



Appeal Decision

Site visit made on 30 May 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 25th July 2023

Appeal Ref: APP/R0335/C/22/3292543

Land at Levers Piece Farm, Ryehurst Lane, Binfield, Bracknell, Berkshire RG42 5QZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Nick Kerner against an enforcement notice issued by Bracknell Forest Borough Council.
 - The notice, numbered EN/21/00117/UCOU, was issued on 13 January 2022.
 - The breach of planning control as alleged in the notice is "Without planning permission the change of use of land to car, trailer, horse box, horse lorries repairs at the land".
 - The requirements of the notice are to: (i) Cease the use of the land on the attached plan as repairs for cars, trailers, horse boxes and horse lorries. This includes all car, trailer, horse boxes, horse lorries repairs, industrial repairs workshop, MOTs, and other industrial uses relates to car, trailer, horse boxes, horse lorries and repairs and servicing; (ii) Not receive any further vehicles for car, trailer, horse box, horse lorry repairs, MOTs and servicing at the land; (iii) Not receive any deliveries in association with the use of the land as car, trailer, horse box, horse lorry repairs, MOTs and servicing at the land; (iv) Remove all vehicles within the ancient woodland land buffer.
 - The period for compliance with the requirements is two months from the date the notice comes into effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Summary Decision

1. The appeal succeeds in part and the enforcement notice is upheld with the corrections and variations in the terms set out below in the Formal Decision.

Formal Decision

2. It is directed that the enforcement notice is corrected by:
 - a) deleting the words "Without planning permission the change of use of land to car, trailer, horse box, horse lorries repairs at the land" from paragraph 3; and
 - b) inserting the following words in their place at paragraph 3:

"Without planning permission the change of use of land from agriculture to a mixed use comprising agricultural use and non-agricultural commercial use for the repair and service of cars, trailers, horse boxes and horse lorries."

and varied by:

c) deleting steps (i), (ii), (iii) and (iv) from paragraph 5; and

d) inserting the following new steps at paragraph 5:

- (i) Cease the mixed use of the land on the attached plan for agricultural use and non-agricultural commercial use for the repair or service of cars, trailers, horse boxes and horse lorries;
- (ii) Cease receiving cars, trailers, horse boxes or horse lorries for repair or service in connection with the non-agricultural commercial use of the land on the attached plan;
- (iii) Cease receiving deliveries at the land shown on the attached plan in association with the non-agricultural commercial use of the land for the repair and service of cars, trailers, horse boxes or horse lorries.

3. Subject to the corrections and variations, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters (Enforcement Notice)

4. The alleged breach of planning control set out in the Enforcement Notice (EN) relates to the commercial use of the appeal site for the repair and service of a variety of vehicles. However, the appeal site is also understood to remain in agricultural use, at least in part. In particular, the access track which is included within the red line plan to the EN provides access to a separate agricultural barn which is unconnected to the vehicle repair business. This was evident on my site visit.
5. I have therefore corrected the allegation to ensure it is clear that the allegation relates to a mixed use of the site, for both agricultural use and for the alleged unauthorised commercial use outlined above. I am satisfied that this correction would not cause injustice to either party, as the agricultural use of the land is not disputed. This correction also negates the need for the plan attached to the EN to be substituted, as it is clear that the agricultural use can subsist.
6. Notwithstanding these corrections, I do not accept that the wording of the allegation as originally drafted would have caused so much ambiguity, as to render the EN invalid or null. The appellant would still have been able to understand, with a reasonable degree of certainty, what constituted the alleged breach of planning control. Nonetheless, it is appropriate to make the corrections set out above to remove any element of doubt. This approach is consistent with the principle established in the *Miller-Mead*¹, in which it was held that the bar for nullity should not be set too low.

GROUND A APPEAL – DEEMED PLANNING APPLICATION

Preliminary Matters

7. One of the reasons for the Council issuing the Enforcement Notice was that there was insufficient information available to demonstrate that the

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

development does not have an adverse impact on neighbouring Ancient Woodland, a Local Wildlife Site and biodiversity, including protected species. However, as set out in the Council's appeal statement, the Council's ecologist has suggested this issue could be overcome by conditions. These would include a requirement to erect boundary fencing between the appeal site and the neighbouring woodland, and a condition restricting the use of external lighting within the site. I have no reason to disagree with this conclusion, so I have not dealt with these ecological considerations as a main issue in respect of the deemed planning application.

