



Appeal Decisions

Inquiry held on 18-22 September 2023

Site visit made on 22 September 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2023

Appeal A Ref: APP/D5120/C/23/3321171

Appeal B Ref: APP/D5120/C/23/3321172

Appeal C Ref: APP/D5120/C/23/3321173

Appeal D Ref: APP/D5120/C/23/3321174

Appeal E Ref: APP/D5120/C/23/3321175

Appeal F Ref: APP/D5120/C/23/3321176

57 North Cray Road, Sidcup, Kent DA14 5EU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by the parties set out in Appendix 1 against an enforcement notice issued by the Council of the London Borough of Bexley.
- The notice was issued on 28 March 2023.
- The breach of planning control as alleged in the notice is
 - (1) Land Area 15:
Without planning permission, the material change of use of Land Area 15 for open storage together with the parking of vehicles, plant and machinery.
 - (2) Land Area 24:
Without planning permission, the material change of use of the Land Area 24, to a mixed use for the deposit and storage of wood, manure, green waste and soil (waste classification code 17.05.04) and of inert materials; the activity of processing these materials on Land Area 24 using associated plant and machinery connected with that use; and for the parking and storage of plant, vehicles and machinery on Land Area 24.
- i) The mixed use of an access road, shown in the approximate location by a purple line on land area 24, for commercial uses associated with the use outlined in (2) above.
- The requirements of the notice are:
 - In regard to Land Area 15.
 - (i) Cease the use of the Land Area 15 for open storage; and for the parking of vehicles, plant and machinery.
 - (ii) Remove all vehicles, plant, machinery and equipment (redundant and operational), bulk bags, scrap metal, and trailers; and
 - (iii) On completion of 5(i) and (ii) above restore the Land Area 15 to its former condition as an undeveloped and vegetated field.
 - In regard to Land Area 24.
 - (iv) Cease the use of Land Area 24 for the storage of wood, manure, green waste and soil (waste classification code 17.05.04) and of inert materials.
 - (v) Cease the use of Land Area 24 for the storage of plant, machinery and equipment.
 - (vi) In relation to (iv) and (v) above, remove from the Land Area 24 the following:
 - a) All green waste, wood, soil (waste classification code 17.05.04) manure and inert waste materials; green waste and inert waste that is stored on Land Area 24.
 - b) All plant, machinery and vehicles from Land Area 24
 - (vii) On completion of (vi) above, to restore the Land Area 24 to an undeveloped appearance as a vegetated field.
 - (viii) Cease the use of the access road shown in the approximate location by a purple line on land area 24, for commercial uses associated with the use outlined in Section 3. (2) above.

- The period for compliance with the requirements is three (3) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal G Ref: APP/D5120/X/23/3321955

Stuart Nurseries, 57 North Cray Road, Sidcup, Kent DA14 5EU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Stuart against the decision of the Council of the London Borough of Bexley.
 - The application ref 23/00100/LDCE, dated 16 January 2023, was refused by notice dated 13 March 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of the identified land in connection with green waste processing, open storage, and distribution (*sui generis*).
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Decisions

Appeals A, B, C, D, E, and F

1. It is directed that the enforcement notice is corrected by:
 - The deletion of Section (1) Land Area 15 and its substitution by:
Land Area 15
Without planning permission, the material change of use of Land Area 15 to use for open storage together with the parking of vehicles, plant and machinery.
 - Deletion of requirement 5(iii) and its substitution by:
On completion of 5(i) and (ii) above restore Land Area 15 to its condition prior to the breach of planning control.
 - Deletion of requirement 5(vii) and its substitution by:
On completion of 5(vi) above restore Land Area 24 to its condition prior to the breach of planning control.
 - The substitution of the plan annexed to this decision, Annex A, for the plan attached to the enforcement notice.
2. Subject to the corrections, the appeals are dismissed, and the enforcement notice is upheld.

Appeal G

3. Appeal G is dismissed.

Preliminary Matters

4. Counsel for the appellants advised that he was only representing Mr Adam Stuart and his brothers in respect of Appeals A, B and C. He could not confirm whether or not appeals D, E and F were to be treated as withdrawn. The appellants for Appeals D, E and F did not submit any evidence to the Inquiry.

5. Mr Adam Stuart (Mr Stuart) attended the Inquiry and presented evidence, his brothers did not. Counsel for the appellants also called witnesses and Statutory Declarations (SDs) had been submitted by people who did not attend. Counsel for the Council called the Council's Planning Enforcement Manager (the Council Officer). All witnesses gave evidence under oath. The Inquiry was also attended by two local residents who I allowed to ask questions of the parties.

The Notice

6. In the light of clarification by the Council in the Council Officer's Proof of Evidence the appellants confirmed that they no longer wished to make an appeal on ground (f). This was because they were satisfied that the requirements of the notice do not necessitate the submission of information regarding replanting on Land Area 15 or Land Area 24 to achieve their restoration and that they do not require the former use of those areas to be revived.
7. However, as I discussed with the parties at the Inquiry the notice could be amended to require the land to be restored to its condition prior to the breach of planning control. This would provide greater clarity. It was agreed that this correction could be made in relation to both Land Area 15 and Land Area 24 without giving rise to injustice.
8. The notice identifies land at 57 North Cray Road which is in the ownership of the appellants, and this is referred to as 'the Site'. Two specific areas are shown on the notice plan being Land Area 15 and Land Area 24, those are the areas where the notice states that breaches of planning control have occurred. During the course of the Inquiry and in the light of evidence provided, the Council decided that it wished to reduce the size of Land Area 15 slightly. It was agreed that this amendment would not give rise to injustice, and I shall correct the notice accordingly in respect of Land Area 15. I have also corrected the allegation to refer to the material change of use of Land Area 15 to use for open storage.
9. In its closing submissions the Council has suggested that Land Area 15 and Land Area 24 could be described more simply on the notice and plan as Areas 1 and 2 respectively. The Council's view is that this would enable the notice to stand without any reference to another document which might complicate its terms. However, all of the evidence has been given by reference to Land Area 15 and Land Area 24 and I am content that the notice is clear on its face, thus it is unnecessary to make this correction to the notice or notice plan. I am not concerned that the reference to Land Area 15 and Land Area 24 will lead to confusion in the future because the notice plan, as corrected, will provide any clarity which may be required in respect of other parts of the Site.

