



Appeal Decisions

Hearing held on 4 July 2023

Site visit made on 4 July 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal A Ref: APP/N0410/C/23/3315512

St James Farm, Bangors Road South, Iver, Buckinghamshire, SL0 0AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Steven Payne against an enforcement notice issued by Buckinghamshire Council - South Area (South Bucks).
 - The notice was issued on 28 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the Land and buildings to a mixed use (sui generis), comprising: agricultural; storage and distribution; manufacturing of windows and doors; vehicle repair workshop; external storage of plant, materials, equipment, racking and machinery in relation to the unauthorised mixed use; and the siting of associated paraphernalia, items, equipment and vehicles to facilitate the unauthorised mixed use.
 - The requirements of the notice are 1. Cease the use of the Land (outlined by the thick black line on the attached plan) and building (shown in the approximate location on the plan dashed and labelled C) for storage and distribution uses; and 2. Cease the use of the Land (outlined by the thick black line on the attached plan) and building (shown in the approximate location on the plan dashed and labelled D) for the manufacturing of windows and doors; and 3. Cease the use of the Land (outlined by the thick black line on the attached plan) and building (shown in the approximate location on the plan dashed and labelled E) for vehicle repairs; and 4. Remove all materials, equipment, racking (shown in the approximate location on the plan cross hatched and labelled A & B), paraphernalia and machinery not used in connection with the lawful agricultural use from the Land and buildings (outlined by the thick black line on the attached plan); and 5. Remove all vehicles not used in connection with the lawful agricultural use from the Land (outlined by the thick black line on the attached plan); and 6. Remove all materials and debris resulting from complying with steps 1 to 5 of this Notice, from the Land and buildings (outlined by the thick black line on the attached plan).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (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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Appeal B Ref: APP/N0410/W/22/3302585

St James Farm, Bangors Road South, IVER, SL0 0AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Steven Payne against Buckinghamshire Council - South Area (South Bucks).
 - The application Ref PL/21/4069/FA, is dated 18 October 2021.
 - The development proposed is retrospective change of use of agricultural building to B8 storage and distribution.
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Appeal C Ref: APP/N0410/W/23/3318262

St James Farm, Bangors Road South, Iver, Buckinghamshire, SL0 0AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class R, Paragraph R.3(1)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Steven Payne against the decision of Buckinghamshire Council.
 - The application ref: PL/22/4432/PNC, dated 21 December 2022, was refused by notice dated 14 February 2023.
 - The development proposed is change of use of agricultural building to a flexible commercial use.
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Decisions

Appeal A

1. Appeal A is allowed, the enforcement notice is quashed and 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 material change of use of the Land to a mixed use and of building C (as annotated on the plan accompanying the enforcement notice) to use Class B8, building D to use Class E and building E to a sui generis use for the repair of motor vehicles at St James Farm, Bangors Road South, Iver, Buckinghamshire as shown on the plan attached to the notice and subject to the following conditions:
 - 1) 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 changes of use of any buildings or hardstanding other than those expressly authorised by this permission (including the permission granted on appeal C) and no permitted development rights shall be exercised without planning permission first being obtained from the local planning authority.
 - 2) No outside storage shall take place anywhere on the site, except in the area marked B on the plan accompanying the enforcement notice or that associated with the use of the site for agricultural purposes. The storage in area B shall not exceed a height of 2m.
 - 3) The access shall be kept clear of all obstructions to a distance of 13m measured back from the edge of the carriageway of Bangors Road South.
 - 4) The uses hereby permitted shall cease within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the laying out and marking of parking spaces within the site (hereafter referred to as the scheme) 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 6 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 have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.

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.

Appeal B

- 2. The appeal is dismissed and planning permission for Change of use of an agricultural building to a flexible use as commercial space is refused.

Appeal C

- 3. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class R, paragraph R.3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of agricultural building to a flexible commercial use at St James Farm, Bangors Road South, Iver, Buckinghamshire, in accordance with the application ref: PL/22/4432/PNC, dated 21 December 2022, and the details and plans submitted with it pursuant to Article 3(1) and Schedule 2; and subject to condition 1 attached to appeal A.

