



Appeal Decisions

Hearing held on 7 December 2023

Site visits made on 6, 7 and 8 December 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2024

Appeal A Ref: APP/Z1510/C/22/3299386

Appeal B Ref: APP/Z1510/C/22/3299387

Land known as Stock Street Farm Barn, Stock Street Farm, Stock Street, Coggeshall, Essex CO6 1NX shown red on the attached plan ("the Land").

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr M Staines and Appeal B is made by Mrs S Staines against an enforcement notice issued by Braintree District Council.
- The enforcement notice was issued on 22 April 2022.
- The breach of planning control as alleged in the notice is:
Without planning permission the change of use of the Land from Use Class B8 Storage to a mix of uses (as listed below):
 - Use Class E(d) Indoor Sport, Recreation and Fitness;
 - Sui Generis Public House/Drinking Establishment;
 - Sui Generis Wedding Venue;
 - Sui Generis Music Venue;
 - Sui Generis Cinema;
 - Sui Generis Dance Hall;
 - Sui Generis Concert Hall;
 - Sui Generis Hot Food Takeaway; and
 - Associated Parking
- The requirements of the notice are:
Cease the use of the Land (as identified in red on the attached plan) for a mixed use including the following mix of unauthorised uses, and associated parking:
 - Use Class E(d) Indoor Sport, Recreation and Fitness;
 - Sui Generis Public House/Drinking Establishment;
 - Sui Generis Wedding Venue;
 - Sui Generis Music Venue;
 - Sui Generis Cinema;
 - Sui Generis Dance Hall;
 - Sui Generis Concert Hall; and
 - Sui Generis Hot Food Takeaway.
- The period for compliance with the requirements is 2 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Application for Costs

1. At the Hearing an application for costs was made by Mr M Staines against Braintree District Council. This application is the subject of a separate Decision.

Preliminary Matters

2. In addition to my accompanied site visit on the morning after the Hearing, I also viewed the site, unaccompanied, from various points on the public highway on the day before the Hearing. I viewed the site again, during the hours of darkness, on the evening of the Hearing, by driving up and down the A120 outside the site, to better appreciate its situation on the highway network.
3. Since the enforcement notice was issued, the National Planning Policy Framework (the Framework) has been updated. But there are no changes of any consequence for the issues in this appeal.
4. The Braintree District Local Plan 2013 – 2033 (the Local Plan) was adopted in July 2022, after the enforcement notice was issued. It replaces the policies of the Braintree District Local Plan Review 2005 and the Braintree District Local Development Framework Core Strategy 2011, referred to in the enforcement notice. This has resulted in some of the Local Plan policies being renumbered and so I have used the updated numbering in this decision. Both main parties have had an opportunity to comment on the relevant policies for the appeal development and any relevant comments made have been taken into account in my reasoning.

Background

5. On 12 December 2017 the Council refused an application for planning permission (Ref 17/01175/FUL). The description of the development included a change of use of a barn on the appeal site from 'B8' to 'D2'. Under The Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order) those uses constitute 'storage or distribution' and 'assembly and leisure', respectively. An appeal against that refusal of planning permission was dismissed on 18 July 2019 (Ref APP/Z1510/W/18/3197357). I shall hereafter refer to the above as 'the previous appeal'.
6. A subsequent planning enforcement investigation carried out by the Council found that the use being carried out on the appeal site contained more components than the use applied for in the above planning application. So the use which is before me in this appeal is the use identified by the Council's planning enforcement investigation and captured in paragraph 3 of the enforcement notice, rather than that which was applied for in the planning application for the previous appeal.
7. According to the Council, the key differences to the use attacked by the notice from the previous appeal are that the use has expanded to include a public house/drinking establishment component, a wedding venue component and a hot food takeaway component. This is reflected in the response by the appellant to a Planning Contravention Notice (PCN) issued by the Council. However, these differences are disputed by the appellant who, at the Hearing, claimed that the use enforced against is the same as that in the previous appeal. I address this dispute later.

8. The proposal in the previous appeal had a maximum of 67 car parking spaces. However, the PCN responded to by the appellant is clear that up to 87 car parking spaces are available for use in connection with the use. So I have dealt with the “associated parking” referred to in paragraph 3 of the enforcement notice as constituting up to 87 spaces, as stated in the PCN response and as illustrated on the plan in Appendix 3 of the PCN response and agreed at the Hearing.
9. However, as part of this appeal, the appellant has asked that I consider a reduced scale enterprise, for a scheme which has 33 car parking spaces. The appellant said at the Hearing that this is “to resolve the concerns”. Although no physical changes to reduce car parking have been carried out on the site and there is no evidence the scale of the use would change. I shall address this reduction in car parking later, as part of the matters stated in the notice, for the purposes of section 177(1)(a) of the 1990 Act.

