



Appeal Decision

Inquiry held on 21, 22 and 23 February 2023

Site visit made on 22 February 2023

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal Ref: APP/P0430/C/21/3273648

Mercers Farm, Thorney Mill Road, Iver, SL0 9AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Brian Smiles against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 24 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, a material change in the use of the Land to the importation, deposit, processing, transfer and disposal of waste material (the 'unauthorised use') parking of vehicles and storage of plant, machinery and vehicles associated with the unauthorised use and operational development comprising the erection of a site office and the siting of any paraphernalia associated with the elements of the unauthorised use.
- The requirements of the notice are to:
 - (1) Cease the use of the Land, outlined Red on the attached plan¹, for the following activities:
 - Importation, deposit, processing, transfer and disposal of waste material (the unauthorised use).
 - (2) Cease the use of the Land, outlined Red on the attached plan, for the following activities:
 - Storage [sic] the storage of plant, machinery, vehicles containers and skips associated with the unauthorised use.
 - Parking of vehicles associated with the unauthorised use.
 - (3) Remove from the Land, outlined Red on the attached plan, all imported waste material.
 - (4) Remove from the Land, outlined Red on the attached plan, all plant, machinery and vehicles, containers and skips associated with the importation, deposit, processing, transfer and disposal of waste material.
 - (5) Remove the site office building within the area outlined black from the Land outlined Red on the attached plan.
 - (6) Remove any paraphernalia associated with the elements of the unauthorised use from the Land outline Red on the attached plan
- The periods for compliance with the requirements are: 1 day for Step 1; 3 months for Steps 2, 3 and 4; and 4 months for Steps 5 and 6.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.

Commented [MJ1]:

Decision

1. It is directed that the enforcement notice is corrected and varied:
 - (i) by deleting the allegation in section 3 and substituting:

¹ References in this heading to "the attached plan" are to the plan attached to the original notice.

"Without planning permission, a material change in the use of the Land to a mixed use comprising the stationing of 1 mobile home for residential occupation, the keeping of horses, and the importation, deposit, processing, transfer and disposal of waste material (the 'unauthorised waste use'), parking of vehicles and storage of plant, machinery and vehicles associated with the unauthorised waste use and operational development comprising the erection of a site office and the siting of any paraphernalia associated with the elements of the unauthorised waste use."

- (ii) in section 5, Step 1, by deleting "(the unauthorised use)" and substituting "(the unauthorised waste use) save any processing and transfer of waste material involved in complying with Step 3."

- (iii) in section 5, by deleting Step 2 and substituting:

"Cease the use of the Land, outlined Red on the attached plan, for the following activities:

- The storage of plant, machinery, vehicles containers and skips associated with the unauthorised waste use.
- Parking of vehicles associated with the unauthorised waste use."

- (iv) in section 5, Step 6, by deleting "unauthorised use" and substituting "unauthorised waste use".

- (v) in section 5, by deleting the times specified for compliance with Steps 2 to 6 and substituting "Four (4) Months" in relation to Steps 2, 3 and 4, and "Five (5) Months" in relation to Steps 5 and 6.

- (vi) by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

2. Subject to those corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. I heard oral evidence in person during the first 2 days and closing submissions virtually on day 3. All witnesses gave evidence under affirmation.

4. Before the inquiry opened, the parties submitted a Statement of Common Ground (SOCG). Among other things, this recorded their agreement that:

- the appeal site comprises one single planning unit²;
- at the time the notice was issued, the use included longstanding uses for the keeping of horses together with residential use, in the form of the siting of a mobile home, and the notice requires neither of those elements to cease; and
- the plan attached to the notice did not correctly indicate the location of the site office building.

Commented [M12]:

² This is also consistent with the conclusion in a previous Inspector's decision on 5 March 2020, Ref APP/N0410/X/19/3229281 (Mr Pugh's appendix MP3).