Applications for costs

- 4. An application for costs has been made by the appellant and is the subject of a separate decision.

Preliminary Matters

- 5. The site is a modestly sized former farmyard adjacent to St James Farm standing on the west side of Bangors Road South just north of Iver. It is still partly used by the appellant for agricultural purposes and he farms the surrounding land, mainly for vegetables. The site and its somewhat messy planning history can best be described as follows. As you enter the site on the right is a triangle of land used for agricultural storage and on the left is area A (as denoted in the enforcement notice) which was being used by a scaffolding company but is now filled with outside storage for the window manufacturer occupying building D. In front of you is building C, a largeish wooden barn that is currently used by a tile company for storage purposes and is packed with tiles stored on pallets. This is subject to the material change of use appeal B to regularise the storage use. To the left beside building C is a long narrow building which is currently divided into a number of smaller units which are perhaps best described as largeish sheds, which are used for storage, an office and a cold store all associated with the farm business, but which is subject to the refused prior approval application for B8 use.
- 6. Behind this building and building C is a larger building divided into D and E. E on the right houses a vehicle repairers, who deal almost exclusively in vans and lorries. There is a hardstanding to the right of building E where such vehicles

are parked either awaiting repair or ready to be picked up. I saw they were intermingled with several tractors for use on the farm. Behind building C and so in front of building E is a large lean-to that is used to store boxes for vegetables and was packed with containers. Next to building E is building D which is currently occupied by the window manufacturer. Next to that in the corner is another area of hardstanding, currently empty, but which is area B in the notice and was used for outdoor storage by the window company. They are in the process of moving out, hence area B is now empty.

7. The notice covers the whole site and requires all the non-agricultural uses to cease and buildings C, D and E to be vacated.

The Appeal on Ground (b)

8. This ground is that the matters alleged have not happened. They clearly have and so this ground cannot succeed. However, the appellant argues the enforcement site is actually several planning units and so the notice should have been issued attacking each unit separately. It is therefore a nullity. Technically this not a ground (b) argument but a nullity issue, but for ease I shall deal with it here.
9. It is not necessarily incorrect to issue one notice to cover a series of planning units, especially where they are grouped together as would be the case here, but in this case I consider the site as a whole is a single unit containing a mix of uses. Both parties relied on *Burdle*¹ and it seems to me the site falls neatly into the second *Burdle* category of *"a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another"*. While the occupiers of the units may be different there is a single overall owner (in this case Mr and Mrs Payne). There is clearly a shared access and parking. None of the units are clearly marked off from each other and the use of different parts of the site by different businesses fluctuates – as in the window manufacturer moving storage from area B to A. The parking for building E was also shared with the agricultural use and no separate parking or storage areas were demarcated on the ground. In my view therefore the site outlined in the enforcement notice is a single planning unit.

The Appeal on Ground (a) and the s78 material change of use appeal

10. The appellant argued that it would have been best to deal with the s78 appeal on its own merits – which would have led to a grant of planning permission – and then deal with the rest of the site via the enforcement notice. Although he also argued the enforcement notice was excessive as the only problem was outside storage so it should have only targeted areas A and B, not the use of the buildings D and E. The Council's view is that there are cumulative impacts which amount to a highway safety issue and that the site cannot be dealt with piecemeal. I have some sympathy with this view and it makes sense to deal with the two main issues, which are the impact on the openness of the green belt of the outside storage and highway safety in the round.

Openness and the green belt

11. Paragraph 150(d) of the NPPF states that the reuse of buildings that are of permanent and substantial construction would not be inappropriate

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

development as long as that re-use would preserve openness. Therefore the various material changes of use of buildings C, D and E are not necessarily policy compliant, as the appellant argued, and it would be perfectly legitimate to prevent those material changes of use if they did not preserve openness. The question then is what is the openness that needs to be preserved?

