
Appeal Decisions

Hearing held on 14 February and 15 June 2023

Site visit made on 14 February 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Appeal A Ref: APP/X0360/C/20/3253078

Land at Heartwood, Sandhurst Road, Finchampstead RG40 3LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Lucas Dutton against an enforcement notice issued by Wokingham Borough Council.
 - The notice was issued on 28 April 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of the land for the storage, distribution and transfer of arboricultural waste.
 - The requirements of the notice are to:
 - (i) Cease the use of "the Land" as identified by a red line on the attached plan for the storage, distribution and transfer of arboricultural waste products and cease bringing arboricultural waste onto the land.
 - (ii) Remove all arboriculture waste and any machinery associated with the use from "the Land".
 - The period for compliance with the requirements is one month from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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/X0360/W/20/3253081

Land at Heartwood Lodge, Sandhurst Road, Wokingham, RG40 3LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Lucas Dutton against the decision of Wokingham Borough Council.
 - The application Ref 192988, dated 11 November 2019, was refused by notice dated 6 January 2020.
 - The development proposed is: the change of use to a mixed use of storage of agricultural products, forestry products and green waste.
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Summary Decision: The appeals are allowed and the enforcement notice is corrected and quashed

Applications for costs

1. An application for costs was made by Mr Lucas Dutton against Wokingham Borough Council. This application is the subject of a separate decision.

2. An application for costs was also made by Wokingham Borough Council against Mr Lucas Dutton. Again, this application will be considered in a separate decision.

Preliminary Matters

3. The enforcement notice refers to several policies of the Waste Local Plan for Berkshire 1998. At the hearing the Council confirmed that this plan and its policies had been superseded with a new waste local plan. As such, the Council confirmed that it no longer relied on any policies of the 1998 Plan. Having been given the opportunity to request that I consider policies of the new waste local plan, the Council chose not to do so; it confirmed that it does not rely on any policies of the new waste plan to support its case. I have, therefore, determined the appeal on this basis.
4. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have, therefore, determined the appeal in light of the revised Framework. The revision to the Framework has had little effect on the sections of the previous Framework that have been brought to my attention. I have not, therefore, sought the parties' view on the implications of this revision to their case.

The Notice

5. Before considering the grounds of appeal on Appeal A, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
6. The notice alleges the change of use of the land for the storage, distribution and transfer of arboricultural waste. Part 1 of the enforcement notice states that there has been a breach of planning control falling within section 171A(1)(a) of the 1990 Act, which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'. However, the notice does not allege that there has been a **material** change in the use of the land. It therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.
7. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
8. Notwithstanding this, having regard to the appellant's case and the grounds of appeal made, he has clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of

the notice to include reference to a material change of use would not cause injustice in this case.

9. In addition to the above, there is a discrepancy between the site address for Appeal A and Appeal B. At the hearing the parties confirmed that the sites are one and the same and that the correct address is that given on the planning application form subject of Appeal B. I will, therefore, correct the notice so that the address of the land to which the notice relates is consistent with this.
10. Finally, there was further discussion at the hearing with regard to the use alleged in the notice and whether or not this is correct. This is a matter that is entirely relevant to the ground (b) appeal that has been made and will, therefore, be considered in the following section of this decision.

Ground (b)

11. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate that the matters stated in the enforcement notice have not occurred.
12. The allegation is of a change to a single use of the appeal site, which is described as a use for the storage, distribution and transfer of arboricultural waste. The appellant's ground (b) appeal is made with regard to a number of matters. These include, that the current use of the site does not involve the distribution of items; that the allegation fails to include the storage of forestry products; and that the allegation fails to recognise that the use of the site is for a mixed use, which includes a forestry use.
13. In this case it is important to consider the planning unit and the use or uses that take place within it. As such, I have had regard to the case law that has been drawn to my attention, in particular that of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207.
14. At the hearing the appellant confirmed that he owns only the land identified on the plan submitted with the application subject of Appeal B (drawing number 16 832C 001), which is broadly the same area of land that is the subject of the enforcement notice. He is also the only occupier of this land.
15. As for the activities that take place on the land, there is no dispute that one activity is the use of the land for storage. Local arboriculturist and tree surgeons pay a fee to bring waste from sites they have worked on to deposit on the land. This is a daily occurrence. Once deposited, waste is stored in piles of similar items. These include a pile for logs, a pile for chippings and a pile for brash.
16. The notice refers to this waste as arboricultural waste. In his suggested alternative wording for the allegation, the appellant also uses the same term. However, it is the appellant's case that not all of the items stored on the site are waste and that some items have a useful purpose. For example, the appellant says that logs are taken from the site and sold elsewhere for firewood. This is not disputed by the Council. The appellant describes these as forestry products, rather than arboricultural waste. I am satisfied that this

is a suitable description for these items and that there is little scope for this to include other items not typically found on a forestry site.