Ground (b) (Appeals A to F)

10. An appeal on ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal, and the onus of proof lies with the appellants. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

11. In this case the appeal on ground (b) relates only to the allegation that the access road within Land Area 24 has been used for mixed use for commercial uses associated with the use of that land.
12. The appellants say that the access road has only been used for residential purposes to serve three dwellings which are separated from North Cray Road by Land Area 24 and other parts of the Site. The access road has a sliding gate with a key-pad entry on one end (the slider gate) and runs roughly perpendicular to North Cray Road. There is another access road adjacent to the driveways serving the dwellings and this serves other parts of the Site. In practical terms the access road which is identified by the notice links into and forms part of the access network around the Site.
13. Witness A did not refer to the use of the access road in his SD but under cross examination he confirmed that it was a driveway to the dwellings and that he had used it when he visited the appellants. Witness B said in his Proof of Evidence that as far as he was aware the access road has only been used for residential use and again, he said that he had used it when visiting the appellants.
14. Witness D refers to the access road being in residential use since April 2018 in his SD. However, when he was cross examined Witness D said that he had seen a digger use the slider gate to access Land Area 24. Witness D went on to confirm that he had seen other vehicles going in but that predominately these were private vehicles. This evidence is not inconsistent with his statement in his SD that the appellants used the access road for residential use. Nor is it at odds with the statement by Witness B which is caveated by the phrase 'as far as I am aware' and Witness A who did not say that the access road was solely used for residential use.
15. The Council Officer also observed a 'grabber lorry' exiting Land Area 24 in March 2023 via the access road and this is stated in his delegated report and in his Proof of Evidence. The appellants sought to undermine this evidence by reference to the lack of any contemporaneous note or photograph. However, in the light of the evidence of Witness D it is at least possible that the Council Officer witnessed one of the rare occasions when the access road was used by a commercial vehicle.
16. It was also established at the Inquiry that commercial vehicles and plant access Land Area 24 using the access serving the Site. Whilst this does not necessarily point to further evidence of commercial vehicles using the access road defined in the notice, it is clear on the ground that those vehicles are required to cross it in order to reach Land Area 24. To that extent the use of the access is not limited to residential use where those crossing movements take place.
17. Drawing all of these points together, notwithstanding the appellants view that the access road was only used for residential use to access the dwellings, the evidence presented to the Inquiry demonstrates that on the balance of probability the access road identified in the notice has been used by commercial vehicles. Therefore the access road has been used in association with the commercial use of Land Area 24 as alleged by the notice.
18. For the reasons set out above the appeals on ground (b) do not succeed.

Ground (d) (Appeals A to F) and Appeal G

Background

19. Appeal G is in respect of the Council's decision to refuse to issue a certificate of lawful use or development (LDC) in respect of the site identified in the appellant's application (the LDC land). There is an overlap between the LDC land and that identified as Land Area 24 in the notice.
20. The LDC land does not include Land Area 15 and this part of the Site was not included in the application for the LDC. Thus, Land Area 15 does not fall to be considered under Appeal G.

Main Issues

21. The main issue in a ground (d) appeal is whether at the date when the enforcement notice was issued (the relevant date) it was too late to take enforcement action on the basis of the time limit set out in section 171B(3) of the Act. Under section 171B(3) of the Act, where there has been a breach of planning control consisting of a change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
22. In order to achieve success on ground (d) the appellants must show that the breach of planning control as set out in the notice occurred before 28 March 2013 and has continued without significant interruption for a period of ten years.
23. In the event the appeal succeeds on ground (d), section 177(1)(c) gives me as the appointed Inspector the discretionary power to issue an LDC under section 191. The determination date for the lawfulness of the use would be the date on which the appeal was made, in this case 27 April 2023.
24. The appellants confirmed at the Inquiry that if their appeals on ground (d) succeed then they wish me to exercise the power under section 177 (1)(c) to issue a LDC.
25. The Council in its opening note sets out that in those circumstances the relevant date for determining lawfulness is the date of the appeal not the date when the notice was issued. However, as set out above, that only applies in respect of the LDC. The relevant date for the ground (d) appeal does not change and continues to be the date when the enforcement notice was issued, 28 March 2023.
26. For the LDC appeal, Appeal G, the appellant is seeking to establish that the time for enforcement action has expired and again the basis for the time limit is set out in section 171B (3). The main issue is whether the Council's decision to refuse the application for an LDC on this basis was well-founded. The relevant date is 16 January 2023 being the date when the application was made. Consequently, for the LDC appeal to succeed it must be shown that the use as described in the application for the LDC commenced before 16 January 2013 and continued for a period of ten years, again without significant interruption.

27. For both the appeals on ground (d) and the LDC appeal the burden of proof lies with the appellants. Notwithstanding whether there is evidence to contradict the appellants' version of events or make it less than probable, the appellants must provide evidence which is sufficiently precise and unambiguous. The standard of proof is the balance of probabilities.