The Notice

10. In their written submissions, pursuant to a ground (e) appeal, the appellant considers the notice to be a nullity. This is because, according to the appellant, the notice fails to meet the statutory requirement of paragraph 4(b) of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.
11. This regulation states that an enforcement notice issued under section 172 of the Planning Act shall specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice. But the notice before me clearly does this and so the appellant’s claim is without merit in this regard. I accept that the relevance of some policies cited in the notice may be arguable. But this does not render the notice a nullity.
12. The appeal decision relied on by the appellant in support of this nullity claim (Ref APP/Z1510/C/20/3263700, dated 29 April 2022) makes no difference and is selectively quoted by the appellant in any event. That decision identifies that the issue in that case was that there was nothing within the notice which allowed the recipient to understand from that contained within its four corners why the Council considered it expedient to take enforcement action.
13. That scenario is plainly not the case for the appeal which is before me. The notice before me clearly identifies that the change of use has a detrimental impact upon heritage assets and highway safety.
14. I appreciate that the notice refers to “the abovementioned policies” when none are stated above that phrase. But when reading the notice as a whole, as should be the case, this is a clear drafting error and does not render the notice a nullity either.
15. At the Hearing, the appellant referred to several other concerns regarding the notice, not identified anywhere in their written submissions. I address each of these concerns below.
16. The important additional information at the back of the enforcement notice states that the notice will take effect on 1 January 2020. This date is plainly wrong given that the notice was issued after then and it carries an effective date of 22 May 2022 in paragraph 7. But I am satisfied this defect is of no

- consequence given that it has clearly not prevented the appellant from lodging an appeal, in time, including an appeal on ground (a).
17. The notice identifies the existing use of the land only as Use Class B8 Storage when it is clear from the submissions and my site visit that the land includes a residential unit and it is not clear whether the B8 use was ever implemented.
 18. But this defect is of no consequence either given that, as has been established in the case law I referred to in the Hearing (*Westminster CC v SSE & Aboro* [1983] JPL 602), a notice alleging a material change of use need not recite the previous use. So I may simply correct the notice in this regard, drawing on my powers under section 176(1) of the 1990 Act, to remove any reference to the previous use. There is no evidence any injustice would be caused as a result.
 19. However, the notice is defective insofar as it does not identify the residential unit which remains on the land. At the Hearing the appellant indicated that I should exclude the farmhouse and its curtilage from the land identified by the notice. But I am not satisfied this is the right approach, as set out below.
 20. The appellant clearly lives on, owns and occupies the entire red line appeal site and runs his business from it. Parts of the site curtilage are clearly used for car parking by occupants of the residential unit and patrons and staff of the business. Moreover, signage I saw on my accompanied site visit indicated that the front garden of the residential unit is used as a beer garden by patrons of the business. This is consistent with an area that the evidence indicates is covered by the premises licence. So it seems that there is some physical and functional relationship between the different components of the mixed use and different parts of the site.
 21. Applying the relevant case law in this regard, referred to at the Hearing (*Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207), based on all the evidence before me, I consider as a matter of fact and degree that the entire red line site on the plan attached to the notice is a discrete single planning unit that is in a mixed use as a residential unit and the commercial components described in paragraph 3 of the notice.
 22. It is not possible to say that any one of the uses in the mix is incidental to any of the others and there is no reason for me to believe there is any smaller area within the red line that, as a matter of fact and degree is physically separate and distinct and occupied for different and unrelated purposes. Whether all the commercial uses listed in paragraph 3 of the notice have occurred is a matter for the ground (b) appeal, which I address below.
 23. Taking the above into account, the pragmatic response to the omission of the residential unit from the notice is to correct the notice to include it as a component of the mixed use on the land. There is no dispute that the residential unit (within the farmhouse) is lawful and so no injustice would be caused by the notice being corrected in this way.
 24. At the Hearing, the appellant suggested that the Council is not able to distinguish between cars parked in association with the residential unit and cars parked in association with the commercial use, suggesting that the notice cannot require "associated parking" to cease. But it is clear what type of car parking the notice is directed at and enforcing this would be a matter for proper investigation by the Council at the relevant time, drawing on its powers

- under Part VII of the 1990 Act. So I consider this argument to be without merit and it does not render the notice invalid or a nullity.
25. In accordance with paragraph 4(c) of the aforementioned regulations, the notice specifies the precise boundaries of the land to which it relates. It does this by reference to a plan attached to the notice. However, paragraph 2 of the notice refers to "Land known as Stock Street Farm Barn". But I see no defect, error or misdescription in this regard. This is because this is clearly the name that the site is known by, as evidenced by the appellant's own signage at the site entrance and notwithstanding that the unauthorised mixed use (and associated car parking) is clearly not confined to just the barn.
 26. At the Hearing, the appellant raised a nullity issue associated with curtilage listing. But there is no evidence of any defect or error in the notice in this regard and what buildings on the site are curtilage listed is a matter for the relevant main issue in the ground (a) appeal.
 27. The appellant was at pains to point out their view at the Hearing that the use is "a mixed use" and not "a mix of uses", as stated in paragraph 3 of the notice. I am not satisfied any correction to the notice is required in this regard. Nevertheless, to address the omission of the residential unit I am correcting the allegation in any event, so I shall make this change as well.
 28. As a mixed use is a sui generis use that by definition has no use class, I shall also delete from the notice all mention of use classes in the allegation and the requirement. The requirement may also be simplified to just refer to 'the mixed use' and associated car parking, rather than relist each of the components of the mixed use. So I shall make this change too, there being no evidence of any injustice occurring as a result. The parties should note that, by reason of section 57(4) of the 1990 Act, the corrected requirement of the notice does not necessarily mean that the land cannot be used for its lawful use and car parking associated with that lawful use.
 29. At the Hearing, the appellant raised an entirely new point, that land to the west of the site should have been included within the red line of the plan attached to the notice and that the owner of that land, which the evidence indicates is Mr Christopher Hill, should have been issued with a copy of the notice. But there is nothing in the appellant's response to the PCN to support this line of argument, this point has not been raised on behalf of Mr Hill and it is clear from his written submissions, read as a whole, that he objects to the appellant's unauthorised use. If the Council were incorrectly identifying the relevant land, the appellant should have pointed this out in their response to the PCN. Instead, in the PCN response the appellant identified the same land now identified by the Council in the enforcement notice.
 30. Whilst I accept vehicles associated with the appeal development may leave the appeal site via Mr Hill's land, his land is not where any of the mixed use alleged is taking place and it does not form part of the relevant planning unit in this case, identified above. So there is no need for any of Mr Hill's land to have been included within the red line of the plan attached to the enforcement notice nor was there any need for him to be issued with a copy of the notice.
 31. There is no evidence to lead me to a different conclusion in this regard, even taking into account paragraph 024 of the 'Making an Application' Planning Practice Guidance (PPG), referred to by the appellant at the Hearing. That