17. If not taken elsewhere to be sold for firewood, the appellant says that logs, together with the brash and chippings, are collected from the site by a lorry between one and three times a month. This arboricultural waste is used as fuel to produce energy or is made into pellets for burning. Whilst there is no dispute that this activity involves the transfer of the arboricultural waste, the appellant suggests that the waste is not distributed. The items stored on the site are subsequently removed from the site as part of the process. However, they are removed from the site in bulk, rather than being taken from the site in smaller portions. I can, therefore, agree with the appellant, that the process taking place is not accurately described as distribution. The description of the activity on the site need only refer to the storage and transfer of arboricultural waste and forestry products.
18. Turning to other activities on the land, there is no dispute that, prior to the issue of the notice, trees on the land had been felled following the grant of a series of felling licences. The most recent expired on 27 June 2019. A condition of the licences is a scheme of replanting. I noted that the land is populated by a number of young trees, as well as some more mature trees along some of the boundaries of the site.
19. I acknowledge that the licenses to fell have expired and that no active felling is permitted on the land. However, I note the restocking conditions of the three licences that have been brought to my attention. These require, amongst other matters, that for a period of 10 years from the restocking, the protection and weeding of the plants; the replacement of any plant lost; and the maintenance of trees and shrubs in accordance with the rules and practice of good forestry. There is no suggestion that the appellant is not complying with these conditions, which would still have been in force for all three licences at the time the notice was issued.
20. I cannot regard the activity resulting from compliance with these conditions as being part and parcel of the use of the land for the storage and transfer of arboricultural waste and forestry products. In my judgement, this activity is best described as forestry, which I find to be a use of the land that is materially different to the storage and transfer use. Furthermore, whilst this forestry activity itself may well result in waste being stored on the land, the vast majority of arboricultural waste and forestry products stored are brought to the site from elsewhere, before being taken from the site in bulk. As such, I am unable to regard one use as being incidental to the other.
21. In addition to the above, whilst I noted the areas of tree planting, as well as the areas used for storage, there are areas of the site that I cannot say are used only by one, rather than the other use. For example, the access track through the site is clearly used for the storage and transfer use, as well as to gain access to the tree planting areas. This shared use is also likely for the other open areas of the site, as well as for the workshop building.
22. Having regard to all of the above, as a matter of fact and degree I find that the appeal site is a single planning unit and that there has been a material change of use of this single planning unit. It is more likely than not that the material change of use that has taken place is from a forestry use to a mixed use for forestry and for the storage and transfer of arboricultural waste and

forestry products. I find this to be a materially different use to the use that is alleged in the enforcement notice. For this reason, I find that the matters alleged in the enforcement notice have not occurred.

23. Having regard to my powers to correct the enforcement notice, my findings above do not necessarily mean that the notice must be quashed. The appellant has suggested a correction to the allegation that is similar to that set out above, and says that injustice would not be caused if the notice were corrected in this way. I have no reason to disagree with this.
24. Whilst I note the Council's reasons for suggesting that the alleged use does not include forestry, there is no obvious reason why injustice would be caused to the Council, were I to include this as part of the alleged mixed use, or to include reference to forestry products in the allegation. The Council's objections to the use of the site relate to the storage use, rather than any forestry use. The notice, once corrected, would still target this element of the mixed use. Furthermore, I see no reason why the correction would affect the Council's case under ground (a).
25. For the reasons given above, the ground (b) appeal succeeds. I will correct the notice to allege: without planning permission the material change of use of the land from a use for forestry to a mixed use for forestry and for the storage and transfer of arboricultural waste and forestry products. The ground (a) appeal will be determined on this basis. I also intend to correct the associated requirements of the notice so that they are consistent with this allegation.

The ground (a) appeal, the deemed application for planning permission and Appeal B

Main Issues

26. Appeal A has been made on ground (a), which includes a deemed planning application for the development that is the subject of the enforcement notice (once corrected as I intend). The description of development for Appeal A differs when compared with the description of development that is the subject of Appeal B, which is described in the application form as the change of use to a mixed use of storage of agricultural products, forestry products and green waste.
27. These differences are as follows:
 - Unlike the description of development for Appeal A (as I intend to correct it), the Appeal B description refers to only the storage of the items listed, and not the transfer;
 - the Appeal B description includes reference to green waste, rather than arboricultural waste;
 - the Appeal B description also includes reference to agricultural products; and
 - the Appeal B description does not include a forestry use.
28. With regard to the first of these differences, having discussed this matter at the hearing, I am satisfied that the process for which permission is sought is broadly the same as that taking place on site at present. That is that items

are brought onto the site in small amounts, stored in various locations, depending on their type, and removed from the site in bulk.

