



Appeal Decisions

Hearing held on 3 October 2023

Site visit made on 3 October 2023

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

Appeal A Ref: APP/K2420/C/22/3304695

Breach Lane Farm, Breach Lane, Earl Shilton, Leicestershire LE9 7FB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mike Deacon against an enforcement notice issued by Hinckley and Bosworth Borough Council.
- The notice was issued on 11 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a mixed use for the storage of containers, (location marked on the attached Plan in blue), the storage, repair and refurbishment of vehicles (sui generis use), ("the unauthorised use"), and the laying of hardstanding (hatched in red on the attached Plan) ("the unauthorised operational development").
- The requirements of the notice are to:
 - 1) Cease the use of the Land for the storage of containers, vehicles and machinery associated with the repair and refurbishment of vehicles.
 - 2) Remove the containers and all items associated with the unauthorised use from the Land, including but not limited to vehicles, machinery, fixtures and fittings.
 - 3) Take up the hardstanding (area hatched in red on the attached Plan) and return this area of Land to its original profile, before the hardstanding was laid.
- The period for compliance with the requirement is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/K2420/C/22/3304696

Breach Lane Farm, Breach Lane, Earl Shilton, Leicestershire LE9 7FB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anthony Deacon against an enforcement notice issued by Hinckley and Bosworth Borough Council.
- The notice was issued on 11 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a mixed use for the storage of containers, (location marked on the attached Plan in blue), the storage, repair and refurbishment of vehicles (sui generis use), ("the unauthorised use"), and the laying of hardstanding (hatched in red on the attached Plan) ("the unauthorised operational development").
- The requirements of the notice are to:
 - 1) Cease the use of the Land for the storage of containers, vehicles and machinery associated with the repair and refurbishment of vehicles.
 - 2) Remove the containers and all items associated with the unauthorised use from the Land, including but not limited to vehicles, machinery, fixtures and fittings.

- 3) Take up the hardstanding (area hatched in red on the attached Plan) and return this area of Land to its original profile, before the hardstanding was laid.
- The period for compliance with the requirement is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Appeal C Ref: APP/K2420/W/22/3305795

Breach Lane Farm, Breach Lane, Earl Shilton, Leicestershire LE9 7FB

- 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 Mr Mike Deacon against the decision of Hinckley and Bosworth Borough Council.
- The application Ref 20/01374/FUL, dated 22 December 2020, was refused by notice dated 7 April 2022.
- The development proposed is the change of use of land for the storage, repair, restoration and sale of vehicles, associated shipping containers and area of hardstanding (mixed use) (part retrospective).

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The description of the development for the planning application appears to have been amended during the Council's consideration of the application. Consequently, for Appeal C, I have used the description of the development as set out in the Council's decision notice as that is the basis on which the application was determined.
2. Following the hearing, it became apparent the interior of small outbuildings adjacent to the dwelling were not viewed during the site visit. To address this, the appellant was requested to submit photographs of the interior of these outbuildings. These photographs were provided on 6 October 2023. Between the photographs and the observations I made during the site visit, I am satisfied I have seen everything I need to in order to make an informed decision and no parties will be prejudiced by me taking this approach.

Appeal A and Appeal B - The Notice

3. On an appeal, any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
4. The breach of planning control alleged in the enforcement notice (the notice) is 'without planning permission, the material change of use of the Land to a mixed use for the storage of containers, (location marked on the attached Plan in blue), the storage, repair and refurbishment of vehicles (sui generis use), ("the unauthorised use"), and the laying of hardstanding (hatched in red on the attached Plan) ("the unauthorised operational development").'
5. However, the red edged area on the plan attached to the notice encompasses the dwellinghouse, Breach Lane Farm, as well as the land and buildings used

for the matters alleged in the notice. Therefore, the allegation in the notice is incorrect. There is clearly a residential use taking place on the site in addition to the other alleged uses.

6. Accordingly, I intend to correct the notice by including the residential use as part of the mixed use within the allegation. As a consequence, I shall correct requirement 1) to reflect the correct mixed use. As the requirements of the notice do not seek the cessation of the residential component of the mixed use, I consider that I can carry out these corrections without causing injustice to any parties.