guidance is relevant to planning applications. This does not mean it should be read across to apply to deemed planning applications made under section 177(5) of the 1990 Act.

32. Even if I were wrong in this regard (and the appellant claimed Mr Hill has been 'deprived of a right to be an appellant'), there is no evidence Mr Hill has been substantially prejudiced by any failure to serve him. So I may rely on section 176(5) of the 1990 Act in this regard, were it necessary for me to do so at all. But I cannot see what appeal grounds Mr Hill would possibly seek to rely on, in light of his written objection to the use, the grounds already pleaded by the appellant and the fact that the notice requires nothing of Mr Hill.
33. Moreover, I am satisfied that the Council's publicity for the appeal and the Hearing were sufficient to comply with the rules (ie The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002). So Mr Hill could have made representations on the appeal development and participated in the Hearing, if he had wished to do so.
34. Finally, the appellant referred to "the totality of errors" in the notice, at the Hearing. But this does not matter and this reflects a misunderstanding of my wide powers of correction under section 176(1) of the 1990 Act and the relevant test of injustice, which I referred to at the Hearing and in my Pre-Hearing Note, dated 27 November 2023.

Main Issues

35. Based on the grounds of appeal pleaded, the main issues in the appeals are:
- whether copies of the enforcement notice were served as required by section 172, ie the ground (e) appeals;
 - whether the matters stated in the notice have occurred, ie the ground (b) appeals;
 - whether planning permission ought to be granted for the breach of planning control alleged, ie the ground (a) appeal;
 - whether the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach, ie the ground (f) appeals; and
 - whether the period for compliance with the notice falls short of what should reasonably be allowed, ie the ground (g) appeals.

Reasons

Ground (e)

36. An appeal on ground (e) is that copies of the enforcement notice were not served as required by section 172. In a ground (e) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
37. Section 172 concerns who the notice is served on and when. The only concern in respect of ground (e) set out by the appellant in their written submission is

the nullity argument raised in respect of the relevance of policies cited in the notice.

38. This is not a ground (e) matter and I addressed this nullity argument above, under the heading of 'The Notice'. So I do not need to consider the issue any further and in the absence of any other relevant argument in this regard that I have not already dealt with, I conclude the appeals on ground (e) fail.

Ground (b)

39. An appeal on ground (b) is that the matters stated in the notice have not occurred as a matter of fact. In a ground (b) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
40. The appellant does not dispute that there is a breach of planning control at the site. However, the appellant's position is that the notice does not accurately describe the breach.
41. On the appeal site, previous planning applications and the previous appeal have described the use as 'D2', ie an 'assembly and leisure' use. This is pursuant to Class D2 in Part D of the Schedule in the Use Classes Order. A D2 use is a use as a cinema, concert hall, bingo hall or casino, dance hall, swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.
42. However, the Use Classes Order was amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Amongst other things, these revoked Part D of the Schedule to the Use Classes Order and inserted a new Schedule 2 providing for new classes including Class F.2 (Local Community). Class F.2 subsumes some of the previous use classes which were specified in the Schedule to the Use Classes Order as Class D2 (Assembly and leisure).
43. It is the appellant's position that the notice should describe the breach as a change of use of "parts of the site" to 'F.2'. But it is not correct to argue that just because the use at the site has previously been described as 'D2' that it should have been described as 'F.2' in the notice, however comparable the use may be to a traditional village or community hall, as suggested by the appellant. D2 and F.2 are not the same, noting in particular that F.2 incorporates some types of shop and it does not include a music venue, cinema, dance hall or concert hall, ie specific components of the breach identified by the Council and targeted by the notice.
44. The appellant states that the F.2 use class encapsulates local community halls and that this is the description that "best reflects" the venue. But this is not the right approach either, given that a use class is not a land use and under section 173(1)(a) of the 1990 Act, an enforcement notice "shall state the matters which appear to the local planning authority to constitute the breach of planning control".
45. Reference to a broad use class alone, which is what is suggested by the appellant, would not tell the recipient of the notice fairly what they have done wrong. In other words, it would not provide the clarity necessary to comply with section 173(1)(a) of the 1990 Act.

