3291551

Scale: Not to Scale





Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 February 2022 the use described in the First Schedule hereto in respect of the land and buildings specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use for the storage of HGVs and events trailers, classic cars and exhibition stands is lawful because the time for enforcement action has expired.

Signed

Elizabeth Pleasant

Inspector

Date: 10 February 2023
Reference: APP/J0405/X/22/3303887

First Schedule

The use for the storage of HGVs and events trailers, classic cars and exhibition stands.

Second Schedule

Land at Red Furlong Farm, Twyford Road, Poundon, Buckinghamshire OX27 9BG

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 10 February 2023

by **E Pleasant DipTP MRTPI**

Land at: Red Furlong Farm, Twyford Road, Poundon, Buckinghamshire OX27 9BG

Reference: APP/J0405/X/22/3303887

Scale: Not to Scale