29. Turning to the second matter, the Council suggest that 'green waste' is a broader category than 'arboricultural waste', and that it would also include items which are compostable, such as household and garden waste. I can agree that green waste includes garden waste, such as arboricultural waste (which is the subject of Appeal A) as well as grass clippings and the like. Indeed, the appellant refers to the domestic work of the arboriculturists and tree surgeons that use his site. Green waste would also arise from the maintenance of public parks and non-domestic landscaped areas, which would again include arboricultural waste. All such waste, including arboricultural waste, is compostable in that it is natural material that will breakdown over time.
30. I cannot, however, agree that green waste would include household waste. In my judgement, the ordinary meaning of green waste is waste that arises from landscaping and gardening work.
31. Having regard to the above, I find little difference between what is meant by arboricultural waste and what is meant by green waste. Indeed, at the hearing the appellant confirmed that there is no difference between the development subject of Appeal A and that subject of Appeal B, save for the agricultural products element, which I will come to below. Accordingly, whilst the description of development for Appeal A and Appeal B differ in their use of these two terms, I have no reason to find a material difference between the two developments in so far as they relate to the storage and transfer of waste. In the interests of brevity, I will here on in use the term 'green waste' to mean both green waste and arboricultural waste in my consideration of the ground (a) appeal and Appeal B.
32. As for the reference to 'agricultural products', there is some ambiguity in the evidence with regard to what is meant by this. In places the appellant's evidence describes the existing items stored on site as both forestry and agricultural products. At the hearing it was clarified that this is not the case. The appellant described the intended agricultural products as a crop yield where the crop has been grown specifically to provide a renewable source of biofuel to be used for energy production. The appellant confirmed that, at present, agricultural products are not stored on site.
33. On the final matter, whilst the description of the mixed use given on the application form and appeal form for Appeal B does not include the forestry use, it has been included at the end of the description of development on the Council's decision letter. As I note above, the appellant confirmed at the hearing that the only difference between the development subject of Appeal A and Appeal B was the agricultural products element. Indeed, it is the appellant's case on Appeal A that the development subject of the enforcement notice fails to include the forestry use as part of the existing mixed use and I have agreed with him on this matter. Furthermore, having regard to the controls imposed by both the TPO and the felling licences, I am satisfied that, in making his Appeal B application for planning permission, it was not the appellant's intention to propose a cessation of the use of the site for forestry.
34. Having regard to the discussion had at the hearing on the matter of the description of the development for Appeal B, as well as for Appeal A, I am

satisfied that neither party would be prejudiced if I determine Appeal B on the basis of permission sought for a material change of use of the site to a mixed use for the purposes of forestry and for the storage and transfer of agricultural products, forestry products and green waste. As such, I am satisfied that the Appeal A and Appeal B applications can be considered together. I will, however, distinguish between the two where appropriate.

35. Noting the Council's reason for refusal of the planning application and the substantive reasons for issuing the enforcement notice, I have identified the following main issues:
- i. Whether or not the location of the development is acceptable, having regard to the policies and guidance relevant to the location of this type of development;
 - ii. The effect of the development on the character and appearance of the site and the surrounding area, in particular the effect of the development on the trees on site; and
 - iii. The effect of the development on the living conditions of nearby residents.

Reasons

Policies and Guidance

36. The development plan for the area includes the Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document dated January 2010 (CS) and the Wokingham Borough Development Plan Adopted Managing Development Delivery Local Plan dated February 2014 (LP).
37. Starting with Policy CC01 (Presumption in Favour of Sustainable Development) of the LP, this reflects the guidance in paragraph 11 and elsewhere in the Framework.
38. CS Policy CP1 (Sustainable development) sets out general criteria for achieving sustainable development in the borough. This includes requirements to maintain or enhance the high quality of the environment; minimise the consumption and use of resources and provide for recycling; avoid areas where pollution (including noise) may impact upon the amenity of future occupiers; provide attractive, functional, accessible, safe, secure and adaptable schemes; demonstrate how they support opportunities for reducing the need to travel, particularly by private car; and contribute towards the goal of reaching zero-carbon developments.
39. CS Policy CP11 (Proposals Outside Development Limits – Including Countryside) is particularly relevant to the location of development. I consider this in more detail below.
40. CS Policy CP3 (General principles for development) sets out criteria for achieving good design. For development to be permitted, this policy requires, amongst other matters, that development is of an appropriate character and does not cause detriment to adjoining land users. To comply with the policy, development must not have a detrimental effect on important landscape

features. It must support flora and fauna and contribute to a sense of place in the buildings and spaces themselves and in the way they integrate with their surroundings.

41. LP Policy CC03 (Green Infrastructure, Trees and Landscaping) requires, amongst other matters, that development protects and retains existing trees, hedges and other landscape features. Similarly, LP Policy TB21 (Landscape Character) requires new development to retain or enhance the condition, character or features that contribute to the landscape.
42. Policy CC06 (Noise) of the LP has also been brought to my attention, this deals with the impact of noise from development.
43. In addition to the above, I have had regard to various chapters of the Framework and the National Planning Policy for Waste (NPPW) that have been drawn to my attention.
44. Turning to other policy and guidance, I have already noted in the preliminary matters that the Council does not rely on the policies of the Waste Local Plan for Berkshire 1998 or the new waste local plan.
45. Although CS Policy CP9 and the Borough Design Guide SPD have been included by the Council in its list of relevant policies, these are not referred to in either the enforcement notice or the decision notice. Furthermore, they are not relied upon by the Council to support its case.
46. On a final matter, the Finchampstead Neighbourhood Development Plan (FNDP) has been referred to. At the time of the hearing it was not an adopted plan and does not, therefore, form part of the development plan for the area. At the time of writing this decision, the FNDP referendum had taken place, but the plan had still not been adopted (made). For this reason, the weight I attribute to any conflict with the plan would be limited.
47. Notwithstanding the above, Policy TC1 (Supporting Businesses) of the FNDP has been drawn to my attention. Whilst it was suggested that criterion 1 is relevant to this appeal, I cannot agree. The criterion relates to development outside 'Core Employment Areas', but within 'Development Locations'. Whilst outside a core employment area, the appeal site is not within a development location.
48. Criterion 2 is relevant. This informs that proposals for commercial use within the countryside will be supported where evidence is provided of the genuine need for the proposed business use and where:
 - a. broadband connectivity, will be supported.
 - b. They allow existing buildings to be appropriately converted.
 - c. Existing buildings that are to be replaced or converted are of permanent and substantial construction.
 - d. Such redevelopment of existing buildings is well designed and proportionate in scale, respecting the character of the rural setting.
49. To comply with the first part of criterion 2, there must be a genuine need for the development, which is the business use in this case. I cannot, however, find the sub criteria a. to d. to be of any relevance to this case. It has not

been suggested that broadband connectivity is necessary for the development and no new buildings are proposed. Whilst the existing building will be used for the development, no works of conversion or any such alterations to the building form part of the scheme of development.