46. Furthermore, the introduction of the phrase “parts of the site” to the breach, as suggested by the appellant, would introduce ambiguity over what the precise boundaries of the land affected are. This would not comply with paragraph 4(c) of the 2002 Regulations noted above and no change to the notice is necessary in this regard anyway, in light of my findings above, regarding the planning unit.
47. Regarding the additional components which have been added to the mixed use since the previous appeal decision, ie the public house/drinking establishment, wedding venue and hot food takeaway, the appellant states that the site does not function as a hot food takeaway or public house.
48. But the appellant’s 2022 response to a Planning Contravention Notice clearly shows that these components have occurred, in the form of late-night refreshments (ie food), beer festivals and weddings. The site’s public house offering is clearly referenced in the Travel Plan. Moreover, at the Hearing, the appellant explained that burger vans and pizza vans have been stationed on the site to serve visitors to the site.
49. Furthermore, none of the evidence before me has satisfied me that any component of the mixed use identified by the Council, is not a primary component of the use and so taking into account all of the above (and bearing in mind that the onus is on the appellant and not the Council in this regard), I conclude the appeals on ground (b) fail.

Ground (a)

50. In considering whether planning permission ought to be granted for the appeal development as described in the corrected description, based on the reasons for issuing the notice, the main issues are:
 - (i) the effect of the appeal development on the designated heritage assets on the site, including the grade II listed farmhouse and barn and curtilage listed buildings;
 - (ii) if there is harm arising from the effects of the appeal development, whether the harm is outweighed by public benefits of the appeal development to justify a grant of planning permission, and
 - (iii) the effect of the appeal development on highway safety.

Heritage Assets

51. The appeal site contains a grade II listed former farmhouse and associated buildings. A barn to the northwest of the farmhouse is also grade II listed in its own right and, according to the Council, the attached buildings, structures north of the farmhouse and a brick wall on the southern side of the site are curtilage listed. Taking into account the relevant tests in this regard, summarised by the Council in the Hearing, I have no reason to disagree with this assessment of what the relevant heritage assets are in this case. As such, the curtilage listed structures enjoy the same level of protection as the listed buildings.
52. The notice identifies a detrimental impact upon the designated heritage assets as a consequence of the unauthorised change of use. From the cases put to me, it is clear that what is meant by this is the effect of the car parking

associated with the unauthorised use on the setting of the listed buildings. As set out above, the car parking associated with the use is the 87 spaces referred to by the appellant in the PCN response, illustrated on the plan in Appendix 3 of the PCN response, available for 200 guests to use, stipulated as the maximum capacity in the PCN response.

53. In considering whether to grant planning permission for the appeal development, for any listed building there is a statutory duty upon me under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
54. The glossary of the Framework defines the setting of a heritage asset as:
- "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."*
55. The Council has provided a comprehensive assessment of the significance of the heritage assets and the contribution made to their significance by their setting. This assessment has not been disputed by the appellant and I have no reason to disagree with it either, which for the purposes of this main issue I summarise below.
56. The farmhouse is of seventeenth century origins with additions and alterations dating from the eighteenth to twentieth century. It is a good example of a well-preserved historic farmhouse with its associated surrounding agricultural and ancillary buildings. The barn dates from the seventeenth century with eighteenth century alterations and nineteenth and twentieth century extensions. It is a surviving example of an agricultural building and maintains a strong relationship with the farmhouse, its proximity to which would have been necessary for safety and ease of operation of the farm.
57. The listed buildings on the site provide an indication of how the agrarian landscape in this area once looked and operated. Their settings are intrinsically linked and (without the car parking associated with the appeal development) are unspoilt, with the historic and largely unaltered layout of the traditional farmstead still legible and the functional character of the farmyard maintained. The low level of activity associated with the lawful use preserves the site's rural setting. The wider setting of the farmstead is largely unchanged since its construction, with open agrarian fields surrounding the site on all sides. These are integral to understanding how the land was historically used and the well preserved isolated and agrarian setting of the farmstead greatly enhances the significance of the listed buildings.
58. At the Hearing the appellant confirmed that their view is that the use enforced against is the same as that in the previous appeal. Whilst for the purposes of the ground (b) appeal I have not found this to be the case, the appellant's view indicates that I have no reason to disagree with the previous Inspector's assessment of the effect of the unauthorised use on the setting of the listed buildings. This is particularly the case given that the use enforced against relates to a greater level of car parking than was proposed in the previous appeal.

59. No events were occurring during my accompanied site visit. But the information provided by the appellant shows rows of car parking spread across the site with large areas of parking to the east and west of the farmstead. Such parking provision does not relate to the historic character of the farmstead and is an unrelated feature within this context. The visual impact of this level of car parking would be considerable as it would be a highly dominant feature taking up a considerable proportion of the land within the farmstead. This would completely alter the setting of the farmstead and how its historic buildings are understood, read and experienced within the farmstead. As such, the appeal development harms the setting of the listed buildings and their significance.
60. Regarding the reduced scale enterprise, with 33 car parking spaces, that I have been asked to consider by the appellant, there is no mechanism available to me to secure this, as I set out below.
61. As is set out in PPG, planning permission should not be refused on a ground capable of being dealt with by planning conditions. At the Hearing, the appellant suggested 6 planning conditions which they consider could be imposed on a grant of planning permission for the deemed planning application. However, from what was said at the Hearing, none of the conditions suggested had been drafted, at least not in any way which is precise, nor submitted for consideration by the Council (or anyone else) in time for the Hearing.
62. One of the appellant's suggested conditions concerns a Travel Plan, a copy of which was submitted for this appeal. The appellant states that it is strongly recommended that a condition is imposed requiring adherence to the Travel Plan at all times and setting a schedule for its regular review and monitoring. According to the appellant, with the Travel Plan in place, "there is no risk that customer parking would ever exceed the site's maximum provision of 33 spaces". This is despite the fact that no physical alterations have been carried out, or are proposed, on the land to reduce the site's physical capacity to accommodate 87 parked cars, as shown on the appellant's plan.
63. In the specific circumstances of this case, for the purposes of paragraph 56 of the Framework (which sets out the relevant tests for planning conditions) I am not satisfied that mere adherence to the Travel Plan is precise or enforceable. Moreover, there are two significant initiatives in the Travel Plan which I am not satisfied can be simply delegated to such a document.
64. The first of these initiatives is the provision of a shuttle bus, operated by the appellant to collect/drop-off guests from pre-booked locations. But there are no precise details of how this service would be managed and funded or for how long it would be operated. At the Hearing the appellant said that the shuttle bus has not operated and that there is no need for it. Taking these points into account, I am unable to conclude this initiative would reduce the demand for customer parking to no more than 33 spaces.
65. In any event, as set out in the conditions PPG, no payment of money or other consideration can be positively required when granting planning permission. So a condition cannot positively require the provision of such infrastructure and would fail the tests for conditions of reasonableness and enforceability. In my view, from all the information provided in this case, for me to take the shuttle bus initiative into account, it must be secured by a planning obligation. Nothing has been provided to lead me to a different conclusion in this regard. But there

