
Appeal Decision

Site visit made on 26 March 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Appeal Ref: APP/R3650/C/23/3324947

Land adjacent to Elm Corner, Dunsfold GU8 4LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Thomas Reynolds against an enforcement notice issued by Waverley Borough Council.
- The enforcement notice, numbered EN/2023/04, was issued on 1 June 2023.
- The breach of planning control as alleged in the notice is, without planning permission:
 1. Change of use of the Land from an agricultural use to a mixed use being an agricultural use and:
 - i. Parking of vehicles associated with a groundworks business
 - ii. Storage and distribution of plant associated with a groundworks business
 - iii. Storage and distribution of logs associated with forestry contracting.
 2. An engineering operation being the laying of hardstanding.
 3. Erection of a building being a log store ('the Building').
- The requirements of the notice are:
 - 1) Cease the use of the Land for:
 - i. Parking of vehicles associated with a groundworks business
 - ii. Storage and distribution of plant associated with a groundworks business
 - iii. Storage and distribution of logs associated with forestry contracting.
 - 2) Remove the hardstanding
 - 3) Remove the Building being the log store.
 - 4) Remove from the Land all materials resulting from the removal of the hardstanding and Building detailed in the step 2) and 3) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and a variation

Procedural Matters

1. In relation to grounds (f) and (g), the appellant indicates that recent works have not added to the hardcore area, but rather the appellant has scraped off the overgrown grass on top of the old scalpings and added a new layer to what was already there. In my view, this is a point that more properly falls to be considered under ground (c): namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those

matters do not constitute a breach of planning control. I will therefore consider that point under ground (c) below.

The Enforcement Notice

2. The notice alleges the 'change of use' of the land which, in itself, is not development requiring planning permission for the purposes of Section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act). That section defines the meaning of development as:

the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land (emphasis added).

I shall therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act. I am satisfied that no injustice would be caused by so doing.

3. Although the notice alleges a (material) change of use of the Land from an agricultural use to a mixed use being an agricultural use and the parking of vehicles associated with a groundworks business, the storage and distribution of plant associated with a groundworks business and the storage and distribution of logs associated with forestry contracting, the requirements of the notice do not specify in terms that the mixed use should cease. However, this is merely a function of the way in which the notice is constructed. Compliance with the requirements of the notice would, in practice, result in the cessation of the mixed use. It is apparent from the grounds on which the appeal has been lodged that the appellant has understood that the notice, in effect, requires the mixed use to cease.
4. Nevertheless, in the interests of clarity and precision, it is important that the notice is varied to specifically require the mixed use to cease. I shall vary the notice accordingly. I am satisfied that no injustice would be caused by so doing.

The appeal on ground (b)

5. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
6. The appellants appeal on this ground is that the matters stated in the notice have not occurred as the site is immune through the passage of time. However, that is a fundamental misunderstanding of the appeal under ground (b) which is simply that the matters alleged in the notice have not occurred, either as a matter of fact or through a misdescription of the breach of planning control that is alleged. The ground of appeal is expressed in the past tense ('occurred') and it is open to the appellant argue under ground (d) that, even if the matters stated have occurred, they are now immune from enforcement action due to the passage of time. The appellant has indeed submitted an appeal on ground (d) and this is considered below.
7. I am also mindful of the Inspector's findings in an appeal decision dated 21 April 2023 in relation to a proposed agricultural barn to house tractors,

machinery and feed (APP/R3650/W/22/3303305I). In dismissing that appeal, the Inspector noted that whilst much of the machinery and equipment visible within the appeal site could be used for agricultural purposes within the unit, many were also suitable for other purposes, including agricultural and forestry contracting and, particularly, for landscaping and groundworks purposes. This led the Inspector to the conclusion that much of the machinery, which included a number of excavators, were also most suited to and most likely to be associated on a day-to-day basis with landscaping and groundworks rather than agricultural purposes in the agricultural unit.