Location

50. The appeal site is outside of the settlement limits defined in the CS. Policy CP11 sets out exceptions where development in such a location will normally be permitted. Criteria 1 and 2 of the Policy are followed with an 'and', whereas criterion 3 is followed with an 'or'. This suggests that compliance with criteria 1 and 2 is essential for any development to be permitted. To comply with criterion 1, development must either contribute to diverse and sustainable rural enterprises within the borough, or it must contribute to and/or promote recreation in, and the enjoyment of, the countryside. There is no dispute that the first, rather than the second element of the criterion is relevant to this case. As for criterion 2, to comply development must not lead to excessive encroachment or expansion of development away from the original buildings.
51. Turning to the remaining criteria, the Policy has been drafted so that compliance with each of these is not necessary. This is understandable as these each relate to specific types of development. Criteria 4 to 7 relate to affordable housing, residential development and extensions, and community facilities. These are not, of course, relevant to the development subject of these appeals. Criterion 3 is, however, relevant to a degree as this relates to development contained within either an existing building or a replacement building.
52. In addition to the above, I also note paragraphs 84 and 85 of the Framework, which relate to supporting a prosperous rural economy.
53. The appeal site is used for a mixed use including forestry and the storage and transfer of green waste and forestry products. The appellant acknowledges that the vast majority of the green waste and forestry products do not result from the forestry element of the use of the site. In this regard, I agree that this element of the mixed use need not take place in this location.
54. However, it is clear from the evidence that the storage and transfer use is an element of the appellant's business that is a diversification from the forestry use. It is a use that operates side by side with the forestry use, which is a land-based rural activity. The same can be said for the storage of the agricultural products described by the appellant. As I note above, the appellant indicated that the crop yield (agricultural product) he proposes to store at and transfer from the site would be used in the same way as the green waste, which is as a biofuel to be used for the production of energy. The development is, therefore, the diversification of a land-based rural business that is encouraged by paragraph 84 of the Framework.
55. Although a family business, it provides employment for the appellant and his son on the basis of one full time employee. I was told that they both live in the local community. The appellant also says that there is potential for the operation to grow providing further employment opportunities in the future. In addition to this, the operation provides a service to local tree surgeons and, therefore, provides support to these local businesses. Accordingly, I am

satisfied that the development is an enterprise that contributes to the local economy. Indeed, this demonstrates a need for the development in accordance with FNDP Policy TC1.

56. The supporting text to Policy CP11 does not define what is meant by the term sustainable rural enterprise. Nevertheless, I have had regard to the appellant's business plan, setting out how he proposes to slowly grow the business to continue to provide employment and to serve local tree surgeons. Furthermore, whilst outside the defined settlement limits, the appellant suggests that the site is only some 0.13km from the edge of the nearest settlement. This is not disputed by the Council. The appellant suggests that the appeal site is in a location that is suited to the enterprise. That the tree surgeons who use the site to deposit their waste serve the local community and that, more often than not, they operate in more rural local areas where properties are more likely to have larger gardens. Again, this was not disputed by the Council.
57. All of the above considered, I am satisfied that the use of the site is a rural enterprise and that the use includes an element of diversification from a land based rural business. I have no reason to conclude that the enterprise is not sustainable. I have also found that it contributes to the local economy. Accordingly, I conclude that the development has the support of paragraph 84 of the Framework and that it complies with criterion 1 of Policy CP11. Furthermore, the evidence also points to a genuine need for the development, which is a business use for the purposes of FNDP Policy TC1.
58. Turning to criterion 2, in terms of original buildings, there is a single building on the site, the lawful use of which is associated with the forestry use. This is now used to store tools and equipment associated with both the forestry use and the storage and transfer use. Green waste and forestry products are stored externally, amongst areas of the site used to grow trees planted in compliance with the restocking conditions of the felling licences. There is no suggestion that the storage arrangements would not be the same for the agricultural products the appellant has referred to.
59. I acknowledge that the forestry use and the storage and transfer use are activities that are different in their nature. However, I do not find the storage of green waste or forestry products (logs) to be an alien activity on land that is otherwise used for forestry. This is particularly having regard to the open nature of the storage on the site (i.e. there is no means of containment of the items stored). I have had regard to the Council's concerns about the proposed storage of agricultural products on the land. However, I have the benefit of the appellant's confirmation of what this will comprise. Accordingly, I have no reason to conclude that the storage of such products on the land is likely to be materially different to the existing storage. A condition could be imposed that would limit the storage of agricultural products to those described by the appellant.
60. In view of the above, whilst the development primarily comprises of open storage on the land, I cannot regard it as leading to an excessive encroachment or expansion of development away from the original buildings. The development is, therefore, in compliance with criterion 2 of Policy CP11.
61. With regard to criterion 3, only the tools and equipment associated with the storage and transfer use, as well as the forestry use, are contained within the

existing building on site. It may well be the case that this building was permitted in association with the forestry use alone. Nevertheless, the building is appropriate for a use associated with the development (i.e. the mixed use of forestry and for storage and transfer), without the need for any adaptation or external changes. The development is, therefore, in compliance with criterion 3.