Appeal A and Appeal B - the ground (d) appeal

7. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate that at the time the notice was issued on 11 July 2022, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
8. The appellant concedes that the hardstanding and storage containers were installed/brought on to the land within the last four years and therefore do not form part of the ground (d) appeal.
9. During the hearing, the appellant confirmed an application for a certificate of lawful use or development (CLD) for the mixed use alleged in the notice is before the Council, awaiting determination. The Council confirmed the determination of the CLD has been held in abeyance until the appeals before me have been determined.
10. The statutory declarations submitted during the hearing by the appellants state they purchased the appeal property in 1997. Two of the barns were upgraded with concrete floors and were used as a workshop and hobby media blasting space by 1999. Since 2020, the media blasting takes place in one of the storage containers and is done infrequently for the appellant's hobby vehicles.
11. From 1999 the barns were used for storing immobile sales project vehicles as well as hobby vehicles. However, there is little evidence as to what the intensity of the use has been over the years since 1999. Michael Deacon's declaration confirms that since 2017 they have sold an average of 25 vehicles per year. However, there is no indication of how many vehicle sales were made in the preceding years, notably from 11 July 2012 (the 10-year period prior to the issuing of the notice) onwards. Moreover, whilst the historical photographs clearly show that vehicles have been stored on the site since at least 2005, there is no indication of how many on average were stored on the site over a continuous 10-year period.
12. I also note that Anthony Deacon's declaration confirms the 'pole barn' was upgraded in 2014 with a concrete floor, side cladding and electrics. Given that many of the old vehicles need to be kept under cover for protection from rain damage, it is likely this barn did not previously accommodate as many vehicles as it does now that it has been clad. Photograph H6) attached to Michael Deacon's declaration supports this. During my site visit, I noted that this

building contained approximately 17 vehicles, along with various parts. Photograph H6) shows the open-sided pole barn with significantly fewer vehicles stored within it. This suggests there was a significant difference in the intensity of the use between when the 'pole barn' was open-sided to when it was fully clad.

13. Consequently, it is not possible to establish two key factors; firstly, when a material change in the use of the land to a mixed use for the storage, repair and refurbishment of vehicles commenced. It may be that, to begin with, the storage, repair and refurbishment of the vehicles was carried out on a scale that was ancillary to the residential use of the land and did not require planning permission as no material change of use had occurred. From the evidence before me, it is not possible to ascertain when the use increased in scale to the extent that a material change of use occurred that would have required planning permission. And secondly, once the material change of use did occur, were there any subsequent material changes of use through the intensification of the use.
14. Overall, the evidence in support of the ground (d) appeal is limited and is not sufficiently precise or unambiguous. There is significant ambiguity over when the material change in the use of the land occurred and if there has been any subsequent material change of use through the intensification of the use. Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of the land to a mixed use for the storage of containers and the storage, repair and refurbishment of vehicles occurred continuously for a 10-year period prior to the date of the notice being served.
15. The ground (d) appeal therefore fails.

Appeal A - The ground (a) appeal and the deemed planning application; and Appeal C

Main Issue

16. The main issue is the effect of the development on the character and appearance of the area.

Reasons

17. Breach Lane is split into two sections by the A47. The eastern section, which serves the appeal property, is a quiet, narrow lane that serves only a small number of properties. The surrounding land comprises open fields, which are interspersed with sporadic dwellings and small clusters of development. Overall, the open fields and limited built form makes a positive contribution to the character and appearance of the rural area.
18. The appeal property comprises a large, detached dwelling with several previously agricultural buildings constructed of metal cladding and brickwork. Whilst the site is no longer used for agricultural purposes, the buildings retain an agricultural appearance, which makes a positive contribution to the rural setting.
19. The vehicle storage, repair, restoration and sale of vehicles use is largely contained within three large metal clad buildings. Two of these buildings contain a large number of vehicles in various states of completeness as well as numerous vehicles parts. The third building is split in two with one half used as

a workshop, which also contained three vehicles, and the other half which was largely empty at the time of my site visit. There is a two-bay open fronted metal building adjoining the third building, which contained two vehicles, alongside a large gantry crane. A further two vehicles were parked in the open fronted brick building adjacent to the dwelling and a single vehicle in one of the storage containers. A pickup truck with a trailer hooked up to it was parked outside, which the appellants confirmed was used for transporting vehicles to and from their business unit elsewhere.