Land Area 15 - Evidence relating to the use of Land Area 15

28. The appellants have only submitted evidence in relation to a small part of Land Area 15 which they have identified by reference to a plan. The area which they refer to comprises open land between a fence which defines one of the commercial units on the Site and the trees/wire fence which comprise the boundary to North Cray Road. I shall refer to this land as Land Area 15(a). The notice plan has been amended by the Council to remove a strip of land which runs parallel to the commercial unit from Land Area 15.
29. The appellants do not seek to demonstrate that the rest of Land Area 15 is immune from enforcement action. Both parties accept that if I find that it can be established that the use of Land Area 15(a) for open storage together with the parking of vehicles, plant and machinery is immune from enforcement action then it will be necessary to amend the enforcement notice plan to exclude Land Area 15(a).
30. When I carried out my site visit, I noted that within Land Area 15(a) there is a strip of land running parallel to the highway boundary in use for storage and that part of the area had been covered with aggregate.
31. The appellants say that they have rented Land Area 15(a) to a company known as 'Town and Country Turf Limited' since 2010 and that the company has used the land for storing and selling turf. They refer to aerial photographs dating back to 2007 to support this and Mr Stuart and the witnesses were cross examined on this evidence.
32. The Council by reference to the same aerial photographs argue that part of Land Area 15(a) has been used to access the rest of Land Area 15. The Council also argues that the condition of the land which is parallel to the highway boundary was unlikely to be conducive to storage of heavy material.
33. Mr Stuart accepted that on the basis of the 2014 Aerial Photograph a turning circle had been created in Land Area 15 and that vehicles had to drive through Land Area 15a to access it. In terms of later photographs where cars are present on Land Area 15, Mr Stuart said that the land was used as an overflow car park. However, by 2018 entry onto Land Area 15 via Land Area 15(a) was restricted by the presence of a large machine which was used to prevent access. The latter was confirmed by Witness B.
34. Both Mr Stuart and Witness D referred to Land Area 15(a) being used to accommodate a vehicle which unloaded turf. However, it is reasonable to conclude that that activity would not have resulted in the access to Land Area 15 being blocked for lengthy periods.
35. Mr Stuart also referred to items on the aerial photographs which he thought were bulk bags utilised for the storage of materials which the company used in connection with its business. Witness B also referred to these items. In relation

to the evidence of storage close to the commercial unit the evidence given at the Inquiry has resulted in a change to the extent of Land Area 15/ Land Area 15(a). However, the presence of bulk bags on the other side of Land Area 15(a) against the highway boundary is less persuasive. Mr Stuart accepted that some of the aerial photographs were unclear, and he thought that the tree canopy may be obscuring the bulk bags in another. By contrast Witness B said that there was no storage under the tree canopy.

36. Witness D is the Depot Manager for Town and Country Turf, and he says that he joined the company in April 2018. Witness D recalled aggregate being laid within Land Area 15(a) which made it easier to store items on the soft areas of ground. He did say that those areas had previously been used for storage, however given that he did not join the company until April 2018 he could not provide evidence before that date.
37. Save for its interpretation of the aerial photographs the Council does not provide any evidence to contradict that which was submitted by Mr Stuart and the Witnesses B and D. However, there is an inconsistency in the evidence from the witnesses regarding where the storage was carried out and whether the whole of Land Area 15(a) was used for open storage together with the parking of vehicles, plant, and machinery as alleged in the notice.
38. There is also evidence that at least for some of the period between 2014 and 2018 Land Area 15(a) was used to provide access to car parking in Land Area 15 which is inconsistent with the use of Land Area 15(a) for open storage which is what the appellants are trying to establish in their ground (d) appeals. I accept the appellants' point that space is needed around stored materials to allow them to be accessed for example by forklift trucks. However, in this case there is evidence of access to other land through the area used for storage.
39. Witness B was the only witness who was able to provide first hand evidence of the use of Land Area 15(a) over the full ten year period required for the appellants to achieve success on ground (d). However, he said in cross examination that although he was at his premises which back onto Land Area 15(a) 6 days a week, generally this was between 7am and 9am. On this basis it is reasonable to assume that he may not have been aware of Land Area 15(a) being used to access the car parking or the remainder of Land Area 15 more generally.

Land Area 15 - Conclusion on ground (d)

40. In conclusion in respect of Land Area 15(a) I find that the evidence which has been provided is limited and open to interpretation in respect of the aerial photographs. I also find that the first hand evidence from Mr Stuart and the witnesses is inconsistent and imprecise. For these reasons the appellants have not demonstrated on the balance of probability that, in respect of Land Area 15(a), the use of the land for open storage together with the parking of vehicles, plant, and machinery as alleged in the notice did not take place before 28 March 2013.

41. It has not been established that the breach of planning control as alleged in the notice is immune from enforcement action. Consequently, in relation to Land Area 15 the appeal on ground (d) does not succeed.