is no such obligation before me (despite this being raised in paragraph 4. (iv) of the Pre-Hearing Note).

66. The second of these initiatives is a booking system for car parking, with a maximum of 33 car parking spaces available to be booked. The appellant states:

"The existing online booking system has been amended, with pre-booked tickets now required for the site's 33 car parking spaces. There will be no additional charge, however guests will be required at the time of booking their event ticket to either book a car parking space OR confirm that they will not bring a car to the venue and will instead travel by taxi, walking or drop-off etc. Once all parking spaces have been booked, patrons booking tickets will be advised that no parking is available for their use and will be shown a list of well-reputed local taxi firms. Guests booking a parking space will be required to enter the vehicle registration number and confirm how many guests will be in the vehicle. This will enable proper management of the car park which will be subject to frequent checks over the course of events. A member of staff will be posted at the site entrance at the beginning of events to ensure that only cars pre-booked to park are allowed to enter. Appropriate warnings will also appear on tickets and on temporary signs located within the Site."

67. I am not satisfied the above system would prevent more than 33 cars being brought on to the site, in the absence of any physical alterations having been carried out, or proposed, to limit its physical capacity to accommodate more than this amount. At the Hearing, the appellant also suggested a condition, specifying a limit of 33 cars being parked on the land, on Orchard Field. But in the circumstances of this case, monitoring the site for compliance with the booking system and/or the 33 car limit would be unreasonably onerous and/or practicably impossible, bearing in mind the size and layout of the site, its relatively isolated location in the countryside and the timing of its events. As such, the test of reasonableness for conditions would not be met.
68. Even if I were wrong about there being no mechanism available to me to secure a maximum of 33 car parking spaces, there is still harm arising from the reduced scale enterprise, as I explain below.
69. The reduced scale enterprise concentrates car parking in Orchard Field, to the east of the farmstead. At the time of my inspection this field was empty. In this location, parked vehicles would be relatively inconspicuous and have a limited impact on the setting of the listed buildings but there would still be harm as this area has historically been void of built form and used as an orchard. As I saw at my site visit, the use of this field for car parking has resulted in muddy ground conditions. This has not been helped by the haphazard application of grass reinforcement material. Its use as a car park is out of character with the historic use of this land and the wider setting of the listed buildings.
70. To access Orchard Field, vehicular traffic has to cross the farmstead in a convoluted manner between the listed buildings. This introduces movement, noise and traffic into what would historically have been a more tranquil area. Whilst there would have been activity here, including vehicular movements, these would have been for an agricultural purpose, whereas for the appeal development this is a level of activity which is incongruous and harmful to the character of the site and the outlook from the farmhouse and barn.

71. Vehicular traffic, with its associated lightspill and reflectivity, would become a dominant feature here. This would be at odds with the agrarian quality of this location and change how the farmstead appears and operates. Views across the farmstead which contribute to the significance and setting of the listed buildings would be harmed and this would negatively affect the experience of the heritage assets and the ability to appreciate their significance.
72. Taking all of the above into account, I conclude that the appeal development, including the reduced scale enterprise, harms the designated heritage assets on the site, by reason of the effect of the associated car parking on the setting of the heritage assets and therefore their significance. I give this issue considerable importance and weight in my decision. In accordance with paragraph 205 of the Framework, when considering the impact on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
73. The harm occurs primarily when events take place. But the use is not temporary and so nor is its associated car parking. I consider that there is less than substantial harm to the designated heritage assets. Nevertheless, any harm to their significance should require clear and convincing justification and in accordance with paragraph 208 of the Framework, the harm must be weighed against the public benefits of the appeal development, including, where appropriate, securing the optimum viable use.