62. As for the relevant criteria of Policy CP1, I have noted above the proximity of the site to the nearest settlement and the appellant's evidence that the site serves tree surgeons working in the local area. Furthermore, the appellant's evidence is that there are no visiting public. Accordingly, I cannot find the development in conflict with the requirements of the Policy that relate to reducing the need to travel, particularly by private car, and the zero-carbon goal.
63. I have had regard to the Council's reference to the last bullet point of paragraph 4 of the NPPW, which informs that, in preparing their plans, waste planning authorities should give priority to the re-use of previously-developed land, sites identified for employment uses, and redundant agricultural and forestry buildings and their curtilages. Whilst the appeal site does not fall within any of the alternatives, I note that paragraph 4 of the NPPW is intended to guide local policy making, rather than decisions on development proposals.
64. The Council also refer to paragraph 7 of the NPPW, which is relevant to the determination of planning applications. I note the Council's reference to the second bullet point of paragraph 7. However, as the 1998 waste plan has been superseded and the Council do not rely on its new waste local plan, I am unable to conclude that the development would fail to comply with the plan and undermine its objectives through prejudicing movement up the waste hierarchy. The Council also point to the fourth bullet point of paragraph 7, which I will consider in the following section of this decision. Notwithstanding this, I am unable to find conflict with the NPPW by reason of the location of the development.
65. Having regard to all of the above, and subject to a suitably worded condition, I conclude that the location of the development subject of both Appeal A and Appeal B is acceptable and that it complies with the relevant criteria of CS Policy CP11 and the Framework. I find no conflict with CS Policy CP1, LP Policy CC01, or the NPPW.
66. In addition to the above, and although not part of the development plan at the time of writing, for the reasons given I also conclude that the development is in compliance with the relevant criteria of FNDP Policy TC1.

Character, Appearance and Trees

67. Although close to residential properties along Nine Mile Ride and other residential development in the area, the character of the appeal site is more in keeping with the wooded areas to the west, north and east. Its character accords with the landscape character area described by the Council.
68. The site is a rectangular parcel that extends from Sandhurst Road and links to the rear of the residential properties along Nine Mile Ride. Whilst the evidence suggests that the vast majority of mature trees on the site have

been felled, the site is scattered with young, recently planted trees. There is an internal track running from the site access towards the rear of the site and there is also a clear area, surfaced in loose material, around the storage building located close to the site entrance. None of these operations are subject of the enforcement notice.

69. The site is covered by Tree Preservation Order No 555/1992 (TPO), which is a woodland TPO containing a mix of trees, including those specified in the first schedule of the TPO. I note the Council's concerns with regard to the effect of the storage and transfer element of the use on the trees on site. The Council say that the young trees on site are covered by the Order. This is not disputed by the appellant. Indeed, the Appellant suggests that the Order gives increased confidence that the existing landscaping will remain.
70. Added to this are the conditions of the felling licences, which I have already referred to above. As I note, for a period of 10 years from restocking these require the protection of the young trees and their replacement, should they be lost.
71. I have not been advised of any incidents of a failure to comply with either the TPO or the conditions of the felling licenses since the material change of use of the land took place. Indeed, the various piles of storage appear to be broadly confined to unplanted parts of the site, adjacent to the hard surfaced areas, including the track. Furthermore, the appellant is alert to his obligations and the protection provided to the trees on site by both the TPO and the conditions of the felling licences.
72. Having regard to the above, provided the site continues to be used in its current manner, I cannot conclude that the continuation of the use is likely to cause detriment to trees on site in the future. Notwithstanding this, I have had regard to plan number 16_832C_002B revision B, which was submitted with the application subject of Appeal B. This identifies two parts of the site as 'areas of storage'. This does not correspond to the areas of the site currently used for storage and, more importantly, I noted on site that new planting has taken place on certain parts of these areas identified on the plan. Whilst the parties have agreed to a condition (suggested by the Council) which requires the development to be 'retained in accordance with' this plan, in my judgement there is a greater likelihood of trees being affected by the development should it be the case that storage takes place in accordance with this plan.
73. In view of the above, in order to conclude as I have on the effect of the development on trees on site, I have disregarded the plan number 16_832C_002B revision B. Whilst I acknowledge the protection for trees on site provided by the TPO and conditions of the felling licences, in my judgement it is necessary to require a revised plan to identify the areas of storage and limit storage to those areas.
74. I agree that the woodland makes a significant contribution to the character and appearance of the wider area. I include the appeal site in this, although acknowledge that the site is mainly occupied by young trees. As I have noted above, I do not find the storage and transfer use to be an alien activity on land that is otherwise used for forestry. The storage of these items on the land is open and without the need of containment in skips or storage containers. A condition could be imposed to ensure that this continues. Such

open storage of vegetation, including logs and green waste, would be commonplace on forestry land that is actively managed.