8. The findings of the Inspector in that appeal are entirely consistent with my own observations at the site visit for this appeal. Some of the equipment parked on or directly adjoining the site at that time, which again included a number of large excavators, are clearly not designed for day-to-day farming activities. They are clearly designed for and intended to be used for the carrying out of groundworks. The presence of this equipment on and directly adjoining the site tends to support the notion that, on the balance of probability, the mixed use alleged in the notice has occurred.
9. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

10. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
11. The appellants appeal on this ground is that the matters stated do not constitute a breach of planning control as the site is immune through the passage of time. This again is a fundamental misunderstanding of the appeal under ground (c). As above, it is open to the appellant argue under ground (d) that, even if the matters stated in the notice do constitute a breach of planning control, they are now immune from enforcement action due to the passage of time. Indeed, the appellant has done so.
12. The scraping of a surface and adding a new layer on top of that could in and of itself constitute an engineering operation for the purposes of Section 55(1) of the 1990 Act, and as such constitute development for the purposes of that Act. This would be a matter of fact and degree. In the absence of more information regarding the depth to which the soil was scraped, the area of the land involved and the amount/depth of new hard core laid down, I am not able to take an informed view on that point.
13. Under this ground of appeal, the onus is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. The appellant has failed to discharge the burden of proof that is upon him. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

14. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The test in this regard is the balance of probability and the burden of proof is on the appellant.

15. An appeal on ground (d) can only relate to the use or operational development alleged in the notice. It matters not that the land may have been used for some aspects of that use for many years, or that other buildings have been erected on the site previously. In order to succeed on ground (d), the appellant must show, on the balance of probability, that the use alleged in the notice has been taking place continuously and without interruption for a period of ten years starting from the date of the breach of planning control¹, and/or that the operational development alleged in the notice has been substantially complete for at least four years prior to the enforcement notice being issued². It is convenient to consider these separately, taking firstly the material change of use.

The material change of use

16. The notice alleges a mixed use comprising an agricultural use; the parking of vehicles associated with a groundworks business; storage and distribution of plant associated with a groundworks business; and storage and distribution of logs associated with forestry contracting. Two points flow from this.
17. Firstly, the appellant has not sought to argue through the appeal on ground (b) that the mixed use has not occurred. That is an implicit acceptance that the breach of use alleged in the notice is a mixed use of a single planning unit. It is settled case law that it is not possible to disaggregate a mixed use. Consequently, in order to succeed on ground (d), the appellant must show that the mixed use (i.e. all the components of that mixed use) have been taking place at least to some extent continuously and without interruption for a period of ten years starting from the date of the breach of planning control.
18. Secondly, the components of the mixed use (and which the appellant has implicitly accepted) are very precise. For example, the parking of vehicles *associated with a groundworks business* (emphasis added). The parking of vehicles in association with other components of the mixed use, such as agriculture or forestry contracting, would not count towards the ten-year immunity period required under Section 171(B)3 of the 1990 Act.
19. The onus is therefore on the appellant to show that those specific components of the mixed use have achieved immunity under Section 171(B)3 of the 1990 Act. In that respect, it is not sufficient to say, as the appellant does, that it is quite clear that the land has been used for a mixed use which many farmers and landowners naturally diversify into. That is neither sufficiently precise nor unambiguous to discharge the burden that falls upon the appellant.
20. The appellant has provided a Statutory Declaration signed by himself and other members of the Reynolds family. The document is not in a conventional format but nevertheless contains all the elements required by the Schedule to the Statutory Declarations Act 1835 (the 1835 Act). Accordingly, I afford this Statutory Declaration due weight.
21. The primary purpose of the Statutory Declaration appears to be to confirm that the signatories are farmers and agricultural/forestry contractors in the context of the aforementioned application for agricultural permitted development. It is confirmed that the signatories acquired the land in January 1996 but, beyond that, there is no information about the history of the mixed use that is taking

¹ Section 171B (3) of the 1990 Act.

² Section 171B (1) of the 1990 Act.

place on the appeal site. As such, the Statutory Declaration does not greatly assist me or the appellant.

22. The other evidence on which the appellant largely relies comprises a number of statements from people familiar with the site. These statements are not affidavits or Statutory Declarations: a Statutory Declaration should include the form of words set out in the Schedule to the 1835 Act, which these do not³. They all have the same wording and format, albeit some have added handwritten notes to provide further detail.
23. The difficulty is that the wording of this statement is somewhat vague. It states that the (Reynolds) family have always had in one form or another a (multi-generational) land-based family business but does not go on to define what those businesses were, when they commenced or confirm that these business have been taking place continuously throughout the relevant period. Consequently, the statement lacks the necessary detail and precision to make out the appellant's case. For all this reason, I attach only limited weight to these statements.
24. There is, in addition, a bespoke letter from a Mr Passmore whose recollection is that the Reynolds family have operated their businesses from the site since at least 2006 if not much earlier. Mr Passmore describes the business as a land-based business covering logs, forestry, arboriculture, fencing, landscaping, groundworks, agricultural contracting & construction. He also confirms that the family has always kept horses and animals on the small holding.
25. The difficulty with this letter is again that it is somewhat vague and short on detail. Moreover, the evidence in this letter, including that the use started in or before 2006, is directly contradicted by the aerial photographs of the site. This substantially reduces the credibility of that evidence. For these reasons, I attach only limited weight to this letter.
26. The aerial photographs do not assist the appellant. The latest date on which the mixed use alleged in the notice could have commenced in order for it have achieved immunity from enforcement action is 1 June 2013. An aerial photograph taken in March 2012, a year or so beforehand, shows some piles of hardcore adjacent to the eastern boundary of the site but very little, if any, on the appeal site itself. The vast majority of the land within red-lined area on the plan attached to the enforcement notice was laid to grass at that time⁴.
27. An aerial photograph taken in June 2013 shows the grass close to entrance to the site becoming worn, indicating increased vehicular activity through that access⁵. But there is no evidence in that photograph of the mixed use taking place. The date of this photograph is crucial. In order for the mixed use to have become lawful through the passage of time, it would have had to have been already taking place exactly as alleged in the notice (in other words, to have been of the same extent and of the same character) on the date that photograph was taken. It clearly was not.