5. Accordingly, while there remains a dispute about the other elements of the mixed use of the site, the parties agree that the notice can be corrected, without causing injustice to either party, in the following manner:
- By amending the allegation to read: "Without planning permission, a material change in the use of the Land to a mixed use comprising the stationing of 1 mobile home for residential occupation, the keeping of horses, and the importation, deposit, processing, transfer and disposal of waste material (the 'unauthorised waste use'), parking of vehicles and storage of plant, machinery and vehicles associated with the unauthorised waste use and operational development comprising the erection of a site office and the siting of any paraphernalia associated with the elements of the unauthorised waste use"; and
 - By substituting the plan attached to this decision, which was provided by the parties as appendix SCG1 to the SOCG.
6. I am also satisfied that these corrections should and can be made without causing injustice. They give rise to minor consequential changes to the requirements, which I cover in the formal decision, along with the correction of a minor typographical error in Step 2.
7. Whilst the parties agree the appeal site is a single planning unit, the appellant identified 7 areas on a plan exhibited to his Statutory Declaration (SD) of 31 January 2023.³ Where I refer to Areas 1 – 7, it is by reference to that plan. Briefly, Area 1 is the site entrance and waiting/parking area; Area 2 comprises workshops, a yard and passageway; Area 3 is the stable block, which opens out onto Area 2; Area 4 is the residential unit, with mobile home; Area 5 is the main yard; Area 6 is the Nissen hut building at the southern end of Area 5; and Area 7 is the substantial extension to the main yard.

Ground (b)

8. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged in the notice, as corrected, have not occurred.
9. As discussed, the parties agree the original allegation was factually inaccurate in that the site had a mixed use, including residential and equestrian uses when the notice was issued. This can be corrected.
10. Through submissions on the oral evidence at the inquiry, the appellant also argues that there has been no "deposit" of waste. In addition, the appellant contends that the parking and storage of vehicles, plant and machinery, has not been limited to such activities associated with the alleged unauthorised waste use. Independent use for car repairs, including respraying is also in contention.
11. The appellant's case is that there was a material change of use of the land many years ago, but to a mixed use of a different composition to that alleged, even with the correction. On that basis, he says the alleged change of use has not occurred as a matter of fact.⁴

³ Exhibit BAS4.

⁴ ID4, paragraph 48.

12. The notice does not seek to define the previous use of the land from which it is alleged there has been a change, and nor is that strictly necessary. The previous lawful use will be relevant to whether there have been any material changes of use, resulting in any significant interruption to the use, so as to prevent success on ground (d). For the purposes of ground (b) however, I am satisfied the focus should be whether the corrected allegation describes the actual use being made of the land at the time of the notice, in a factually accurate way.
13. Turning to the evidence, I shall look separately at the issues of deposit of waste; parking and storage of vehicles, plant and machinery; and car repairs, including respraying.

Deposit of waste

14. In paragraph 43 of his 2023 SD, the appellant said waste operations on the site have always comprised of, "the importation, *deposit* (emphasis added), processing, recycling, storage and disposal of waste material taken from building sites, domestic jobs and from contracts...in the waste industry." However, although the appellant called no expert planning witness, in closing, Mr Edwards KC said "deposit" can only mean "the permanent introduction of waste onto the site, akin to "dumping" i.e., the type of use that would normally be made of a landfill site."⁵
15. The appellant's evidence, both in his 2023 SD and his oral testimony, was that, over many years, waste material has been brought onto the site and sorted before disposal as soon as possible off site, though scrap metal may be kept a little longer until prices rise. Much of the material is now stored in skips, including '40-yard skips', rather than on the ground and the appellant says, whilst they have disposed of wood by burning it on site, they have never "dumped" waste on it. I also note the appellant's responses to a Planning Contravention Notice (PCN) dated 26 February 2021⁶, in which he indicated that materials were imported, stored, sorted, recycled and removed from site.
16. For the Council, Mr Pugh suggested in his proof that a May 2018 aerial photograph⁷ could be indicative of the deposition of waste material. However, the appellant said this just showed a pile of hard core and rubble being spread over the eastern area of the site to provide a hard surface. I accept that explanation, and indeed a June 2019 aerial image⁸ shows the whole area resurfaced with what the appellant explained was rubble and 'scalpings.' I conclude that this exercise did not involve the deposit of waste.
17. However, Mr Pugh's evidence was also that, during a site inspection on 6 March 2017, he observed "2 deposits of waste" on the site, namely, scrap metal along the southern boundary and a large bund on the site consisting of soil and burnt wood waste.⁹ He also said that, by the time of his site visit on 20 January 2021, some of the material in the piles had some age to it.¹⁰ I am satisfied on the evidence that scrap metal was probably only being stored pending sale or disposal off site. However, difficulties in moving waste during

⁵ ID4, paragraph 50.