75. Notwithstanding the above, I am mindful that the storage and transfer use in this case is not incidental to the forestry use, and that it generates a greater degree of vehicle movements to and from the site, when compared to an incidental storage and transfer use. The appellant says that the tree surgeons visit the site to deposit material between 2 and 3 times a day. The material arrives in small trucks or trailers. The appellant says that larger lorries then visit the site to collect material less frequently than this. In the past these movements have peaked at around 43 visits in 2020. Whilst there may have been an incident of a larger vehicle being parked at the site for an extended period, vehicles are likely to be on site only for short periods, for the duration of the deposit or collection of material. Parked vehicles on the site are only likely to be those belonging to those employed at the site. The appellant does not suggest that these arrangements would be any different if the agricultural products he describes are also stored at the site.
76. I acknowledge that the vehicle movements to and from the site might bring a more commercial element to the character of the site. However, I cannot agree that the development has had an urbanising effect on the site's character. This is particularly so, having regard to the open nature in which items on the site are and will be stored. I also note that the area of open storage is limited by reason of the trees on site, which must be protected and replaced if lost. I have also identified above the necessity for a condition requiring the submission of a plan identifying the areas of the site on which items can be stored and limiting their storage to these areas. All things considered, the change to the character of the site is not such that it causes detriment to the woodland setting.
77. In addition to the above, having noted the mature trees and vegetation that occupy the land between the site and the carriageway along Sandhurst Road, views of the site and activity upon it are limited and only glimpsed through the site entrance. For this reason, the development has a limited effect on the appearance of the site and the surrounding area.
78. All things considered, I conclude that the development has an acceptable effect on the character and appearance of the site and the surrounding area, and that it has an acceptable effect on trees on site. This is subject to the use continuing without the need for any means of containment of the items stored, including the use of skips or shipping containers. For the reasons given, I cannot find the development in conflict with CS Policy CP3 or LP Policies CC03 and TB21, including the criteria of these policies highlighted earlier in this decision. Neither can I identify any conflict with the relevant chapters of the Framework, or the NPPW which requires, amongst other matters, that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located.

Living Conditions

79. At the hearing the Council confirmed that its objections to the development on the matter of its effect on the living conditions of nearby residents relate to noise, disturbance, and vibration. Noise and disturbance is a matter that

interested parties have raised as a concern, particularly that resulting from the unloading and loading of items on the site.

80. I have been provided with no technical evidence with regard to noise, including any comparison of noise generated by the development with the background noise of the site and its surroundings. Notwithstanding this, I noted that the appeal site is in a fairly tranquil area, although noise is generated by traffic on the surrounding highway network. At the site visit I noted piles of material stored close to the rear boundaries of adjoining residential properties and can understand that any noise generated by the deposit and loading of material in this part of the site is likely to be heard from nearby gardens.
81. The dwellings on these nearby properties are, however, located close to the front of their plots, close to Nine Mile Ride. As such, there is some distance between these dwellings and any activity at the appeal site. In addition to this, I have noted above that vehicle movement on the site and the activity associated with the deposit of material, including the vehicle reversing alarms. This is, however, limited to 2 to 3 smaller vehicles a day and the loading of material to less than a few larger vehicles per month. A condition preventing the use of skips or other such means of containment of items stored would ensure that the limited noise generated by the unloading and loading of items would continue.
82. In view of the above, and without any technical evidence on noise to demonstrate harm caused by the development, I am unable to conclude that the number of vehicle movements and activity at the site is so great as to cause harm to the living conditions of the adjoining occupiers by reason of noise and disturbance. I acknowledge that activity at the site might increase in the future with additional tree surgeons using the site. However, as I have mentioned above, the capacity of the site for the storage of green waste and forestry products, as well as agricultural products, is limited, due to the need to avoid the areas of tree planting.
83. Notwithstanding the above, I can agree that even a limited amount of additional early morning or late evening noise would cause disturbance to local residents, particularly those sleeping. However, an appropriate condition to control the hours that any activity on the site might take place would mitigate the harm caused.
84. As for the matter of vibration, the Council suggests that this is generated by the larger vehicles that remove material from the site. Again, there is no technical assessment before me of the vibrations caused by such vehicles entering and leaving the site, including whether any vibrations are experienced on adjoining or nearby land. Without such evidence, I am unable to conclude that, if vibration is caused by the activity on the site, this has a detrimental effect on the living conditions of nearby residents.
85. Although not part of the Council's case, I note the third party objections to the development that refer to odour and dust. I acknowledge that organic matter, including chippings from freshly cut material, might generate some odours. Indeed, I was able to appreciate the odour of fresh cut material from the chippings pile on site. I acknowledge that this odour may travel, depending on wind direction. I did not, however, find it to be strong or

unpleasant, even at close quarters. I do not, therefore, find the development unacceptable for this reason.

86. As for the matter of dust, again, there is little evidence relating to this before me. Whilst dust might be generated by vehicles driving along the track during dry periods, I am also mindful of the distance of the track from most nearby properties and the mature vegetation that bounds the site. Indeed, having regard to the vegetation between the site and surrounding properties, I cannot conclude that the development has an effect on the privacy of nearby residents.
87. All things considered, I have insufficient evidence to conclude that the effect of the development on the living conditions of nearby residents is unacceptable. Accordingly, I have no reason to find conflict with CS Policies CP1 and CP3, LP Policies CC01 and CC06, and the relevant chapters of the Framework.