³ Specifically, 'I A.B. do solemnly and sincerely declare, that and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the year of the reign of his present Majesty, intituled [the 1835 Act].

⁴ Photograph within the appellant's evidence.

⁵ Photograph within the appellant's evidence.

28. There is other evidence too. Prior to the Council issuing the Notice, it served a Planning Contravention Notice (PCN) on the appellant. The completed PCN was returned to the Council by Mr Thomas Reynolds (the appellant) on 18 January 2023. The answers provided within the PCN describes the use of the land as a "FARMYARD/WOODYARD" since the initial purchase of the land in 1999 (sic). No mention was made of the other uses taking place on the land.
29. It is an offence to knowingly or recklessly give information, in response to a PCN, which is false or misleading. The Council was entitled to rely on the information provided in the completed PCN to decide whether or not it was expedient to issue an enforcement notice. I am equally entitled to rely on the information provided in the completed PCN in considering the appeal on ground (d). In this case, the completed PCN is good evidence that the mixed use alleged in the notice was not taking place on or before June 2013, and therefore had not become lawful on the date that the enforcement notice was issued.
30. Finally, in this respect, reference is made in representations from local residents to the intensification of the mixed use on this site is to a level which constitutes a material change of use over the last 10 years. One local resident comments that the current operation is a wholly different operation which has dramatically increased in size since 2013 when the current site was still a green field. These comments, from local residents who in some cases have lived in the area for many years and who are thoroughly familiar with the appeal site, are also indicative that the mixed use alleged in the notice had not been taking place continuously for a period of ten years on the date that the enforcement notice was issued.

The hardstanding

31. In order to become immune from enforcement action, operational development must be substantially complete on a date four years prior to the date on which the enforcement notice was issued. The relevant date in this respect is therefore 1 June 2019.
32. An aerial photograph taken in 2021 photographs vehicle tracks around a central grassed area and across other grassed areas towards the western end of the site⁶. There are no aerial photographs available after that date but photographs taken at ground level embedded within the Council's evidence show that the central grassed area has been removed and replaced by hardstanding⁷. The Council believes that the hardstanding was laid down between August and December 2022.
33. This is corroborated by comments made by local residents. In a representation dated 7 September 2023, one local resident states that the appeal site "...was a field. Or was until last summer when hard core was laid and other things down / erected". Another representation explains that beginning in August 2022 there was a lot of new activity at the site: truckloads of surfacing materials were brought in and heavy construction equipment was used to level and then create a hard surface across the site, and new industrial security fencing erected. This evidence is supported by a photograph dated 26 August 2022 which appears to show that work in progress.

⁶ Page 15 of the Council's appeal statement

⁷ Page 16 of the Council's appeal statement.

34. The appellant maintains that recent works have not added to hardcore area, but rather the appellant has scraped off the overgrown grass on top of the old scalpings and added a new layer to what was already there. Two points arise from that.
35. Firstly, as indicated above, the scraping of a surface and adding a new layer on top of that could in and of itself constitute an engineering operation for the purposes of Section 55(1) of the 1990 Act, and as such constitute development for the purposes of that Act. The appellant was not able to discharge the burden of proof that falls upon him in that respect, and accordingly the appeal on ground (c) failed. The laying of the hardstanding does constitute an engineering operation and typically requires planning permission.
36. Secondly, that being the case, the 'clock' for the purposes of Section 171B (1) of the 1990 Act would be reset with the laying of the new layer of hardstanding. The evidence before me is that the new layer of hardstanding was laid in the last quarter of 2022 and therefore less than four years prior to the enforcement notice being issued. On the balance of probability, the new layer of hardstanding is therefore not immune from enforcement action.