Land Area 24 – The Planning Unit

42. The history of the use of Land Area 24 is less clear cut than that of Land Area 15 and the starting point for the consideration of the change of use which has taken place is the planning unit. In 1988 planning permission was granted for use of the Site as a garden centre. A layout plan formed part of that consent which identified the shop, glasshouse, car parking and outdoor space associated with the garden centre and a house surrounded generally by fields.
43. There is no dispute between the parties that since 1988 the Site has been divided up into parcels, some of which have been the subject of successful applications for LDC and planning permission and the uses, as defined in those LDCs/consents, are now immune from enforcement action. The most recent example of this is Land Area 23 which was the subject of an appeal decision in March 2022 (Appeal Ref. APP/D5120/C/20/3255738) (the Land Area 23 Appeal). In that case the Inspector granted planning permission on part of the land which had been identified by the Council on an enforcement notice.
44. Both parties refer to *Burdle* (*Burdle v Secretary of State for the Environment* [1972] WLR 1207) which sets out the tests which should be applied in determining the appropriate planning unit. The appellant applies *Burdle* to Land Area 24 and concludes that it is a single curtilage and planning unit that has been used for a composite use.
45. In his Proof of Evidence the Council Officer reaches a different conclusion and the Council say that Land Area 24 remains part of the wider Site rather than being a planning unit in its own right. However, as a result of evidence provided at the Inquiry the Council raised the question of whether Land Area 24 is functionally related to Land Area 23 leading to the formation of a new single planning unit.
46. The *Burdle* judgement states that “it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes.” In doing so the judgement established that in considering the planning unit, physical and functional separation is key.
47. In this case, the Site is owned by the appellants, but it is sub-divided into several units of occupation such as by the turf company. I observed that these units are defined by fences and gates. There is no dispute between the parties that there are separate planning units within the Site.
48. There are also shared access and parking areas notably the access which runs through the site which serves a number of individual units. Of particular relevance to the question of whether Land Area 24 forms part of a planning unit with Land Area 23 is the access track between those two areas. This track provides a physical link, but in the absence of any defined boundary Land Areas 23, 24 and the access track do not amount to an area which is physically separated from the rest of the Site.

49. There is no dispute between the parties that when the Land Area 23 Appeal was being determined there was no evidence before the Inspector regarding the use of Land Area 24. This aligns with the appellants' view, in this appeal, that Land Area 24 is not part of a larger planning unit with Land Area 23. Whilst the Council's view has changed, it says that this is the result of new information which has come forward in this appeal which has established a functional link between the two areas.
50. In relation to functional separation, there is a gate on the access track, but the witnesses said it was kept unlocked, thus it forms part of the wider access network serving the site. The access track provides access to Land Area 24 from the highway, and it provides a secondary access to the dwelling houses on the Site and means by which the occupiers access the wider Site as part of their business activities.
51. In order to establish a functional link, the Council relies on the evidence that material is moved between Land Area 24 and Land Area 23 for soil blending and sale, between Land Area 23 and Land Area 24 for the purposes of processing material and that the office for the business is situated on Land Area 23.
52. Witness 1 said that when vehicles came to off load material, they came to Land Area 23 where loads were checked. Mr Stuart said that orders for the products made on Land Area 24 including compost were arranged by mobile phone and these arrangements were not reliant on the office in Land Area 23. The appellants said that they moved plant from Land Area 24 to Land Area 23 because the latter provides a more secure place for storage.
53. Mr Stuart acknowledged that some of the products from the processing activities on Land Area 24 were taken to Land Area 23 where they were mixed with products derived from the processes carried out there. For example compost was taken from Land Area 24 and mixed with soil in Land Area 23 to create 'blended topsoil'. The resultant material was stored in bulk bags on Land Area 23. However, other products such as logs, and wood chips which arose from the processes only carried out on Land Area 24 were stored on Land Area 24 before being moved off site.
54. Land Area 23 has planning permission for use for soil screening, manure and soil storage and processing inert material. The appellants say that Land Area 24 is used for green waste processing, open storage and distribution and the notice alleges a similar mixed use although using more detailed wording.¹ It seems to me that there is a significant difference between the processes being carried out on the two areas. Whilst there is some interrelationship because products from one area are used in the other, this does not amount to a functional link. When the products are ready for sale they are stored where the final activities in their creation were carried out. There is for example no shared storage area.
55. When hauliers such as Witness 1 come to take products from the Site, they park in one location and those products are brought to them for example by forklift truck. Again this does not demonstrate a functional relationship

¹ The parties did not take issue with the difference between the description of use of the site in the application for the LDC and on the notice.

between Land Area 23 and Land Area 24. Similarly the fact that there is a point on the Site where loads are checked is a pragmatic solution to ensure that controlled loads such as those which are taken to Land Area 23 are not mixed up with the green waste on Land Area 24.

56. Whilst it is clear from the evidence that there is some movement of materials between Land Area 23 and Land Area 24, in my view, this was not significant enough to demonstrate a functional link between the two areas. Therefore, drawing all of these strands together, it has not been established that there is a physical or functional relationship between Land Area 23, Land Area 24, and the access track to such an extent that they jointly constitute a single planning unit.
57. The Council also raised the question of whether the access track between Land Area 23 and Land Area 24 should be included within Land Area 24 on the basis that it formed part of that planning unit. This access track serves Land Area 24 and all commercial vehicles accessing the area to deposit green waste should use it on the basis that the slider gate access is for residential use only. However, as I have acknowledged above the access track between Land Area 23 and Land Area 24 provides a secondary access to the dwellings and it also provides access to car parking which for example Witness 1 referred to using for his private car.
58. As the access track between Land Area 23 and Land Area 24 has a function beyond its use for access to Land Area 24 only, I do not find that it should be regarded as forming part of the planning unit comprising Land Area 24. On that basis the enforcement plan does not require modification to include the access track.
59. To conclude, Land Area 24 currently comprises a single planning unit in mixed use as set out in the notice, and this is the basis for consideration of when the breach of planning control occurred.

Land Area 24 - Evidence relating to the use of Land Area 24/the LDC land

60. The appellants confirmed at the Case Management Conference and at the Inquiry that their evidence related solely to the LDC land, which only covers part of the area shown as Land Area 24 on the notice plan.
61. The appellants are not making the case on ground (d) that the mixed use of the access road as alleged by the notice is immune from enforcement action. Their position as evidenced in the ground (b) appeal is that the mixed use of the access road has not occurred, and I have dealt with that above.