12. The site is a classic mixed use where agricultural uses sit side by side with various other businesses, which leads to a considerable mess. I hope the appellant is not offended if I say that farmyards are notoriously scruffy, and the agricultural areas I saw here were no exception. If the whole site was still a farm then I would expect there to be the usual scatter of machinery, vehicles and all the general detritus that goes with farming, much of it no longer used or usable. This would clearly have an impact on openness, and the fact that agriculture is a use that is not inappropriate in the green belt does not mean that its associated clutter can be discounted. As a baseline the farmyard would have generated outside parking, storage and clutter that would have affected openness.
13. That said, as I saw on area A, the concentrated storage of manufacturing products on racks which can be several metres tall, is considerably more intense than the likely agricultural alternative. Originally this area was filled with scaffolding and the whole of area B was filled with the window manufacturers products. The corner beside building E was filled with large parked vehicles. There was a clear open space in front of building C and the prior approval shed, but there is no guarantee that future occupiers of C would not want to use that area too. All-in-all, the impact on openness has a potential to be much greater than the former agricultural use and that would make the change of use of buildings C, D and E inappropriate development.
14. The appellant recognises this and has suggested a condition that prevents any outside storage at all. This would not affect the parking of vehicles associated with the use in building E, as that is not a storage use. A statement with which I agree. This would clearly resolve the green belt issue. However, the appellant also argued that given the outside storage associated with the agricultural use, then some storage would be acceptable. For example storage could be restricted to area B with limits on height of 2m so it was not visible outside the site. That, along with the parking of vehicles associated with the various uses, would be no more harmful than the impact of any outside storage and parking associated with the agricultural use, assuming the whole site was agricultural. It is of course impossible to be certain, we are talking about the idea of openness which it is difficult to be objective about. But the balance suggested does not seem unreasonable to me. This could be secured by conditions and would overcome the green belt problem and so the proposed material changes of use would not be inappropriate development.

Highways

15. The highway issue concerns the generation of vehicle movements by HGVs. Bangors Road South has a 7.5 tonne weight limit "except for loading" from beyond the site to the north as far as the junction with the B470 in Iver to the south. In other words no HGVs should be using the road past the site, unless they are 'loading'. I assume (and this seemed to be the general presumption at the Hearing) that HGVs were excluded from the limitation if they were travelling to and from sites along Bangors Road South for loading and

unloading purposes. Nevertheless the appellant has provided a traffic survey which showed there were 90 HGVs using Bangors Road South a day, so the weight limit is clearly not being enforced.

16. It was agreed that the reason for the limit was the pinch point in the road close to its southern junction in Iver. As I saw, and was accepted by the appellant, the road narrows here so that a car cannot pass a lorry, and there is nowhere for larger vehicles to turn. This is the nub of the Council's concern, that there should be no increase in HGVs using this part of the road. The local plan has one policy that is directly relevant, TR10, which deals with development that produces HGV trips. Three sub clauses describe where such development will be allowed. Clause (a) concerns residential amenity or local character which is not in dispute; (c) refers to other policies in the plan, but no other issues with such policies (apart from the green belt) have been identified. Clause (b) is the key issue and uses should not be allowed where they generate "significant" number of HGV trips onto a road which is not suitable for such traffic. Bangors Road South is not suitable for such traffic to the south of the appeal site, but it would seem there is no problem with HGVs turning north. The word 'significant' is important as it accords with the wording of the NPPF, paragraph 111 which says that development should only be refused on highway grounds if there was an unacceptable impact on highway safety or cumulative impacts would be severe.
17. The issue is therefore whether the site is likely to generate a significant number of HGV trips turning south out of the gates or travelling to the site from the south. The parties had come up with different figures for HGV trip generation. When considering the material change of use application for building C on its own the Council considered it would create 3 trips² a day which was de minimis. Using the PCN responses they calculate buildings C, D and E together produce 9 trips a day. If prior approval is granted for the shed building this adds 3 more trips, a total of 12, and in a worst case scenario, if all the buildings were in general B8 use that would produce 17 trips, or 34 HGV movements to and from the site.
18. This data was based on the TRICS database and I agree with the appellant there are specific limitations at the site, such as the size of the buildings and the site layout that mean it should not be treated as if it were a purpose built commercial estate. Some of the buildings are low or designed for agriculture and not for a typical warehouse use. The appellants own survey showed only 3 HGV trips (for buildings C, D and E) a day and generally a split of 50/50 for vehicles turning north and south. I note there is a sign on the gate asking all HGVs to turn north out of the site but whether they do or not I cannot say. Assuming there is a 50/50 split, so half the HGV movements will be to or from the south and there are 17 trips a day then 9 will be to or from the south, affecting the pinch point. However, the site already produces agricultural traffic movements. The Council have discounted these, on the rather odd to my mind reason that farms generate seasonal and less frequent movements. Even if farms are seasonal, they can be very busy indeed for quite a few months. In any event the Council accepted the old egg production unit (that was in buildings D and E) produced 4 trips a day, or 2 to the south.