The building

37. The building is clearly marked on the plan attached to the enforcement notice as being in the approximate position 'A'. Comparison of that plan with the aerial photograph taken in 2021 shows that there was no building in position 'A' at that time. The building could therefore not possibly have been substantially complete four years before the enforcement notice was issued.

Conclusion on ground (d)

38. This is not a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise to counter the documentary and photographic evidence produced by the Council and the evidence of local residents. Accordingly, I conclude that, on the balance of probability, the breach of planning control alleged in the notice has not been shown to have been lawful on the relevant date(s), such that the appellant has not discharged the burden that falls upon him.
39. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

40. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated three substantive reasons for issuing the enforcement notice, from which the following main issues are raised the effect on the development on:
- the character and appearance of the area
 - the living conditions of the occupiers of neighbouring residential properties, specifically in relation to noise disturbance, dust and vibration, and
 - the use by horse riders, cyclists and walkers using Dunsfold Common Road (Bridleway 285).

Character and appearance

41. The appeal site is located on open countryside beyond the Green Belt, within an Area of Great Landscape Value (AGLV). The appeal site lies to the rear of a group of residential properties fronting onto Dunsfold Common Road. The site is adjoined to the north by a linear field. To the north and west is an extensive area of woodland. The surrounding area has an overtly rural character comprised of fields, areas of woodland and isolated farmsteads. It is an attractive and high-quality landscape.
42. By contrast, the appeal site is predominantly hard surface, on which there are placed a number of shipping containers, water containers, a portaloo and various small buildings. A variety of building and other materials are stored on the site including, but not limited to, spoil, timber, breeze blocks, reels of cable and plastic piping. Several vehicles, including JCBs and trailers, are parked on the site. The site is enclosed, in part, by a metal security fence of some 2m in height. As a result, the site has a distinctly urban character and untidy, poor-quality appearance that contrasts markedly and is wholly out of keeping with the surrounding rural character and high-quality landscape as AGLV.
43. I conclude that the development unacceptably harms the character and appearance of the surrounding area. I therefore conclude that the breach of planning control that has taken place is contrary to Policies RE1, RE3 and TD1 of the Waverley Borough Local Plan Part 1 (Local Plan Pt1) and Policies DM1, DM4 and DM15 of the Waverley Borough Local Plan Part 2 (Local Plan Pt2). These policies require, amongst other things, that the intrinsic character and beauty of the countryside will be recognised and safeguarded, and that new development must respect and where appropriate enhance the character of the landscape in which it is located.

Living conditions

44. The access to the site passes in close proximity to the residential properties fronting onto Dunsfold Common Road. Given the type and size of vehicles used in connection with a groundworks business and forestry contracting, this is likely to give rise to unacceptable levels of noise disturbance and, in dry weather conditions, to vibration and dust generation. This is referenced in the representations from some local residents and those from Dunsfold Parish Council. Those harmful impacts are therefore clearly perceived by those residents.
45. I conclude that the development significantly and unacceptably harms the living conditions of the occupiers of neighbouring residential properties, specifically in relation to noise disturbance, dust and vibration. I therefore conclude that the breach of planning control that has taken place is contrary to Policy DM1 of the Local Plan Pt2 which, amongst other things, requires that new development avoids significant harm to the health or amenity of occupants of nearby land and buildings, including by way of an unacceptable increase in, noise, dust and vibration.

Use by horse riders, cyclists and walkers using Bridleway 285

46. Dunsfold Common Road (Bridleway 285) is a narrow, unmade road. Use of that road by vehicles of the type and size associated with a groundworks business and/or forestry contracting has the clear potential to cause conflict

with pedestrians and cyclists using Bridleway 285. Reference is made in some representations from local residents to an incident that occurred in 2022 whereby a pedestrian sustained injury due a large pothole in the track. Whilst the existence of that pothole cannot be directly attributed to the vehicular movements generated by the use taking place on the appeal site, it is reasonable to conclude that the type and size of those vehicles was a contributing factor to the creation of that pothole and the degradation of the track in general.

47. The risk is even greater to those use using the bridleway on a horse or leading a horse. That risk is further exacerbated by the proximity of the metal security fence to the bridleway, thereby restricting the space available to people riding a horse and potentially affecting the behaviour of horses in a confined space. The latter is a separate consideration to the actual width of the bridleway.
48. I fully recognise that the fence was erected in the interest of animal welfare, specifically to restrict access to the field by dog walkers, given that dog faeces can cause some major diseases in sheep and cattle. I fully accept the premise but no evidence has been provided to show that this had been a problem on this site. I have balanced this against the harm caused by this fence but, on the evidence before me, conclude that the harm outweighs the benefit.
49. I conclude that the development unacceptably affects the use by horse riders, cyclists and walkers using Dunsfold Common Road (Bridleway 285).