⁶ Mr Pugh's appendix MP20.

⁷ Ibid, appendix MP27.

⁸ MP28.

⁹ Mr Pugh's proof paragraph 6.7 and appendices MP13 and 14.

¹⁰ Photographs at MP 17.

the Covid-19 pandemic may have resulted in some material being kept on site for longer than normal.

18. Turning to the bund, this is shown in photographs taken during the 6 March 2017 visit and an aerial image from April 2017¹¹. When giving evidence in chief, the appellant said he was burning a lot of wood in that area and the bund was formed to stop the fire spreading. When cross-examined, he said there may have been some bits of burnt wood on, rather than in the bund. The photographs are not decisive of the issue, but Mr Pugh's oral evidence for the Council was that he saw "a notable inclusion of waste wood" in the bund. He explained that, whilst there was ash on the ground, the bund included not just ash, but "fragments or portions of wood", which "served no discernible purpose", so this looked to him like the deposit of waste on site.
19. In any event, burnt material or ash appears to have been in the soil on the ground near the bund, as well as in a mixed pile of waste, just to the east of the Nissen hut, at the southern end of the site.¹² In his 2023 SD, the appellant said timber would either be burnt on site or taken to a timber recycling yard in Tilbury. In his SDs of 19 February 2019 and 19 March 2020¹³, he said he burnt wood on site from 1986.
20. As Mr Pugh said when re-examined, there is no evidence that the burnt wood residue was ever removed from the site; this appears to have been its final resting place and therefore this waste was deposited. Mr Pugh was the only expert planning witness to give evidence, and he has considerable experience in investigating and remedying breaches of waste planning control. I am not persuaded on the balance of probability that the reference to the deposit of waste in the allegation is factually inaccurate.

The parking and storage of vehicles, plant and machinery unrelated to such activities associated with the alleged unauthorised waste use

21. In his 2023 SD, the appellant said that, over the past 37 years, the site has been used by other business operators for the parking of vehicles and storage of implements and machines. However, in oral evidence, he confirmed that there had been no parking or storage by others unrelated to his business since the resurfacing of the site was completed in 2019. Indeed, by the time of the May 2018 aerial photograph, resurfacing of the site, including much of Area 7, was well underway. That photograph gives no indication of any continuing primary use for the parking and storage of vehicles, plant and machinery unrelated to such activities associated with the alleged unauthorised waste use, or the residential and equestrian use.
22. I am satisfied on the evidence that, any such parking and storage use, lawful or otherwise, had ceased 2 to 3 years before the enforcement notice was issued. It was not therefore necessary or appropriate to include that as a primary component of the alleged unauthorised mixed use; the allegation was not factually inaccurate in that regard.

¹¹ Mr Pugh's appendices MP12 (photo 8) and MP26.

¹² MP12, photos 8, 6 and 7 respectively.

¹³ Mr Smiles' 2023 SD, exhibits BAS2 and BAS3.