Other Matters

88. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
89. There may be other green waste collection sites in the wider area and I acknowledge that the Council's new waste local plan may also identify new waste deposit sites, or extensions to existing sites, that might allow for the collection of green waste. However, this does not justify the refusal of the development that I have found to accord with the development plan.
90. I note the representations with regard to the effect of the development on wildlife in the area. Whilst activities on the site might disturb wildlife, I have insufficient evidence to conclude that the effect is such that it causes harm.
91. I have had regard to the concerns of interested parties relating to the effect of development on the highway network, in particular larger vehicles turning into and exiting from the site. However, I note that there was no objection to the development from WBC Highways. I have been given no reason to conclude that vehicle movements to and from the site would cause detriment to highway safety.
92. Whilst I note reference to the use of the site for holding events, this does not form part of the development that is the subject of either appeal. Accordingly, I have no reason to take this into account in determining these appeals.
93. On a final matter, the appellant suggests that paragraph 11 d) of the Framework is engaged and that the policies which are most important for determining the appeals are out-of-date. The appellant refers to CS Policy CP11 in particular.
94. Even if the provisions of paragraph 11d) were engaged in this case, I have found the development to accord with the Framework, as well as the development plan. The indication is, therefore, that permission ought to be granted.

Conditions

95. I note the list of suggested conditions. This, along with other suggested conditions were discussed at the hearing. Subsequent to the hearing, I also sought the views of the parties on other conditions. I consider each of these, as follows. Where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance: Use of Planning Conditions.
96. As a point of clarification, I have already noted that the description of development subject of Appeal B differs from that of Appeal A. The appellant has also confirmed that the mixed use proposed in the case of Appeal B has not commenced in that the site is not being used for the storage and transfer of agricultural products, which is included as part of the mixed use for Appeal B. In view of this, and regardless of whether or not such a use is materially different to the use that is the subject of Appeal A, the conditions I intend to impose on the grant of permission under Appeal B will correspond to a proposed development, rather than a development that has already taken place.
97. As the planning permission granted on Appeal A is for the existing use of the site, the time limit condition is only necessary for the permission granted on Appeal B.
98. The suggested plans condition requires the development to be 'retained in accordance with' a site location plan and the layout plan number 16_832C_002B revision B. I have, however, concluded that there would be a greater likelihood of trees being affected by the development should it be carried out in accordance with this plan. For the reasons already given, I find a condition which requires the submission of a revised plan to be necessary for both planning permissions, along with a requirement for the development to be carried out in accordance with the plan. This will allow the Council to control the effect of the development on trees, including their root zones. Such a condition is necessary in the interests of the protection of trees on site, as well as to mitigate any effects of the development on the character and appearance of the area.
99. I have not imposed the suggested landscaping condition, in view of the recent tree planting and limited scope for additional planting. Furthermore, the existing trees have the protection of the TPO and the conditions of the felling licences. The revised plan condition, referred to above, will also limit any adverse effect of the development on existing trees on site.
100. My conclusions with regard to the effect of the development on the character and appearance of the area and the living conditions of neighbouring occupiers is based on how the site is currently used. That is, that storage takes place in an open manner, without any means of containment of the items stored. If items were to be stored on the site using a means of containment, such as skips or metal storage containers, it is likely that the site would have a more commercial appearance and character, when compared to the existing. This would have an adverse effect on the character and appearance of the site and the surrounding area. Furthermore, if a means of containment such as skips are used, these are likely to cause noise and disturbance when being loaded, unloaded or taken from the site.

101. I acknowledge that the Appeal B scheme does not include a proposal for any means of containment. Nevertheless, it may well be the case that such means of containment could be used at the site without the need for permission. The condition I intend to impose on both permissions would allow the Council to maintain necessary control, should there be a future need for a means of containment of items stored on the site. This will also allow control over the height of any storage.
102. The permission I intend to grant for the development subject of Appeal B includes the storage and transfer of agricultural products. I can agree with the Council, that agricultural products might include a substantial range of items, some of which might look out of place if stored on a site otherwise used for forestry. However, I have concluded that permission ought to be granted for the development subject of Appeal B on the basis that the agricultural products to be stored at the site would comprise crop yields where the crop has been grown for use as a biofuel to be used for energy production. I have found that this would be similar to green waste in its appearance and use. Accordingly, a condition limiting the type of agricultural products to that proposed by the appellant is necessary.
103. A condition limiting the hours of activity on the site is necessary in order to mitigate the effect of the development on the living conditions of nearby residents.
104. I note the noise mitigation conditions suggested by the Council and third parties. Firstly, I cannot see how it would be possible to achieve a noise level at the site that is below the existing background noise. Furthermore, and notwithstanding my conclusions on the matter of noise generated by the development, as I do not have any technical noise evidence before me, it would be unreasonable to impose a condition that would specify a noise level that must not be exceeded on the site. In addition to this, the evidence suggests that there would be a limited number of vehicles manoeuvring about the site that would use reversing sirens. In view of this and the hours condition referred to above, a condition confining vehicles using such sirens to the northern part of the site would not be necessary or reasonable. I also have no reason to control the use of a burglar alarm on site.
105. I noted the thick vegetation along most of the boundary of the site closest to the nearby residents. I do not, therefore, consider there to be a need for a condition requiring a 2.5 metre high solid fence between the site and adjacent residential gardens. Such an enclosure might also cause detriment to the character and appearance of the site.
106. In view of my conclusions above with regard to the effect of the development on highway safety, I have no reason to find a need for the gates at the entrance of the site to be moved to allow vehicles to wait off road.
107. The development I intend to permit in respect of Appeal A and Appeal B includes only the storage and transfer of items and not the sale of any items on site. A condition prohibiting the direct sale of any items from the site is not, therefore, necessary.
108. Permission is granted for a use of the site that includes a forestry use as part of the mixed use. The conditions of the forestry licence require the maintenance of planting on site in accordance with the rules and practice of

good forestry. There are also the controls imposed by the TPO. All of this considered, I am satisfied that the site will support wildlife presence and habitat creation, without the need to impose further conditions relating to these matters.