Public Benefits

74. The appeal development reuses a building that provides space for hire by local community groups for a variety of events and brings together people of all ages. I have no doubt this contributes to social cohesion and is beneficial for the mental health of people in the community.
75. The use provides some access to heritage assets, for members of the public to appreciate, as part of the historic environment. Revenue from the use is also likely to lead to investment in the maintenance necessary for the long-term conservation of the heritage assets.
76. From representations made, it is clear that the use supports other local businesses and entrepreneurs, including caterers, taxis and entertainers. So it contributes to the local economy, including the visitor economy and it generates some local employment (as well as an income for the appellant).
77. The use may reduce the need for local people to travel further afield for the services the appeal development provides, including new residents residing in new homes being built in the area and at least some people have said they are able to walk to the venue (although representations were also made that it is not a place you can walk to, which is consistent with my own observations).
78. The appellant has indicated that the appeal development constitutes the optimum viable use for the heritage assets. This has not been specifically disputed by the Council and I have no reason to disagree, taking into account PPG in this regard, although this consideration does not override all others in the decision whether to grant planning permission.
79. Overall, I conclude the public benefits would be modest, particularly taking into account the appellant's view that the use enforced against is essentially the same as that in the previous appeal. As such, the benefits have not changed in

any substantive way since the previous appeal and as a matter of my planning judgement the benefits do not outweigh the heritage harm identified to justify a grant of planning permission.

80. My attention has been drawn to examples of other listed buildings with car parking close by. But from the information available to me, I cannot be certain that the circumstances on those sites are the same as in the case before me. So I give those examples limited weight in my decision and in any event, heritage effects are site specific. What may be acceptable on another site will not necessarily apply elsewhere.
81. I conclude that the appeal development, including the reduced scale enterprise, harms the designated heritage assets on the site, by reason of the effect on their settings and that this harm is not outweighed by public benefits of the appeal development to justify a grant of planning permission. So in this regard, the appeal development does not comply with Policies SP 1, SP 7, LPP 52 or LPP 57 of the Local Plan or Policies 5 or 13 of the Coggeshall Neighbourhood Plan, July 2021 or the Framework.

Highway Safety

82. Notwithstanding the reasons for issuing the notice, from the cases put to me, the highway safety issue in this case is twofold. First, it is a consequence of the level of car parking provision available on-site for the unauthorised use. Second, it is a consequence of the standard of vehicular access available to serve the unauthorised use on the site.
83. Paragraph 115 of the Framework states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.
84. The appeal site is in a rural location adjacent to a major trunk road, the A120, from which it is directly accessed. This is a busy and relatively narrow single carriageway road with a speed limit of 60 mph, managed by National Highways. This road has no streetlighting and its footways, where they exist at all, are narrow such that any pedestrian is walking close to fast moving traffic.
85. In respect of car parking provision, the appeal development before me differs from the previous appeal in that it constitutes 87 spaces for up to 200 guests, rather than 67 spaces. In the previous appeal, the Inspector stated that 67 spaces was well below the requirement for parking spaces for half of the venue capacity of 200. But the same is true for this scheme with 87 spaces.
86. Nothing has been provided to satisfy me that a lower car parking requirement is justified, particularly bearing in mind that no public transport is available nearby. I realise that at least some guests may travel to and from the site by taxi but no specific evidence has been provided in this regard. In light of the above, I have serious concern that 87 parking spaces cannot adequately accommodate guest parking at the appeal site, especially if a capacity event were to take place.
87. A consequence of the above is that if guests were unable to park on the appeal site this could lead to vehicles being parked on the verge along the busy public highway of the A120 where traffic is fast flowing. I consider this would pose a significant risk to guests' safety as well as to other users of this road.

88. On the opposite side of the road from the appeal site is a lay-by. But parking here would result in guests having to cross the A120 at a location where there is no pedestrian crossing and drivers would not be expecting pedestrian movements. Either of the above parking scenarios is dangerous, especially at night.
89. The Travel Plan states that if guests arrive by car and there is no capacity, they will drop their guests and return on-foot or by the shuttle bus "if running". But this does not explain where else vehicles will park and given the lack of street lighting and footways to access the site, I find this contention of the appellant implausible.
90. The reduced scale enterprise, with 33 car parking spaces, that I have been asked to consider by the appellant, would not address the above highway safety concerns arising from an insufficient amount of car parking. The concerns I set out above about the Travel Plan and its initiatives (including the shuttle bus) and a 33 space limit on parking spaces to be secured by condition, apply equally to this main issue of highway safety.
91. At the Hearing the appellant suggested a condition with a capacity limit for the site of 180 customers at any one time. But this would not control the number of vehicles being brought on to the site (and there is no evidence a capacity limit in respect of guest numbers is necessary to address any other harm identified by the Council).
92. In assessing applications for development, paragraph 114(b) of the Framework states that it should be ensured that safe and suitable access to the site can be achieved.
93. The principal access serving the appeal site is through a gap in the listed brick wall on the southern side. This access is too narrow to accommodate two-way traffic. Consequently, if used as the only access, there is a safety risk of vehicles waiting to enter the site for extended periods on the A120 carriageway, whilst vehicles wait to exit the site. As such, a one-way system has operated, with the 'in' access being through the listed wall and the 'out' access being via land to the west. This land is outside of the appellant's ownership and is used to access agricultural buildings to the north of the appeal site. But the evidence indicates the appellant has a right of way over it.
94. In their response to this appeal, National Highways state that the current access arrangement is not to the required standard. They clearly indicate that the entrance and exit need to be upgraded, to provide safe means of entry and exit between the A120 and the appeal site. I have carefully inspected the site in this regard and I have no reason to doubt what National Highways have said, particularly given what I have seen on site.
95. The appeal site entrance is not conspicuous and there is a tight radius to turn into it. The verge outside has clearly been driven over to enter the site and scuff marks are seen on the kerb. Given the tight radius, a low speed is required to drive in, with an effect on any vehicles close behind, who may not be expecting deceleration at this point on this high-speed road.
96. The appellant states that no alterations to access are required but it has not been explained why. Moreover, for the Hearing, the appellant did not take the opportunity to establish precisely what the necessary upgrade works may entail

or provide any specific evidence in this regard. Nor has it been demonstrated that all necessary consents for these works would be obtainable. In this regard, there is a dispute between the main parties over whether consent for upgrade works would be required from the landowner to the west of the site.