20. Overall, there were approximately 40 vehicles stored on the site at the time of the site visit, with all but the pickup truck with the trailer attached stored within the buildings. The appellants confirmed that approximately 15 of the vehicles were part of the wider business of selling restoration project vehicles. The remaining vehicles were for personal and hobby use, with the hobby being restoring old vehicles and taking them to shows.
21. The repair and restoration activities are largely carried out within the existing buildings, mainly the workshop building, with media blasting taking place within a dedicated storage container. The number of vehicles sold from the site as part of the business are typically small and therefore customers visiting the site are infrequent. Therefore, as almost all the activities associated with the storage, repair and restoration use take place within the buildings and the number of customers is very small, the use as it currently operates has limited effect on the character and appearance of the area.
22. However, this limited effect is largely due to the way the appellants operate the site and the nature of the niche market for the vehicles sold. Were I to allow the ground (a) appeal and grant planning permission for the development, the permission would also allow other vehicles to be sold, which may have a much wider market base, for example modern used cars. Such a use could possibly attract a significantly greater number of customers. In addition, an increased turnover of vehicles sold could result in a greater number of vehicles being delivered to the site, possibly by large car transporters/articulated lorries, which would further detract from the rural character of the area.
23. Moreover, works to the vehicles generally takes place inside the buildings with little noise generated. However, were the use to operate differently as set out above, other tools and machinery could be utilised and could be used more frequently, which could generate greater noise and thus further detract from the rural character of the area.
24. Overall, these potential changes to the way the use currently operates could result in significant harm to both the character and appearance of the area, with the site becoming more of a commercial use in both its character and appearance that would be more akin to a use found in an urban environment rather than a rural setting.
25. I have had regard to the suggested condition that the maximum number of vehicles parked outside the buildings could be limited to 7, which would limit the effect the development would have on the character and appearance of the area. However, given that the use of the site is a mixed use, including a residential component, such a condition would be unreasonable as there could be instances whereby unknowing visitors, such as friends, family, or delivery drivers, arrive to the site unannounced when the maximum number of vehicles is already parked on the site and therefore breach the condition.

26. In addition to the material change of use that is the subject of the appeals, there is also operational development comprising the construction of the hardstanding to enable the turning of large vehicles within the site. The hardstanding consists of road planings that have been laid out in the adjoining field to the west of the building complex. As a result, the built-form of the site has encroached on to land that was otherwise free from development, eroding the verdant, open character of the area. Due to the low-level nature of the hardstanding, this is not readily visible from Breach Lane. However, the hardstanding is directly on top of a public footpath accessed from Breach Lane and therefore it is clearly visible from public vantage points. Consequently, I find that the hardstanding unacceptably harms the character and appearance of the area.
27. I note there is a commercial use operating from the neighbouring property, Stanmaur Farm. However, this is a boarding kennel, a use that is often found in, and is generally compatible with, a rural setting. Vehicle repair, restoration and sales uses are typically not. Furthermore, although the A47 is within proximity of the appeal site, it is well screened from Breach Lane and does not detract from the peaceful, rural character experienced on Breach Lane. Moreover, whilst land to the north of the A47 has been allocated for a large mixed use development, the south of the road would still remain rural in character.
28. I find therefore the development significantly harms the character and appearance of the area, contrary to Policies DM1, DM4 and DM10 of the Hinckley and Bosworth Borough Council Site Allocations and Development Management Policies DPD (DPD) 2016, which seek to promote sustainable development; protect the intrinsic value, beauty, open character and landscape character of the countryside; and complement or enhance the character of the surrounding area.

Other Matters

29. I acknowledge the unit from which the business operates from Merrylees Industrial Estate has experienced theft in the past and the appeal site offers a more secure site, given that one of the appellants lives there. However, this does not justify the harm the use could have on the character and appearance of the area.
30. I have also had regard to the condition suggested that would tie the commercial use to the occupants of Breach Lane Farm. Such a use would likely prevent any harmful effect on the living conditions of the occupants of the dwelling. However, it would not prevent the use of the site for more harmful activities that would be permitted under the use, such as the repair, restoration and sale of more modern vehicles, which could potentially be unacceptably harmful to the character and appearance of the area.
31. Furthermore, whilst landscaping could screen some of the site from view, this would take time to sufficiently mature to provide an effective screen. Moreover, it would not screen potential noise and disturbance from power tools, machinery etc and the comings and goings of customers and deliveries. Therefore, although the screening would provide some visual enhancement, it would not adequately mitigate the harm I have identified.