Car repairs, including respraying

23. The paragraphs specifically related to ground (b) in the appellant's 'facts in support' and his Statement of Case (SOC) did not mention use of the land for car repairs/respraying. Furthermore, he made no reference to this use in response to questions in the PCN concerning the nature of the business or activities carried out on the land, or what he regarded to be the lawful uses. In his 2023 SD, the appellant said this was an oversight because, although he has carried out vehicle repairs and respraying over a period of 37 years, this work had tended to be "relatively low level", or "ad hoc and peripheral to...other activities"; he said he personally worked on "anything from one or two vehicles a week, to one every month or so."
24. The sections of the facts in support and SOC concerning ground (d), and paragraph 3.4 of the SOC, which detailed the use of various parts of the site, contend that car repairs took place for a continuous period of 10 years, prior to the issue of the notice. In oral evidence in chief, the appellant said car repairs and respraying had been carried out since 1981/2 and had continued all the time since then. However, expanding on the evidence contained in his 2023 SD, he said he spent about 10% of his time on car repairs, adding that this was "something to do" in the evenings. When it was put to the appellant in cross-examination that vehicle repairs and respraying was just a hobby for him, he said, "No, just to get extra money."
25. In his 2023 SD, the appellant refers at paragraph 31 to his sole occupation of the units on the site since 2018 and their use for his business for vehicle repairs. That paragraph did not make entirely clear whether this was purely related to the waste operation. However, paragraph 27 referred only to the repair of his own vehicles and machinery, including mechanical, electrical, bodywork repairs and panel resprays.
26. Furthermore, the table exhibited as BAS13 explicitly referred to "Mechanical workshop use associated with the use of the wider site for waste operations." Indeed, although that table refers to mechanical workshop and bodywork activities by other tenants over the years, any reference to the appellant's own mechanical workshop use is always "associated with the use of the wider site for waste operations." In oral evidence, the appellant said this was wrong, but it is hard to see why he would make that mistake in his SD, and not mention this use at all in his PCN responses in 2021.
27. Letters from Piers A Walsh and A S Payne dated 7 and 9 February respectively, and exhibited to the appellant's February 2019 SD¹⁴, indicate that the appellant carried out vehicle respraying and repairs over the previous 10 years. However, they contain no detail in terms of the amount, frequency, or continuity of work and, more significantly for ground (b), they provide no evidence of this activity being carried out during the 2 years or so prior to the issue of the enforcement notice. The appellant's March 2020 SD¹⁵ makes no reference to vehicle repairs or respraying.
28. James Smiles' SD refers to use for vehicle, machinery repairs and bodywork, but it does not indicate this represents a separate primary use by the appellant. In evidence in chief, he said this work also related to vehicles other

¹⁴ Brian Smiles' 2023 SD, exhibit BAS2.

¹⁵ Ibid, exhibit BAS3.

than those associated with the waste operation. When cross-examined, he said, although he could not give specific dates, vehicle spraying occurred in units 3 and 4 within Area 2 when he was younger, and indeed from 2018. In that regard, he referred to a Land Rover shown in the photographs, which he had painted himself. However, that is shown in a photograph dated 6 March 2017¹⁶ and this does not assist with the position after 2018.

29. The SD of Mr Rudge, a close friend of the appellant, says some of the workshops in Area 2 have always been used by the appellant and tenants for mechanical and electrical vehicle repairs, bodywork and respraying. However, since he retired in 2010, though regular, his visits have been largely social, and his written and oral evidence included no detail regarding the extent of vehicle repairs and respraying in recent years.
30. Mr Blackmore's SD indicates that, until he left the site in 2016, he maintained his own vehicles in Area 2 and was able to use the appellant's tools, including spraying and welding equipment. It also indicates that Area 2 has been used continuously, in excess of 10 years, for workshops, storage and parking. However, neither Mr Blackmore's SD nor his oral evidence indicated that vehicle repairs and respraying were continuing to any significant degree, as a primary use during the few years leading up to the issue of the enforcement notice.
31. In closing, it was part of the appellant's case that use for car repairs, including respraying, was part of the mixed use of the site when the notice was issued. It is not clear whether that was intended to mean it was actually taking place, or it was just part of the lawful mix. In any event, I have had regard to all the evidence, and the lack of documentary corroboration, including business accounts detailing income from car repairs. Taking all the evidence together, I am not persuaded that use for the repair, including respraying of vehicles, was taking place to any significant extent, beyond the repair of vehicles associated with the waste use, throughout the 2-to-3-year period leading up to the issue of the enforcement notice. It was not therefore necessary or appropriate to include that as a primary component of the alleged unauthorised use, and the allegation was not factually inaccurate because of that omission.
32. The only expert planning witness who gave evidence indicated that, in his planning judgement, the mixed use is properly characterised as per the corrected allegation.