97. In an attempt to resolve this matter, at the Hearing the appellant suggested the imposition of a condition requiring the submission and approval of an access plan. From written submissions provided, it is clear that the landowner to the west objects to the appellant's unauthorised use of the appeal site. As such, should their consent be required, it is more than unlikely that all the necessary upgrade works can be delivered. In these circumstances, imposing a condition for an access plan to address this issue would not meet the test of reasonableness for conditions, set out in paragraph 56 of the Framework.
98. Works to upgrade the west access would likely close or reduce this access for a period of time. So it seems likely that the relevant landowner's consent would be required and that they may not agree to the works, particularly if they had to agree to this access becoming 'out only' and/or 'no entry', to facilitate the appeal development and its one-way system. Nothing has been provided to lead me to a different conclusion in this regard.
99. Even if I am wrong, my overall conclusion on highway safety would not change due to the other highway safety issue, relating to the level of car parking provision.
100. Moreover, if the consent of the landowner to the west is not required, this does not explain why recommendations made by National Highways in previous responses have not been implemented, or why this matter has not been resolved in the 8 years or so since unauthorised use of the appeal site began, given the risk to highway safety identified. Furthermore, National Highway's response to this appeal post-dates any 2019 correspondence that the appellant relies on.
101. Consequently, in these circumstances, the evidence leads me to believe that, with current access arrangements as they are, there is a real risk of collision at high speed and the potential for people to be killed or seriously injured. As a matter of my planning judgement, this issue is so important that planning permission should not be granted before it is resolved. My concerns in this regard have not been allayed by any discussion at the Hearing, at which National Highways were represented. A lack of accidents having occurred so far may be just a matter of luck and so this makes no difference to my conclusions on this main issue.
102. Compliant signage needs to be provided, to ensure the conspicuity of the vehicular entrance to the site and to facilitate the delivery of the one-way system around it. Not providing compliant signage could lead to late breaking and turning movements of vehicles on the A120, as at least some drivers will not be expecting the use in this rural location.
103. Signs already displayed at the entrance by the appellant are not permanent signs recognised by the appropriate standards. Whilst in principle, compliant signage could be secured by the imposition of a planning condition, this depends on exactly what the signage would do and relates to my concern above about the west access becoming 'out only' or 'no entry'.

104. Taking all of the above into account, I conclude that the appeal development poses a risk to highway safety. This is unacceptable. In this regard, the appeal development does not comply with Policies SP 1, SP 7, LPP 7, LPP 43 or LPP 52 of the Local Plan, Policy 16 of the Coggeshall Neighbourhood Plan, July 2021 or the Framework.
105. I note the appellant considers that Policy SP 1, cited in the notice, to be irrelevant. But it reflects the presumption for sustainable development set out in the Framework. As I have found harm as a result of the appeal development, I do not consider it to be sustainable and so the appeal development does not comply with Policy SP1. It is not therefore irrelevant.

Other Matters

106. A petition signed by 3,147 people has been submitted in support of the appellant. In summary, it requests that I recognise that the use is the optimal viable use because it offers more benefits and fewer risks to public benefit, grade II listed and other buildings, heritage setting and road network than a B8 Storage and Distribution use or other uses.
107. The petition and representations received clearly show that the appeal development is of considerable value to the local community, for reasons referred to above and I have carefully taken these into account in my decision.
108. But the petition does not raise any new issues I have not already addressed and, in any event, a decision on whether planning permission should be granted must be based on the strength of the planning merits. It is not a referendum (or a decision which should be based on Facebook 'likes').
109. The appellant considers that they have been the target of heavy-handed enforcement. But in light of the lengthy planning and enforcement history of the site, there is no evidence to make me think this is the case. The Council was entitled to take enforcement action when it did, drawing on the statutory powers available to it under Part VII of the 1990 Act. Whether the Council correctly used its powers to decline to determine a previous planning application is not a matter for me to consider in an appeal under section 174. Nor is how the Council may have publicised its enforcement action, where statutory requirements have been met.
110. At the Hearing, a condition to limit the use to a "community hall", within Class F.2(b) of the Use Classes Order (as amended by the 2020 regulations), was suggested by the appellant. But this is not the relevant use in this case anyway, as I have found pursuant to the ground (b) appeal, and so a condition to this effect is not necessary or reasonable. Moreover, it would make no difference to my conclusions on the main issues.
111. A condition prohibiting the sale, transfer, lease or disposal of the barn independently from the farmhouse was also suggested at the Hearing by the appellant. Whilst this could reduce harm to the living conditions of occupants of the farmhouse, this would make no difference to my conclusions on the main issues either.
112. The appellant states that the contents of the PCN response should be taken with "a considerable pinch of salt" as it was completed without professional advice and the appellant has only limited knowledge and experience of the planning system. Be this as it may, it does not mean that information in the

PCN response should not be relied upon in deciding whether planning permission ought to be granted for the breach of planning control, particularly as it is an offence not to respond to or to give false or misleading information in response to a PCN.