109. Whilst the hours condition will limit activity on the site to daytime hours, any lighting on site is likely to disturb certain habitats and species. The appellant has not proposed any lighting on site, but this may change in the future, particularly when working on site in winter. A condition prohibiting the installation of lighting is, in my judgement, necessary in order for the Council to maintain control of such matters in the future, including, for example, the positioning of any lighting and hours of its use.
110. Finally, in view of my conclusions on the main issues and other material considerations in this case, I have not imposed the condition that would limit the permission to a temporary period.

Planning Balance

111. I have found the development to be in accordance with the development plan, when read as a whole. I have no reason to conclude that my determination of the appeals should be made otherwise than in accordance with the development plan.

Conclusion – Appeal A

112. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice, as corrected.
113. The appeal on ground (g) does not fall to be considered.

Conclusion – Appeal B

114. For the reasons given I conclude that Appeal B should succeed.

Formal Decision – Appeal A

115. It is directed that the enforcement notice is corrected by:
- The deletion from part 2 of the reference 'RG40 3LS' and its substitution with the reference 'RG40 3LT'; and
 - The deletion from part 3 of the words 'Without planning permission the change of use of the land for the storage, distribution and transfer of arboricultural waste' and their substitution with the words 'Without planning permission the material change of use of the Land from a use for forestry to a mixed use for forestry and for the storage and transfer of arboricultural waste and forestry products'.
116. Subject to the corrections, 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 from forestry to a mixed use for forestry and for the storage and transfer of arboricultural waste and forestry products at land at Heartwood,

Sandhurst Road, Finchampstead RG40 3LT as shown on the plan attached to the notice and subject to the following conditions:

1. The use hereby permitted shall be discontinued within 3 months 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 plan showing the areas of the site to be used to store arboricultural waste and forestry products shall have been submitted for the written approval of the local planning authority. The storage areas of the site identified on this plan shall avoid areas of new tree planting as well as other trees on site and their roots.
 - ii) If within 3 months of the date of this decision the local planning authority refuse to approve the plan 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) Following the approval of a plan in pursuance of i) or ii) above, the carrying out of the use hereby permitted in accordance with the approved plan.

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.

2. A means of containment of arboricultural waste and forestry products shall not be installed or used on the site, including the use of skips or metal storage containers, unless it is installed and used in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
3. Machinery shall be operated; processes shall be carried out; vehicles shall be loaded and unloaded; arboricultural waste and forestry products shall be deposited at or taken from the site; and any other deliveries shall be taken at or despatched from the site only between hours of 8:00 to 18:00 Monday to Friday and 9:00 and 13:00 on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
4. No external lighting shall be installed on the site unless it is installed and used in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

Formal Decision – Appeal B

117. The appeal is allowed and planning permission is granted for Planning application for the material change of use to mixed use for forestry and for the storage and transfer of agricultural products, forestry products and green waste at Heartwood Lodge, Wokingham, RG40 3LT in accordance with the terms of the application, Ref 192988, dated 11 November 2019, and the plans submitted with it, subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. Notwithstanding the submitted plans, the use hereby permitted shall not commence until a plan showing the areas of the site to be used to store green waste, forestry products and agricultural products has been submitted to and approved in writing by the local planning authority. The storage areas of the site identified on this plan shall avoid areas of new tree planting as well as other trees on site and their roots. The use hereby permitted shall be carried out in accordance with the approved plan.
3. A means of containment of green waste, forestry products and agricultural products shall not be installed or used on the site, including the use of skips or metal storage containers, unless it is installed and used in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
4. Agricultural products stored at and transferred from the site shall be limited to crop yields where the crop has been grown for use as a biofuel to be used for energy production.
5. Machinery shall be operated; processes shall be carried out; vehicles shall be loaded and unloaded; green waste, forestry products and agricultural products shall be deposited at or taken from the site; and any other deliveries shall be taken at or despatched from the site only between hours of 8:00 to 18:00 Monday to Friday and 9:00 and 13:00 on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
6. No external lighting shall be installed on the site unless it is installed and used in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio Limited
Lucan Dutton	The Appellant
Christopher Dutton	The Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Castle	Wokingham Borough Council
Mark O'Leary	Wokingham Borough Council
Senjuti Manna	Wokingham Borough Council
Chris Hannington	Wokingham Borough Council

INTERESTED PERSONS:

Peter Keston	Local resident
Lana Keston	Local resident
Nigel Bird	Local resident
Dennis Dean	Local resident
Roger Marshallsay	Finchampstead Parish Council
Charles Margetts	Wokingham Borough Councillor
Steve Arnold	Tree Solutions

HEARING DOCUMENTS

HD1	Statement of Councillor Margetts
HD2	Signed witness statement of Chris Dutton
HD3	Extract of Finchampstead neighbourhood Development Plan
HD4	Signed witness statement of Lucas Dutton
HD5	Photographs
HD6	Updated vehicle movement data