Conclusion on ground (b)

33. For all the reasons given, I conclude that the appellant has failed to prove on the balance of probability that the matters alleged in the notice, as corrected, have not occurred. Ground (b) therefore fails.

Ground (d)

34. To succeed on this ground, the appellant must prove on the balance of probability that the material change of use of the land alleged in the notice, as corrected, occurred on or before 24 March 2011, and that use then continued thereafter for at least ten years without significant interruption.

¹⁶ Mr Pugh's appendix MP12.

35. The corrected allegation is set out in the formal decision and at paragraph 5 above. The appellant's appeal on ground (d) does not extend to the erection of the site office and solely concerns the use of the land.
36. As summarised in closing, the appellant's case is that in 1979, there was a material change of use of the land to a mixed use comprising residential use (through the siting of a mobile home), the keeping of horses and a waste use.¹⁷ When cross examined, Mr Pugh accepted for the Council that there had been such a material change of use.
37. It was common ground between the parties at the inquiry that, if a use has become lawful after 10 years' continuity, lawful use rights can only be lost through: (a) abandonment; (b) the beginning of development comprising a material change of use of the land pursuant to the grant of planning permission; (c) a material change of use of the planning unit as a result of the change in the composition of the mix of uses; or (d) a material change of use through intensification. There is no suggestion that (a) or (b) are relevant, and (d) is not relied upon in isolation.¹⁸
38. The appellant's case is that the alleged mixed use continued uninterrupted for decades after 1979¹⁹. However, his evidence is also that other uses were introduced later.
39. The appellant states that from 1986 to 2006, units 2, 3 and 4 within Area 2 were occupied by Arthur Downes, now deceased, for his mechanical workshop and body shop business²⁰. He is pictured in a photograph taken around 2000, standing next to a vehicle in Area 2, near to car body parts, tools and what the appellant said was spraying equipment. Mr Smiles' 2023 SD states that, when Mr Downes left in 2006, units 2 – 4 were used by him until 2008 for "mechanical workshop use associated with the use of the wider site for waste operations." No evidence has persuaded me that there was any significant use during that period for vehicle repairs and respraying other than in relation to the use of the wider site for waste operations.
40. However, the appellant's 2023 SD then states that from 2008 to 2018 units 2 – 4 were occupied by Mandeep Jabbie for use as "electrical auto engineering and mechanical workshop" purposes. A separate 2023 SD from Mr Jabbie himself confirms that he and his business partner used those units from August 2008 to October 2018. They initially had a 6-month rent free period, to get established, but then paid £500 per month, rising eventually to £800 per month in 2016. He confirms that he would also use the yard area in front of the units for visitor car parking, and for working outside, if the units were full of other cars. All of this indicates a substantial car repair business.
41. The appellant says the site was also used by other companies for storage of vehicles, machinery and plant for 37 years²¹. This included the storage, by Central Hydraulics (MCR) Ltd, of hydraulic machinery used at Heathrow Airport since 1996, and use by the Peugeot car showroom in Cowley for the storage of new cars.²²

¹⁷ ID4 para 8.

¹⁸ ID3, paragraph 35.

¹⁹ Ibid, paras 8, 10, 13 and 17.

²⁰ Brian Smiles 2023 SD, paragraph 28 and 29 and exhibit BAS13.

²¹ Ibid, paragraph 7.

²² Brian Smiles' 2019 SD (exhibit BAS2 of his 2023 SD).