32. The appellant argues that the use provides jobs and therefore contributes to economic growth in accordance with criterion c) of Policy DM4 of the DPD. However, criterion c) states that development in the countryside will be considered sustainable where: c) it significantly contributes to economic growth, job creation and/or diversification of rural businesses. The creation of 4 jobs is not considered to be a significant contribution to economic growth or job creation.
33. I note the concerns raised regarding how the planning application was determined and whether, procedurally, this was done so correctly. However, that is not a matter for me to determine as part of these appeals and has had no bearing on my consideration of the planning merits of the proposal. Moreover, matters concerning land outside of the appeal site are not for my consideration in the appeals before me.

Conclusion on the Appeal A ground (a) appeal and the deemed planning application; and Appeal C

34. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to either the ground (a) appeal against the enforcement notice and deemed application, or to the Section 78 appeal against the refusal of permission. Therefore, Appeal A on ground (a) fails, as does Appeal C.

The ground (f) appeal

35. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
36. The appellant's argument under the ground (f) appeal is that in the event the the appeals are dismissed, the hobby use should be allowed to continue.
37. The alleged matters in the notice do not distinguish between the hobby and commercial activities taking place and it need not do. The activities undertaken to facilitate the two are very similar and therefore it is not necessary to identify whether it is a commercial or hobby use. In addition, due to the number of vehicles stored on the site that the appellant's keep on a hobby basis and the machinery and tools used to facilitate this hobby, the scale of this hobby use exceeds what would typically be deemed to be a use ancillary to the residential use of the land.
38. It terms of the requirements of the notice, there is a crossover between the commercial and hobby uses with tools, machinery and vehicle parts being used for both. Therefore, it would be very difficult to know with any certainty that none of the vehicles, parts, machinery and tools stored on the site were not part of the commercial use. As a consequence, it would not be possible to ascertain whether the requirements of the notice had been complied with. Moreover, even with a hobby use, there is the likelihood that some of the vehicles kept on this basis would be sold at some point, which would make it difficult to ascertain whether this was a commercial activity or not.

39. Overall, the requirements of the notice do not exceed what is necessary to remedy the breach of planning control; or, any injury to amenity. I therefore conclude that the ground (f) appeal must fail.

Formal Decision

Appeal A and Appeal B

40. It is directed that the enforcement notice is corrected by:

- (a) The insertion of the words "and residential" immediately following "(sui generis)" in paragraph 3.
- (b) The deletion of requirement 1 in paragraph 5 of the notice and substituting "1) Cease the mixed use of the land for the storage of containers, the storage, repair and refurbishment of vehicles and residential use by ceasing the use of the land for the storage of containers and the storage, repair and refurbishment of vehicles."

41. Subject to the corrections, the appeals are dismissed, 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.

Appeal C

42. The appeal is dismissed.

A Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Deacon	Appellant
Peter Wilkinson	Director of Landmark Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Matt Jedruch	Hinckley and Bosworth Borough Council
Jonathon Warner	Hinckley and Bosworth Borough Council

INTERESTED PERSONS:

Chris Klenk	Local Resident
Nicholas Davies	Representative of Chris Klenk

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Transport Technical Note, July 2021 - submitted by the appellant.
- 2 Statement of Chris Klenk, dated 3 October 2023 - submitted by Chris Klenck.
- 3 Statutory Declaration of Michael Deacon, dated 25 October 2022 - submitted by the appellant.
- 4 Statutory Declaration of Anthony Edgar Deacon, dated 25 October 2022 - submitted by the appellant.
- 5 Policies DM1, DM4, DM10 and DM15 of the Hinckley and Bosworth Borough Council Site Allocations and Development Management Policies DPD 2016 - submitted by the Council.
- 6 Policies 2 and 22 of the Hinckley and Bosworth Borough Council Core Strategy 2009 - submitted by the Council.
- 7 Extract of the Definitive Map of Public Rights of Way for Leicestershire - submitted by Chris Klenk.