² All trips are two way.

19. The result of this is the worst case scenario is 7 additional HGVs a day using Bangors Lane South to the south of the appeal site. I accept that 'significant' for HGVs is a smaller number than for cars as they are associated with proportionally more damage or congestion, but if the 90 figure is correct this is an increase of about 8%. I agree this is on the border of being significant; but ignores the fact the whole site is not in B8 use, ignores the appellants traffic survey suggesting much lower HGV trips and ignores the limitations of the site itself and the possibility of a greater agricultural use. Overall the figures are relatively small, and even a reduction from the worst case of 2 vehicles would clearly take the numbers out of any reasonable person's definition of significant. Consequently I do not think there is a highway safety issue.
20. I have included the prior approval building in the above discussion. The appellant suggested he did not want to convert it to B8 as it was used for his farming activities and would be happy for a condition removing the permitted development rights for conversion. I do not think this is necessary even if he changes his mind in the future as the figures do not suggest there would be an overall highways problem. Of course if the weight limit was enforced there wouldn't be a problem at all. I am also aware of the issues raised by a third party at the Hearing, but the scaffolders are gone and because of the proposed outside storage conditions they cannot lawfully return. I accept that local pedestrians and cyclists would rather there were no HGVs, but the purpose of the planning system is to balance everyone's interests and the figures do not suggest there will be a significant highway problem by allowing these appeals.
21. I was given a copy of the recently adopted Ivers neighbourhood plan and was referred to two policies. IV6 resists proposals that would harm the functioning of the highway network and IV9 resists proposals that would have an unacceptable impact on highway safety or a severe cumulative impact on the road network. These two issues have been discussed fully above and the appeal developments are in accord with those policies.

Conclusions

22. I shall allow the ground (a) appeal which will grant planning permission for the material change of use of buildings C, D and E to Class B8, Class E and a sui generis use of vehicle repairs respectively. An agreed condition is to remove permitted development rights for further changes of use which is needed to prevent an intensification of the uses that could be harmful in terms of highway safety. Another agreed condition is to prevent any outside storage, although, as discussed above I shall amend this to allow storage in area B to a height of no more than 2m. A further agreed condition is to create and retain car parking spaces and this will require a plan to be agreed with the Council. Finally an agreed condition to keep the access clear of any obstructions to a distance of 13m from the edge of the carriageway is necessary to allow safe access to the site. To avoid duplication I shall dismiss the material change of use appeal for building C as this covered by the ground (a). I shall allow the prior approval appeal, as, it is clear from the above, I do not consider there is likely to be cumulative harm in terms of highway safety if this building is used for commercial purposes.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sebastian Charles – agent

Steven Payne – appellant

Emrys Williams – previous agent

Dermot McCaffrey - Highways

FOR THE LOCAL PLANNING AUTHORITY:

Stephanie Penney – enforcement

Ian Severn – senior planning officer

Lucy Mollow - highways

INTERESTED PARTIES:

Ms Carol Gibson

DOCUMENTS

1. Agreed statement of common ground
2. The Ivers neighbourhood plan