Evidence by Mr Stuart/the appellants

62. When they submitted their application for the LDC the appellants sought a certificate for the 'use of land in connection with green waste processing, open storage, and distribution (sui generis)'. The notice uses a different form of words but the evidence before me suggests that the LDC and the notice relate to essentially the same use of the land.
63. Mr Stuart said that the LDC land has been used to recycle green waste including logs and chipped wood principally from tree surgeons. He said that

- the use of the LDC land as a whole as a green waste site began in November 2012 but that before that date smaller areas within it were used for that purpose. Mr Stuart said the more intensive use of the LDC land arose as a consequence of a local company no longer taking in green waste.
64. Mr Stuart also said that the construction of the access road serving the dwellings commenced in February 2013 and that as a consequence of those works soil was deposited beside it. The soil was subsequently removed as part of an enforcement investigation by the Council.
65. The processing of green waste to make other products was described by Mr Stuart. The green waste comes onto the LDC land in the form of chipped wood, logs, and tree cuttings. It is stored in heaps and those heaps are moved around and turned over so that the material breaks down to form compost or mulch. Machines are used on the site to shred the material and also to grade it to separate compost from other elements which have not broken down sufficiently. Such was the appearance of the LDC land when I carried out my site visit.
66. The aerial photographs (including Google Earth images) which were provided by both parties, and which were referred to during cross examination, catalogue the appearance of the LDC land over time. In 2007 at the time of the first submitted aerial photograph there are heaps of material on parts of the LDC land with vehicle tracks also evident. Some of the heaps had 'greened over' which were consistent with Mr Stuart's comment that weeds and plants grow on deposited green waste.
67. Heaps of material were apparent on the LDC land on the photographs dating from 2009 and 2012 but they do not cover the whole of that land. In particular a triangular area to the east of the LDC land does not appear to be used for storage or processing of green waste in those years. The condition of the 'unused triangle of land' is significant and I will return to it later.
68. In the 2013 photograph almost all of the LDC land is covered with material and Mr Stuart pointed out a screener machine and bulk bags. This photograph demonstrates that at some point between when the 2012 photograph was taken and when the 2013 photograph was taken, the LDC land began to be used more intensively. This is broadly consistent with Mr Stuart's evidence.
69. An aerial photograph dated 13 May 2013 shows the access road in place and the piles of soil removed for its construction alongside. It also shows the LDC land covered with heaps of material including in the unused triangle of land. This image enables the time of year when the breach of planning control had taken place to be estimated more accurately.
70. In May 2013 the Council's Enforcement Officer (RK) visited the site and photographs have been provided which are date stamped the day of his visit. The photographs primarily show the newly formed access to the dwellings and the heaps of soil which were removed to construct it. However the photographs also show a machine and heaps of vegetation and wood on parts of the LDC land.
71. RK's notes refer to soil screening activities taking place and the presence of the machine which grades soil is consistent with the notes. RK's subsequent letter,

dated 3 June 2013, to the appellants informs them to remove soil and other materials used in the soil screening operation together with machinery.

72. Over the course of the next few months there were other visits by the Council and by June 2014 RK confirmed that the soil had been removed. He also notes that an application for an LDC was going to be submitted. The case was closed in January 2015.
73. The appellants say that the reason why they did not apply for an LDC was because they were waiting for information from the Council. However, the onus was on the appellants not on the Council to make the application and it was their choice not to do so and to continue to use the LDC land for the processing, open storage, and distribution of green waste. Nevertheless, RK does refer to being told that the field had been used for storage and waste recycling and the Council did not take any action either to prevent that use continuing or to require the removal of material from the LDC land.
74. As set out above in order to achieve success on ground (d) the appellants have to show that the breach of planning control began before 28 March 2013 and continued for a period of not less than 10 years without interruption. For the LDC appeal to succeed the relevant date is 16 January 2013. The aerial photographs provide sound evidence that the use which is the subject of the notice and the LDC appeal was being carried out by 3 May 2013.
75. The aerial photographs show that over time heaps of material move around the site and cover different parts of it. However the unused triangle of land is consistently left empty, and the aerial photograph dated 3 May 2013 is the first photographic record of material being present on this part of the site. Given the five week period between 28 March 2013 which is the relevant date for the enforcement notice appeal and the date of the photograph in the absence of other evidence it is feasible that these heaps of material were brought on within that timescale. Had that been the case the appellants would not be able to demonstrate immunity for the whole of the LDC land.
76. The aerial photograph from 2013, provided by the appellants, does not contain a specific date. However, on the basis of the foliage on trees in the wider area, the appearance of the meadow land and the angle of the sun it is reasonable to assume that the photograph does not show the site in the winter months. For that reason the aerial photograph from 2013 does not evidence that the breach had occurred on the LDC land by 16 January 2013 or by 28 March 2013.
77. The aerial photographs and Mr Stuart's evidence provided at the Inquiry is sufficiently precise and unambiguous so as to demonstrate that the breach of planning control occurred by 3 May 2013 on the LDC land. The subsequent photographs show that the use continued over the LDC land until the present day albeit that the extent of the green waste storage varied across the site and at time heaps of green waste were entirely greened over. This is consistent with Mr Stuart's description of the processes which were undertaken on the LDC land. However, in order to achieve success on ground (d) the appellants need to show that the breach had occurred five weeks earlier and in the case of the LDC appeal by 16 January 2013.