42. In terms of the hydraulic machinery, Mr Smiles specifically referred in oral evidence to 'air bridges' and I can see one of these on site in a 2008 aerial photograph.²³ Although they are snapshots in time, vehicle storage is clearly shown in that same 2008 image, and in another aerial photograph from 2000²⁴.
43. Mr Blackmore, who operated from the site as Denham Haulage from around 2007 to 2016, said in his oral evidence that he remembered a lot of car storage. He said the 2008 photograph is consistent with what he saw for about 5 or 6 years, or until very approximately 2012, though he did not say the storage use stopped thereafter. The appellant said it ceased in 2019, and although storage use is not so apparent in the aerial images available after 2008, Mr Pugh's evidence is that the use included general open storage, at least in March and July 2017²⁵. Though he was not specific about dates, Mr Jabble, who was on site from 2008 to 2018, said in his SD that he was aware of Area 5 being used by the appellant's clients and friends for storing vehicles and equipment.
44. When the substantial storage and vehicle repair uses were added to the mix, I am satisfied, as a matter of fact and degree, that they resulted in a significant change in the character of the activities on the land and they altered the definable character of the mixed use. As the only expert planning witness to give evidence, Mr Pugh added that they would probably also have brought with them new impacts, for example in terms of the type and frequency vehicle movements, together with noise and disturbance for adjoining neighbours. This reinforced his professional view that the introduction of significant storage and vehicle repair uses amounted to a material change of use, such that there was a new single mixed use, including those elements.
45. Turning to the waste use, when Buckinghamshire County Council officers, including Mr Pugh, investigated the appeal site in March 2017, they noted a pile of scrap and a bund comprised of subsoil and burned wood waste. Mr Pugh advised the appellant to remove these and reiterated this in writing on 7 March 2017.²⁶
46. Mr Pugh said in oral evidence that the appellant did not suggest at any stage that he need not remove the waste because that use had become lawful, though he did indicate that storage had taken place for many years. Indeed, this was recorded in an email to a colleague on 17 March 2017.²⁷ Furthermore, when Mr Pugh returned to the site on 25 July 2017, his request had been complied with, as there was no apparent continuing use of the site for the management of waste. The December 2017 'Case Closure report' recorded the conclusion that no waste use was currently in operation.
47. The appellant maintains that the waste use continued throughout this period. However, in February 2019, he applied for a certificate of lawfulness of existing use for "storage and industrial purposes", and the officer's report stated that the area to the south of the site had been cleared and there was little evidence of any scrap yard or recycling facilities. I also accept Mr Pugh's oral evidence that, notwithstanding the possible existence of a few white 'dumpy bags' in the

²³ Mr Pugh's appendix MP22.

²⁴ Ibid, MP35

²⁵ Mr Pugh's proof, paragraph 10.11

²⁶ Mr Pugh's appendix MP13.

²⁷ Ibid, MP14.

southern corner of the site, the June 2019 aerial photograph is not consistent with a continuing waste use.²⁸

48. In the appeal against the refusal of the certificate of lawfulness in March 2020²⁹, the Inspector said he had "little doubt that the appeal site has been used for what might properly be termed waste management uses since 1979." However, this was in the context of his dismissal of the appeal, on the basis that there was, "simply not enough information from the appellant to understand how long each of the enterprises operated from the appeal site or what the mix of uses was at any given point in time." He added, it was "simply not possible to undertake the assessment required to establish whether or not the changes in the mixed-use that have taken place amount to a material change of use and a new chapter in the planning history of the site."
49. The Council's explicit evidence, tested through cross examination under oath, was that the waste use had ceased by July 2017. In all the circumstances, I do not accept the previous Inspector's comment as an unequivocal and binding adjudication or finding of fact that a mixed use, including waste management, continued uninterrupted for 10 years throughout the relevant period.
50. Having regard to *Wipperman v Barking LBC* (1966) P&CR, *Philglow v SSE* (1986) 51 P&CR 1 and *Beach v SSETR* [2001] EWHC (Amin) 281, the cessation of one element of a mixed use does not in principle and in all cases amount to a material change of use. However, it may if, as a matter of fact and degree, it changes the character and nature of the use within the planning unit.
51. As a matter of fact and degree, the cessation in 2017 of the waste use changed the character of the mixed use. Then, in around 2018 the cessation of two primary elements in the mix, namely significant storage and vehicle repair uses, changed the character of the use again. Subsequently, the waste use recommenced and expanded to absorb that part of Area 5 previously used for storage, and to take up Area 7, which is a large part of the overall site. Prior to this, the aerial photographs from 2008 to 2017 indicate that the waste use was relatively low-key, and largely restricted to the southern part of Area 5, close to Area 6 (the Nissen hut).
52. Even if the waste use had not ceased in 2017, the appellant accepts that Area 7 had not really been used in association with the remainder of the site until after it had been resurfaced in 2018/19.³⁰ Around this time the skip hire element of the waste operation began³¹ and, as confirmed by James Smiles in oral evidence, the appellant acquired 150 – 200 skips.
53. I accept it is unlikely that all, or even a substantial proportion of those skips would be on the appeal site at any one time. Mr Pugh said that before the notice was issued, he saw about 10 skips on site in January 2021, along with a similar number, or possibly more, of the bins. I take this to be a reference to the 'roll on roll off', or 'ro-ro' bins, also described by the appellant as '40-yard skips.'
54. During my visit, I saw 1 empty and 1 full skip in Area 5, and about 29 stacked, empty skips, and around 10 ro-ro bins in Area 7. I appreciate that what I saw