Main Issue

8. In this context, the sole main issue is the effect of the development on highway safety.

Reasons

9. The alleged material change of use relates to the operation of a vehicle repair business which is located to the east of Ryehurst Lane. The business specialises in the repair, servicing and maintenance of Land Rovers and other 4 x 4 vehicles, trailers, horse boxes and horse lorries. Given that access to the site is gained off Ryehurst Lane, the lane's suitability with regard to the number and type of vehicle movements associated with the business is paramount.
10. In terms of its physical characteristics, Ryehurst Lane is a relatively narrow country lane which runs north from the B3018. It is classified as "ancient highway", and comprises a surfaced carriageway which is bounded on either side by grass verge. For much of the lane, these areas of grass verge sit adjacent to a shallow roadside ditch. As per the Local Highway Authority's measurements, the width of the surfaced carriageway varies between 2.75m and 4.0m, although most commonly measures approximately 3.2m. This falls below the minimum width for two vehicles to safely pass one another as set out in the Manual for Streets², or for a larger vehicle, such as a horse box or lorry, to pass a cyclist. This reflects my own observations during my site visit.
11. On account of these limitations, the appellant has provided evidence to show there are numerous "informal" passing places along the lane. However, many of these comprise access driveways to residential properties, and do not form part of the adopted highway. Moreover, the majority of these would not provide sufficient space for larger vehicles to pull into, to allow another vehicle to pass. In turn, these informal passing places are only of limited benefit. Notwithstanding these, there is a notable absence of formal passing places along much of Ryehurst Lane, particularly along the straightest section of the lane immediately to the west of the appeal site.
12. The lack of formal passing places means difficulties are likely to arise when two vehicles are seeking to pass one another, particularly along the stretch of the lane closest to the appeal site. This risk is particularly acute in situations where two large vehicles, such as horse boxes or lorries, meet head-on. Photographic evidence also demonstrates that car tow vehicles have been used to deliver vehicles to the site, which are even larger. In such circumstances, vehicles may need to reverse down long stretches of the road to find an appropriate passing place. Alternatively, they may seek to pull into adjoining verge, much of which

² Manual for Streets, Department for Transport

is flanked by a shallow ditch. Either scenario heightens the risk of accident, particularly as much of the verge is punctuated by large rocks and boulders, which have presumably been placed to prevent such occurrence.

13. These risks are particularly serious, as the lane is routinely used for recreational purposes by pedestrians, cyclists and equestrians. I witnessed a number of horse riders along the lane during my site visit, commensurate with the lane forming part of the Binfield bridleway circuit. Such recreational usage amplifies the potential for conflict between different road-users, as these users would also need space when faced with oncoming vehicles.
14. In this context, any meaningful increase to the number of traffic movements along the lane, and particularly to the number of larger vehicles, would increase the likelihood of conflict between road users, and therefore the risk of accident. Whilst the appellant has suggested conditions could limit the number and type of vehicle serviced or repaired by the workshop, it would be difficult to enforce such conditions in practice, given that other agricultural vehicles use the same access.
15. Nonetheless, the appellant has provided baseline traffic data collected through automatic traffic counters in an effort to demonstrate that the vehicle movements associated with the business would not lead to a material increase to traffic movements along the lane. The survey data collected in January 2022 found an average of 152 two-way vehicle movements per day at the southern end of the lane, and an average of 146 at the northern end. Surveys carried out in March 2022 found similar traffic flows.
16. Whilst I make no aspersions with regard to the credibility of this data, during my own site visit (when the business was not in operation), I observed the lane to be very quiet, with infrequent traffic movements in either direction. Whilst informal, my observations were broadly consistent with the findings of the Local Highways Authority, in which just 6 vehicle movements were observed per hour. Whilst I accept there may well be fluctuations in traffic volume at different points in the day (as evidenced by the appellant) my own experience suggests that the baseline traffic position along the lane is generally low. In turn, even a small increase in traffic movements could have a material impact on highway safety.
17. The appellant suggests that the vehicle repair business gives rise to approximately 32-40 vehicle trips to or from the site per day, which includes staff movements, deliveries and removal of waste. Whilst evidence has been presented to suggest vehicle movements associated with the business may be higher, even the estimate provided by the appellant would be meaningful when considered against the low baseline traffic position, particularly given the variety of vehicles serviced by the repair shop. Indeed, such an increase amplifies the likelihood of conflict between road-users, which in turn increases the risk of accident. Whilst there will invariably be variation between different vehicle repair workshops, the TRICS database also gives an indicative figure of 157 vehicle movements per day for a business of this kind. It is therefore conceivable that the business could give rise to more vehicle movements at some point in the future, further exacerbating these risks.