78. Whilst the appellants' witnesses, do not have the detailed day to day knowledge of the use of the LDC land which Mr Stuart has, they corroborate the evidence provided by Mr Stuart and the aerial photographs. Witness A had been on the site since 1994 and regularly went to the LDC land and Witness B had been on the Site since 2008 and he observed the LDC land when he went into the Site and used the access road to visit the dwellings. Similarly Witness D said he could see over the fence into the LDC land and had observed chippers and other machinery there from April 2018 onwards.
79. Witness C, who is a tree surgeon, recalled tipping tree waste on the LDC land, although not all of his evidence was first hand as he employed others and had not been to the Site himself since 2015. However, he said that he started out in 2010 as a sole trader employing one person. In 2012 he says he thought he was probably the only person tipping on the LDC land and he confirmed that he added to some of the material shown on the aerial photographs.
80. Witness C also said that the appellants moved the piles of material around which is consistent with Mr Stuarts description of the processes which were carried out on the LDC land.
81. I have established that the aerial photographs do not provide evidence that the use of the LDC land for green waste processing, storage and distribution had become established by 16 January 2013. It follows that neither Mr Stuart nor the witnesses could be taken to photographs of the time period between November 2012 when Mr Stuart said the use of the whole of the LDC land commenced and 3 May 2013 when there is evidence that the breach of planning control had occurred.
82. Witness C's evidence demonstrates that he was on the LDC land during this time period and that he tipped green waste there. However, in the absence of being able to reference exactly where he tipped material, his evidence does not support the appellants' argument that the final part of the LDC land, being the unused triangle of land, was in use before either 16 January 2013 or 28 March 2013.
83. In terms of the evidence of the use of the whole of the LDC land between November 2012 and 3 May 2013 I am solely reliant on Mr Stuarts Proof of Evidence and his evidence given under oath at the Inquiry.

The 2022 Appeal Decision

84. Land Area 24 was the subject of an appeal decision in May 2022 (Appeal Ref. APP/D5120/X/21/3271688) (the 2022 Appeal). The appeal related to an application for an LDC for the same uses on Land Area 24 as are before me. The Inspector in that case reached the view that the deemed refusal to grant an LDC was well-founded. This decision is a significant material consideration in the current appeal and the Council refer to it extensively in its closing submissions.
85. The 2022 Appeal was determined by the written representations method, thus the evidence before the Inspector was not given under oath and was not subject to testing under cross examination. By contrast the evidence before me was provided under oath and it was scrutinised over the course of a 5 day Inquiry.

86. The Inspector in the 2022 Appeal made the point, as I have done, that the onus is on the appellant to make out their case and he found that the appellant's evidence did not justify the grant of a certificate for a number of reasons.
87. Firstly the Inspector found that there was a contradiction between the appellant's statement that a mobile screener was permanently on the site and evidence in the form of aerial photographs. The Inspector was not satisfied with the contention that the shredder was moved into the yard for safety and security. This was because in his view that did not explain the absence of the shredder/screener from photographs prior to 2013.
88. I am satisfied with the reasons which have been given for the shredder/screener being moved onto other land bearing in mind the processes which are undertaken on the LDC land as explained to me. These include the moving and turning of material to make compost/mulch and the shredder does not need to be permanently on site to enable that to happen. Also in terms of the relevant 10 year period for this appeal the absence of the screener/shredder from the aerial photographs which are prior to 2013 is not determinative.
89. The Council points out that Mr Stuart changed his evidence in terms of what was before the Inspector in the 2022 Appeal because he now refers to the mobile screener being 'often located' and not 'permanently' located as the Inspector records. I accept that this is an inconsistency, however I do not consider that it significantly undermines Mr Stuart's evidence given that he was able to provide a satisfactory explanation regarding the presence of plant on the land at the Inquiry.
90. Secondly the Inspector found that the issue of the relevant planning unit had not been addressed. He refers to the functional connection to the wider site for example arising from the movement of equipment. It will be seen above that I am satisfied on the basis of the evidence now before me that the land to which the current appeal relates is a separate planning unit.
91. Thirdly the Inspector refers to a Planning Contravention Notice (PCN) which Mr Stuart completed in 2007 and he notes that there is no reference to the use of the land for green waste processing, storage, and distribution in the PCN. This PCN was also brought to my attention by the Council in the current appeals and it draws attention to the same omission.
92. The PCN included a plan which identified the whole Site i.e. it included the same land which was the subject of the 1988 planning permission. The suspected breach of planning control is described in the PCN as a change of use from garden centre/nursery to mixed garden centre/nursery and storage, and waste transfer business.
93. The difference between the parties in terms of Mr Stuart's responses to the PCN is that the Council say that the PCN relates to the Site, but Mr Stuart says that his replies related only to the land which was subsequently the subject of the Land Area 23 Appeal. Mr Stuart was cross-examined on this point at the Inquiry and had the opportunity to explain his responses. The Council consider that Mr Stuart sought to rewrite his PCN response 16 years after the event.

94. At the Inquiry Mr Stuart sought to elaborate on his PCN response and the Council makes a valid point that to some extent he attempted to adapt the answers so as not to conflict with the case which he and his brothers are making in the current appeal. For example question 2(a) seeks information about the way in which the whole site was used and Mr Stuart's answer is predominately as a garden centre with ancillary operations other than a scaffolding yard. Had the green waste storage, processing, and distribution use been ongoing at this time and unrelated to the garden centre use, which Mr Stuart now says it was, it should have been referred to in the answer to this question.
95. It has been established that Mr Stuart had professional assistance in completing the PCN and in that context it is unfortunate that his answers were not more precise at the time. Whilst I respect Mr Stuart's wish to reconsider his evidence during the Inquiry, this undermines the reliability of Mr Stuart's evidence overall.
96. Fourthly, the Inspector in the 2022 Appeal also refers to RKs enforcement investigation in 2013/2014, which he regards as not supporting the appellant's case. This evidence has not changed since the 2022 Appeal, so it is relevant in the context of the current appeals. RK was not present at the Inquiry, which means that his notes and letters are open to interpretation to some extent.
97. The Inspector was not satisfied that the references to 'tree waste use' made by RK was the same as the use described in the LDC application which was before him. On the evidence presented to the Inquiry I am satisfied that this is the same use as has been applied for in the LDC application
98. The Inspector also refers to a letter from RK dated 29 April 2014 which the Inspector says indicates the use which was being claimed by the appellant as lawful was 'the storage of waste materials and soil screen'. The Inspector was not satisfied that this use reflected the use described in the LDC application which was before him.
99. The letter from RK dated 29 April 2014 is also submitted as part of the evidence for the current appeals. However, there is also a subsequent letter from Mr Stuart to RK dated 9 May 2014 which queries why screening soil is referred to by RK. This letter, which was also before the Inspector, makes it clear that the LDC would be for 'green waste, logs, chipped wood and brush'. The evidence by Mr Stuart has clarified that he was not claiming a lawful use for soil screening.
100. The Inspector also considered that ceasing the use for screening soil as part of a mixed use represented a material change of use to the whole planning unit. The evidence before me is that the soil was deposited on the land in association with the construction of the access road. The LDC land does not include the access road, but it does include the land on which the soil was placed and as shown on the photographs provided by the Council, where the screener was positioned.
101. The aerial photograph from 3 May 2013 demonstrates that the soil associated with the construction of the access road was limited to one area of the LDC land and that the rest of the land was in use for green waste storage,