²⁸ Ibid, MP28.

²⁹ Mr Pugh's appendix MP3.

³⁰ ID4, paragraph 37.

³¹ SOCG, paragraph 5.2.3.

may not be representative, because a stop notice has been in place since March 2021, and what Mr Pugh observed shortly before the enforcement and stop notices were served may, to some degree, have been distorted by the lingering impact of Covid-19 restrictions on waste operations. However, James Smiles explained in oral evidence that they used to bring waste in on a tipper truck and maybe hire in skips to take it out, or someone would do the haulage for them, whereas now they bring back full skips, using 2 skip lorries and a ro-ro lorry.

55. Though his evidence was generally given in a straightforward and plausible manner, James' Smiles' assertion that the capacity of the waste business, including the number of associated vehicle movements has not increased was not credible. The acquisition of up to 200 skips would have been pointless if it would have no impact on the capacity of the waste business.
56. Furthermore, the acquisition of those skips and the incorporation of Smiles & Sons Skip Hire³² coincided with a very significant increase in the proportion of the overall site given over to the waste use, along with the cessation of other primary uses in other areas of the site. It is also notable that, whilst the appellant said he had "heaps" of waste transfer notes, Mr Edwards KC later explained these were all from the period around the issue of the enforcement notice and thereafter; there were no such records from before that.
57. In addition, Mercers Haulage and Plant Hire Limited was registered as a waste carrier with the Environment Agency in January 2021, followed by registration of BA Smiles and Son as a waste carrier in September 2022³³. Brian Smiles also explained that, prior to the incorporation of Mercers Haulage and Plant Hire Limited, his business had been cash only.
58. From their written representations on the appeal, the Ivers Parish Council appeared unaware of any "waste processing activity going on at the site before about 2018" and, in addition to stating that "the sorting of waste materials" did not take place on the adjoining field (Area 7) before about 2019, the next door neighbour of 30 years appears to indicate that the "sorting of skips waste" did not take place on any part of the appeal site before then. Even the erection in October 2020³⁴ of a site office in Area 7 is indicative of, or at least consistent with, a change in scale from the previous waste operation.
59. As Mr Pugh said when re-examined, the waste operations were previously concentrated in a small south-western portion of the site, within Area 5. They were focussed on the surface-based deposition of material, but it was not brought in and put into different receptacles. However, from shortly before the notice was issued, he said, "there was an industry to it all" and the area of storage had increased significantly. Acknowledging again that aerial photographs represent only a snapshot in time, the contrast between that from March 2021³⁵ and anything before around 2018, when the resurfacing and extension into Area 7 began, is very striking.
60. However, even if the waste used had not ceased in 2017 (and I am satisfied it did), it later expanded to absorb those previous primary elements of car repairs and storage and to engulf Area 7. This was more than a pure intensification of

³² Brian Smiles' 2023 SD, paragraph 11.

³³ Brian Smiles' 2023 SD exhibit BAS7.

³⁴ Brian Smiles' 2023 SD, paragraph 55.

³⁵ MP30

the waste use and resulted in a change to the character of the mixed use. As a matter of fact and degree, it represented a material change of use.