18. Whilst advisory only, I acknowledge that guidance set out in the Department for Transport's Advisory Leaflet³ (DfT Guidance) indicates that quiet lanes can potentially accommodate up to 1000 vehicles per day, without unduly compromising the enjoyment of pedestrians, cyclists and horse riders. However, given the particular physical constraints and limitations of Ryehurst Lane, this guidance should not be used to justify an increase to vehicle movements which could potentially increase the risk of accident.
19. For completeness, the appellant has provided an updated swept-path analysis for the access into the appeal site, which appears to demonstrate that larger vehicles could safely access and egress the appeal site. Nonetheless, this factor does not overcome the risk to highway safety owing to the increase in vehicle movements along Ryehurst Lane.
20. On account of these factors, I consider that the development risks unacceptable harm to highway safety along Ryehurst Lane. In turn, it conflicts with Policies E4 and EN9 of the Bracknell Forest Borough Local Plan 2002 (Local Plan), which are explicit that any support for small businesses or the re-use of existing non-residential buildings is contingent on development not risking harm to road safety or traffic generation problems. The development would also conflict with Policies M4 and M6 of the Local Plan, which seek to ensure new development safeguards safe and convenient pedestrian and cycle links. Similarly, the development conflicts with Policy CS23 of the Core Strategy Development Plan Document 2008 (Core Strategy), which promotes safe modes of travel through the maintenance and improvement of the local road network. Finally, the development conflicts with paragraphs 110, 111 and 112 of the National Planning Policy Framework 2021 (Framework), all of which seek to safeguard appropriate highway safety as part of new development. In particular, paragraph 111 is explicit that development may be refused solely on highway grounds if it would have an unacceptable impact on highway safety.

Other Matters

21. Whilst I note the appellant's business is valued locally by customers, there is little evidence before me to demonstrate the business could not be accommodated elsewhere, where highway safety would not be adversely affected. In turn, the economic and social benefits of the scheme carry limited weight in my decision.
22. The appellant has cited a planning permission granted by the Council in support of its case, relating to a new commercial business along Garsons Lane. However, I have limited details before me regarding the particularities of this business, nor of the associated levels of traffic generated. In turn, it is difficult for me to draw any direct comparisons between the two cases. Nonetheless, it is the particular physical constraints of Ryehurst Lane which has led to my conclusion with regard to highways impact, and so a case located elsewhere, where the physical circumstances are likely to vary, is unlikely to bear direct relevance.
23. The appellant has suggested that a temporary permission would allow them sufficient time to locate alternative premises for the vehicle repair business. However, it would not be appropriate to issue a temporary planning permission

³ Department for Transport Traffic Advisory Leaflet 3/04 "Quiet Lanes" (TAL 0/04)

in this instance, as the development risks harms to highway safety and with no prospect of this risk reducing.

GROUND F APPEAL – STEPS REQUIRED

24. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control. The requirements set out in the notice must therefore achieve this purpose.
25. As originally drafted, the steps set out in the EN could potentially compromise certain activities incidental to the agricultural use of the land. For example, the appellant could be prevented from repairing vehicles used in connection with the agricultural use of the land, or from receiving deliveries in connection with such repairs. Notwithstanding the overarching requirement to cease the mixed use of the land (which has been varied to reflect the corrected allegation), I therefore agree that the remaining steps should specifically relate to the non-agricultural use of the site for vehicle repairs and servicing, and not to any similar activity pertaining to the site's agricultural use. Otherwise, the requirements could purportedly go beyond what is necessary to remedy the breach.
26. I have therefore made a number of variations to the EN, to ensure that the requirements specifically relate to the non-agricultural commercial use of the land. I am satisfied that these alterations would not cause injustice to the appellant, as the requirements make it clear that the agricultural use, which is not disputed, can continue unfettered. The varied requirements would also not prejudice the Council, as they would still achieve the purpose of remedying the breach.
27. The appellant also alleges that step (iv), which requires all vehicles to be removed from the ancient woodland buffer at the land, goes beyond what is necessary. Ultimately, steps (i) – (iii) would already prevent any further vehicles coming on to site for the purpose of vehicle repair or service in connection with the non-agricultural use of the land. In turn, I agree that any further restriction on parking would go beyond the purpose of remedying the breach, and risk unfairly compromising the appellant's agricultural business. I have therefore deleted this requirement.
28. The appeal on ground (f) therefore succeeds, but only to the extent outlined above.

GROUND G APPEAL – TIME FOR COMPLIANCE

29. The appellant contends that a longer period for compliance should be allowed in the event that the EN is upheld, but has advanced little evidence to support any need for a longer period.
30. It is understood that the vehicle repair business is no longer in operation at the appeal site, and has not been since the Council issued a Temporary Stop Notice in December 2021. Moreover, no substantive physical works will be needed to comply with the requirements of the EN. In turn, I see no reason why the time for compliance should be extended. As highlighted, given that the development risks harm to highway safety, the time for compliance should not go beyond what is strictly necessary.
31. The appeal on ground (g) therefore fails.

Conclusion

32. The requirements set out in the EN should be varied so that it is clear they only relate to the unauthorised non-agricultural commercial use of the appeal site for the repair and service of vehicles, and not to the agricultural use of the site. The appeal on ground (f) succeeds to that extent. However, for the reasons given, I conclude that the appeal on grounds (a) and (g) should not succeed. I shall therefore uphold the enforcement notice with the corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

James Blackwell

INSPECTOR