113. The Council has referred to Policy LPP 1 of the Local Plan, which relates to development boundaries and which the appellant considers is irrelevant. The way Policy LPP 1 is worded means it may be interpreted as relevant to all development, whether inside or outside of a development boundary. Although Policy LPP 1 contains no specific wording relevant to the main issues in this appeal. So I consider it weighs neither in favour of nor against the appeal development.
114. I take the same view in respect of Policy LPP 61 of the Local Plan, which the appellant considers to be relevant. This supports the provision of community facilities. Whilst the appeal development is clearly used by the community, it is a commercial enterprise run for commercial gain by the appellant. Nothing has been provided to lead me to a different conclusion in this regard. So I am not satisfied it is a community facility for the purposes of Policy LPP 61, even though some components of the use may fulfil this purpose, when commercially favourable for the appellant.
115. My attention has been drawn to the reasoned justification of Policy 5 of the Neighbourhood Plan. This identifies venues which have provided benefits to the community through the provision of services and recreational venues supporting the rural economy and which have enabled the continued sustainability of otherwise redundant rural buildings and assisted in their preservation. Stock Street Barn is listed in the text as one of the examples. But, as set out above, I have found the appeal development contrary to Policy 5, insofar as it relates to heritage assets. The reference to the barn in the reasoned justification does not mean planning permission ought to be granted when other planning considerations indicate otherwise, as is the case here.

Planning Balance

116. I have found harm arising from the appeal development in terms of its effect on heritage assets and highway safety. I have carefully considered the benefits of the appeal development, set out at the Hearing and in written submissions and summarised earlier in this decision so I shall not repeat them here. But as a matter of my planning judgement, the benefits of the appeal development do not outweigh the harm to justify a grant of planning permission, particularly in terms of the risks to highway safety. So I consider that there is conflict with the development plan as a whole and the conditions suggested would not be able to mitigate the adverse effects.

Conclusion on Ground (a)

117. Taking all of the above into account, I conclude that the appeal on ground (a) fails.

Ground (f)

118. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those

matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

119. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
120. Based on the single requirement of the notice, the purpose of the notice is to remedy the breach and this is consistent with the Council's submissions and section 4 of the notice itself.
121. The appellant is of the view that the steps required by the notice to be taken exceed what is necessary to remedy any injury to amenity which has been caused by the breach. But this is not the purpose of the notice and no explanation has been provided of why the single requirement of the notice is excessive to remedy the breach.
122. I conclude that the appeals on ground (f) fail.

Ground (g)

123. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.
124. The single requirement of the notice is to cease the use and the car parking associated with it. As such, no physical works are required and from the information provided, ceasing the unauthorised use would principally be a matter of cancelling upcoming events.
125. In response to the PCN the appellant indicated a minimum period of 5 years would be needed to cease the use, to allow another use to be found while revenue could still be derived from the unauthorised use. But this goes far beyond what is required to comply with the notice and would be tantamount to a grant of temporary planning permission. This is not justified in light of the harm.
126. In subsequent submissions, the appellant has requested that the time for compliance is extended to 18 months to enable them to honour the vast majority of existing bookings and in recognition of public disbenefit which is said would arise from the venue's forced closure. In this regard, my attention has been drawn to knock-on effects for other local businesses, community groups, charities, the tourism industry, the local economy and on social cohesion. But these are all reasons for granting planning permission, which I have already considered under ground (a), above.
127. The appellant states that the venue generally receives certain bookings far in advance of the event date. But bookings taken since the notice was issued in April 2022 will have been agreed with full knowledge of the possibility that the notice could be upheld on appeal, particularly given the planning and enforcement history of the appeal site.

128. Pursuant to ground (g), my attention has been drawn to reputational harm to the local area and its tourism industry which is said will arise. But this is a matter for the appellant who, on his own case, has sustained an unlawful use of the site since circa 2016 and this problem could have been avoided if the issues were properly resolved and planning permission obtained before carrying out any unauthorised use of the site.
129. I have considered allowing more time, for users of the venue to amend their business plans and look for alternative venues. But this must be balanced with the highway safety issue which has been identified and I consider this a compelling reason not to allow more time to comply with the notice.
130. Taking into account the above I am satisfied that the period for compliance specified in the notice does not fall short of what should reasonably be allowed and so the appeals on ground (g) fail.

Conclusion

131. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

132. It is directed that the enforcement notice is corrected by:
- the deletion of the breach of planning control in paragraph 3 of the notice and its replacement with:
"Without planning permission the material change of use of the Land to a mixed use comprising indoor sport, recreation and fitness; public house/drinking establishment; wedding venue; music venue; cinema; dance hall; concert hall; hot food takeaway and a residential unit ('the mixed use') and car parking associated with the mixed use."
 - the deletion of the requirement in paragraph 5 of the notice and its replacement with:
"Cease the mixed use and car parking associated with the mixed use."
133. Subject to these corrections, the appeals are dismissed, the enforcement notice is upheld and in respect of Appeal A planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Staines	Appellant
Andrew Cann	Planning Direct
Nikki O'Hagan	Planning Direct

FOR THE LOCAL PLANNING AUTHORITY:

Natalie Banks	Enforcement Officer
Josef Cannon	Cornerstone Barristers
Laura Johnson	Built Heritage Consultant
Mark Norman	National Highways
Matthew Wilde	Planning Officer

INTERESTED PERSONS:

Craig Bull
Lisa Calvert
Michael Carrington
Jeffrey Collins
Paul Goddard
Kerry Pennock
Councillor Paul Thorogood
Adam Walsh
Councillor Tom Walsh

DOCUMENT

Public Notice dated 16 November 2023