- processing, and distribution at that time. Later aerial photographs show the soil heaps have been removed.
102. I concur with the Inspector in the 2022 Appeal that the presence of the soil heaps on the land and the soil screening activities associated with them represent a different use of that part of the LDC Land than is described in the LDC application which was before him, and which forms the basis of the application for the LDC which is before me. Thus, the soil screening on this part of the LDC Land could be regarded as constituting an interruption in the continuous use of the land for green waste storage, processing, and distribution.
103. Finally, in terms of the 2022 Appeal, the Inspector refers to an enforcement notice dated 26 September 2018 (the 2018 notice) which records the site as being in 'nil use'. The 2018 enforcement notice included a plan and schedule of land uses across the Site and identifies Land Area 24, however the breach of planning control specified in the 2018 notice did not relate to Land Area 24. The schedule describes 'apparent' uses for each of the Land Areas 1-24 identified on the plan. For Land Area 24 the use is stated as 'land appears to be currently in nil use' and the comments record the only authorised use as agriculture.
104. The evidence which has been provided at the Inquiry contradicts the description of Land Area 24 as set out in the 2018 notice. For example, the Council submitted photographs which were taken in connection with an enforcement investigation on an adjacent site in July 2018.
105. These photographs show the condition of Land Area 24 shortly before the 2018 notice was served. There are heaps of vegetation on the land and the Council Officer conceded under cross examination that a machine appeared to be present. Thus, the photographs are evidence of at least some form of use and thus not a nil use, and do not point to an ongoing agricultural use of the land.
106. On the basis of the evidence provided by Mr Stuart about the processes carried out on the land, the photographs taken by the Council in July 2018 are evidence of the use of at least part of the LDC land for green waste storage, processing, and distribution at that time. On that basis the schedule of land uses attached to the 2018 notice was not accurate in respect of Land Area 24 at the time when that notice was served.
107. Drawing together my findings on the 2022 Appeal Decision, I find that in general the concerns and deficiencies which the Inspector found in the respect of the evidence before him have been addressed by the appellants. However, there are some outstanding points which I will return to below.

The Council's evidence

108. The Council says that the change of use of the whole of Land Area 24 did not occur until between 3 May 2013 and 19 July 2013 on the basis that it was during this timescale that a large pile of material was introduced onto the unused triangle of land.

109. The agent acting for the appellants agreed that a lozenge shaped feature had appeared on that area between May 2013 and July 2013. However the aerial photograph for 3 May 2013 shows that the majority of the unused triangle of land was in use for green waste storage, processing, and distribution by that date.
110. There is a mound of material close to the location of the lozenge shaped feature which appears on the aerial photograph from 19 July 2013 and evidence of vehicle movements consistent with material being moved around as described by Mr Stuart. Therefore, I do not find the presence of the lozenge shaped feature in July 2013 as determinative of when the final piece of the LDC land began to be used for green waste storage, processing, and distribution.
111. The Council also points to an inconsistency in the evidence provided to the Inspector in the 2022 Appeal. This arises from the Statutory Declaration made by Mr Stuart in that appeal in which the Inspector reports he states that the appeal site had been continuously used since 2003. In his Proof of Evidence to the current appeal Mr Stuart says the change of use has been ongoing since at least November 2012.
112. The phrase 'at least' removes the inconsistency to some extent because it allows the reference to 'since 2003' to stand. However, the differences in the evidence before the Inspector in the 2022 Appeal and before me in terms of when the use commenced do give rise to a degree of ambiguity. The Inspector reports that Witness A states in an SD to the 2022 Appeal that the use was associated with the wider site, which I have dealt with above, and was continuous since 1994. The Inspector also refers to an SD by Mr M which states continuous use since the late 1990s.
113. Witness A and Mr M have both provided SDs to the current appeals and in those documents, they state that the LDC land has been used for green waste processing, open storage, and distribution since at least November 2012. These statements are inconsistent with their previous statements and represent an element of imprecision, notwithstanding that Witness A told the Inquiry that he had been asked to 'declare 10 years' in his statement.
114. The Council also argue that the use of the land amounts to the disposal of waste and that under section 55(3) of the Act a material change of use occurs each time waste is deposited. It also made this argument to the Inspector for the Land Area 23 Appeal, and he took the view that the waste was not being deposited for disposal purposes. Although the waste products which I am considering are different, I reach the same conclusion as the Inspector for the Land Area 23 Appeal because the green waste is processed and then distributed as a different product.