61. The history of uses on this site is complicated. However, I am satisfied on the evidence that, though a mixed use comprising residential use, the keeping of horses and waste management commenced in 1979, as a matter of fact and degree, the following have probably resulted in material changes to the mixed use since then:

- The addition of uses for car repairs and the storage of vehicles, machinery and plant in around 1986;
- The cessation of the car repair use in 2006;
- The commencement of another car repair use in 2008;
- The cessation of the waste management use in 2017;
- The cessation of the car repair use and the storage of vehicles, machinery and plant in around 2018; and
- The resumption of a waste management use after 2017, at greater intensity and engulfing Area 7.

Conclusion on ground (d)

62. For the reasons given, I conclude on the balance of probability that the material change of use of the land alleged in the notice, as corrected, did not occur on or before 24 March 2011 and then continue for at least 10 years without significant interruption. Accordingly, the appeal on ground (d) must fail.

Ground (f)

63. Ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach.

64. The notice does not, in any event seek to fully remedy the breach, because it only requires the waste related element of the single mixed use to cease. The appellant's case on ground (f), is that the requirements are excessive because he is entitled in law to revert to the previous lawful use of the site.

65. By virtue of s57(4) of the 1990 Act, when an enforcement notice has been issued, planning permission is not required for use of the land for the purpose for which it could have lawfully been used if the unauthorised development had not been carried out. Having regard to *Mansi v Elstree RDC* [1964] 16 P&CR 153, I must ensure the notice does not purport to restrict that right.

66. The appellant contends³⁶ that the previous lawful use comprised at least a mixed-use involving residential use, the keeping of horses and waste operations. However, on my ground (d) analysis, even if a mixed-use including waste operations had become lawful at some point, there was an intervening unlawful mixed-use, excluding waste operations before the notice was issued, as the waste operations ceased in 2017. Accordingly, the land cannot lawfully be used for a purpose including waste operations. The notice does not purport

³⁶ ID4, paragraph 58.

to restrict lawful use rights, and subject to what I say under ground (g) in relation to Step 1, ground (f) fails.

Ground (g)

67. Ground (g) is that the periods specified for compliance with the notice are unreasonably short. The appellant requests 12 months for Steps 2 – 6. This is because he considers he should be given sufficient time to sort the waste and extract recyclables before removing the waste to comply with Step 3.
68. Mr Pugh indicated that whilst the Council would prefer the waste to be recycled, and not just taken to landfill, it would favour this being done at a lawful site, rather than on this unlawful site in the Green Belt, close to residential property. He acknowledged there would be a cost associated with moving the material to another transfer station, but considered that, even if recyclables were extracted on site, this could be achieved in 4 months and, well within the maximum period of 6 months suggested in his proof.
69. Whilst it is important to ensure the unlawful use is not unduly prolonged it would be reasonable to allow some opportunity for recyclables to be extracted on site. I am not persuaded that 12 months is necessary, but 4 months would be proportionate and allow a reasonable opportunity. The time for compliance with Steps 5 and 6 can be extended to 5 months, to maximise that opportunity, and I will vary the requirements accordingly.
70. Given that extracting recyclables on site would involve some conflict with Step 1, that requirement needs to be varied so that it does not prevent any processing and transfer of waste involved in compliance with Step 3. I will make that variation, technically under ground (f), being satisfied that no injustice will result.

Conclusion

71. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Douglas Edwards KC

He called:

Brian Smiles
James Smiles
Keith Rudge
Luke Blackmore

FOR THE LOCAL PLANNING AUTHORITY:

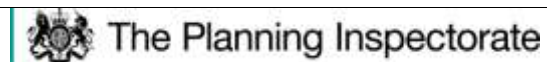
Alex Greaves of counsel

He called:

Mitchel Pugh MSc (Licentiate member of RTPI), Principal Planning Enforcement Officer, Buckinghamshire Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Appellant's opening submissions
2. Council's opening submissions
3. Council's closing submissions
4. Appellant's closing submissions



Plan

This is the plan referred to in my decision dated:23 March 2023

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

Land at: Mercers Farm, Thorney Mill Road, Iver, SL0 9AR

Reference: APP/P0430/C/21/3273648

Scale: DO NOT SCALE