Appeal G - The Lawful Development Certificate - Conclusion

115. In order to justify the grant of an LDC in the terms set out in the application the appellants need to show that the use of the LDC land for green waste processing, open storage, and distribution had commenced by 16 January 2013 and has continued without significant interruption for a period of ten years.
116. On the basis of the evidence, I have found that the use described in the application for the LDC had commenced by 3 May 2013. However, with the

exception of the evidence from Witness C and Mr Stuart there is no evidence to demonstrate that the use had commenced in November 2012, as suggested by the appellants.

117. Witness C's evidence is imprecise in terms of exactly where he tipped green waste. Similarly, Mr Stuart's evidence related to the generality of the use of the LDC land. He was taken through the aerial photographs but as there are no photographs to show the unused triangle of land, with any certainty between November 2012 and May 2013, Mr Stuart could not be taken to them. On this basis his general comments are not sufficiently precise to demonstrate that the use of the whole of the LDC land, including the unused triangle of land, for green waste storage, processing, and distribution had commenced by 16 January 2013.
118. For the reasons given above I find that the appellant has not demonstrated on the balance of probabilities that the use of the LDC land for the purposes set out in his application is immune from enforcement action. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the identified land in connection with green waste processing, open storage, and distribution was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeals A to F - Land Area 24 - Conclusion on ground (d)

119. In order to achieve success on ground (d) the appellants must demonstrate that the breach of planning control/material change of use had occurred by 28 March 2013 and continued without significant interruption for 10 years. On the basis of the evidence provided in respect of the LDC land, I have found that parts of Land Area 24 have been in use for green waste storage, processing, and distribution.
120. The access road was excluded from the LDC land, and the appellants have not sought to demonstrate that its use by both commercial traffic and by residents is immune from enforcement action. Consequently, I have no basis to conclude that that part of Land Area 24 is immune from enforcement action.
121. When the access road was constructed, the appellants say that soil from the land was piled on part of Land Area 24. Although the appellants removed the soil whilst it remained on Land Area 24 that part of the land would not have been available for the use described by Mr Stuart being green waste processing, open storage, and distribution. This is a point which was picked up by the Inspector in the 2022 Appeal and which led him to consider whether there was a material change to the planning unit.
122. The soil piles were present on the land after 29 April 2013. However, notwithstanding that RK does not carry out another site visit until 2014 when he confirms their removal, the soil piles are not present on the aerial photograph from July 2013. As such I do not find that the soil piles represent a significant interruption in the use of that part of Land Area 24 for the use set out in the notice.
123. There are elements of imprecision and ambiguity in the evidence provided by some of the witness but this stems from the advice given to them about how to

word their evidence to refer to November 2012. Also the reliability of the evidence provided by Mr Stuart is to some extent undermined by him seeking to place a different interpretation on statements he made in 2007.

124. The aerial photographs, in combination with the explanation by Mr Stuart regarding the processes which are carried out provide good evidence that Land Area 24 (excluding the access road) has been in use for the purposes set out in the notice since 3 May 2013. However, in order to achieve success on ground (d) the appellants had to show that the use had been taking place since 28 March 2013 and this has not been demonstrated.
125. I conclude on the balance of probabilities that, within Land Area 24 but excluding the access road, the material change of use did not take place more than 10 years prior to the issue of the enforcement notice and so, at the date that the enforcement notice was issued, the time for taking enforcement action as set out in section 171B(3) of the 1990 Act as amended had not expired. Therefore, the appeals on ground (d) do not succeed.

Ground (g) – Appeals A to F

126. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of 3 calendar months is too short.
127. Initially the appellants considered that 3 months is too short a period to comply with the notice because they were uncertain about the restoration requirement and whether this would require tree planting. However, the Council has confirmed that no such planting is necessary to comply with this requirement.
128. The appellants also said at the Inquiry that depending on the time of year that ground conditions could make it difficult to access the land to remove materials and equipment. Mr Stuart said that four months would be needed in the summer and six months in the winter. However, there was no evidence to substantiate his arguments save for general comments made about the ground conditions by some witnesses.
129. For the reasons set out above, I find that the 3-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeals on ground (g) should not succeed.

Sarah Dyer

INSPECTOR

APPEARANCES

For the appellant

Mr Stuart Jessop	Counsel
Mr Paul Nicholls	Agent - Graham Simpkins Planning Ltd
Mr Adam Stuart	Appellant
Mr Les Searle	Witness A
Mr Gavin Hall	Witness B
Mr Jake Loader	Witness C
Mr Alan McCawley	Witness D

For the Council

Mr Christiaan Zwart	Counsel
Mr David Bloom	Planning Enforcement Manager

INTERESTED PARTIES

Mr and Mrs Horgan	Local residents
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DOCUMENTS SUBMITTED TO THE INQUIRY

By the Appellants:

Opening Submissions

Closing Submissions

By the Council:

Opening Submissions including copies of documents referred to in submissions.

Notification letter (correction of start time) dated 14 September 2023

Copy of Statutory Declaration by Adam Stuart dated 4 February 2021

Executive summary update to Mr Bloom's proof

Closing Submissions

Other Documents:

Statement of Common Ground

Appendix 1

List of those who have submitted the appeals.

Reference	Case Reference	Appellant
Appeal A	APP/D5120/C/23/3321171	Mr Adam Stuart
Appeal B	APP/D5120/C/23/3321172	Mr Billy Stuart
Appeal C	APP/D5120/C/23/3321173	Mr Boris Stuart
Appeal D	APP/D5120/C/23/3321174	Company: Stuarts Topsoil
Appeal E	APP/D5120/C/23/3321175	Company Town and Country Turf
Appeal F	APP/D5120/C/23/3321176	Company HSBC Bank PLC

Annex A - Enforcement Notice Plan