Other considerations

50. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
51. The appellant maintains that there is a benefit to the rural economy by retaining the current use of the site. However, the point is briefly stated and the claimed benefit to the rural economy has not been quantified through supporting evidence. Moreover, as the Council points out, the rural location of the appeal site is not essential for the groundwork contracting business taking place there. Accordingly, I only attach limited weight to this as material consideration.
52. The Council accepts that the lawful use of the land is for agriculture. It follows that in the event that the appeal was dismissed and *the enforcement notice fully complied with*, the appellant would potentially benefit from permitted development rights available under Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This includes engineering operations which are reasonably necessary for the purposes of agriculture within that unit. The appellant advances this as a fallback position in relation to the hardstanding subject to this enforcement notice.

53. It is settled case law that the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Consequently, even if the possibility of the fallback position happening may be very slight, this is sufficient to make the position a material consideration.
54. In this case, the appellant would firstly need to comply with the enforcement notice in full and then return the use of the land to agriculture as the primary use of the land before permitted rights under Part 6 of the GPDO became available to him. The new hardstanding proposed would then need to be reasonably necessary for the purposes of agriculture within that unit, including in terms of the extent of that hardstanding. There is no information before me in relation to the agricultural use to which the land would be put or the extent of the hardstanding that is proposed. I am therefore unable to form an informed opinion as to whether the hardstanding envisaged as comprising the appellant's fallback position would be more than just a theoretical prospect.
55. Nevertheless, in the circumstances, I am prepared to give the appellant the benefit of any doubt and to treat the fallback position as a material consideration. However, for the reasons set out above, it is a material consideration to which I attach only limited weight.
56. A total of eight representations (including two from Dunsfold Parish Council) have been received in relation to this appeal, all of which object to the development that has taken place on the site and support the upholding of the enforcement notice. The detailed points raised are generally those rehearsed above but the consistent theme is that this is an inappropriate location for a groundwork contracting business. I have taken all these representations into account in the overall planning balance.
57. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. However, the harms identified are intrinsic to breach of planning control that has occurred and could not be overcome or mitigated by the imposition of conditions.

Conclusion on ground (a) and the deemed planning application

58. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. Having weighed the factors in support of the development, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.
59. Given the location of the site within the countryside, the Council are of the opinion that the log store would be acceptable in principle and could be controlled through the imposition of suitably worded conditions.
60. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation to any part of the land to which the notice relates

(my emphasis). Applying the wording of Section 177(1)(a) to the facts of this case, the breach of planning control is specifically stated as including the log store. The log store therefore forms part of the matters stated in the notice, and it is open to me to grant planning permission for it.

61. I concur with the Council insofar as the log store would in principle be appropriate in this rural location, subject to an appropriate condition to ensure that the use would be related to agriculture. However, where I depart from the Council is in the effect of the log store on the character and appearance of the area. In my view, the log store is constructed from poor quality materials and is somewhat ramshackle in appearance. Consequently, although of relatively small scale, the log store is harmful to the character and appearance of this high-quality rural environment and the AGLV. It is therefore contrary to Policies RE1, RE3 and TD1 of the Local Plan Pt1 and Policies DM1, DM4 and DM15 of the Local Plan Pt2.
62. Accordingly, I conclude that planning permission ought not be granted for the log store in isolation.

The appeal on ground (f)

63. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I intend to vary it) include to cease the use of the land for the mixed use by ceasing the parking of vehicles associated with a groundworks business, the storage and distribution of plant associated with a groundworks business and the storage and distribution of logs associated with forestry contracting. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
64. The appellant's case on this ground appears to be that the issue of remedying the breach is not applicable because, as a farmyard, it does not cause injury to the amenity of the area and as an agricultural, forestry and landscaping contractors yard the site would be lawful. Two points flow from this.
65. Firstly, I have found under ground (d) that the mixed use alleged in the notice is not lawful. Secondly, I have found under ground (a) that the mixed use alleged in the notice unacceptably harms the character and appearance of the surrounding area. Consequently, both aspects of the appellant's appeal on this ground have been considered, and dismissed, under other grounds of appeal.
66. The appellant has not advanced any lesser steps than the complete cessation of the use of the mixed use that would achieve the purpose of the notice to remedy the breach of planning control that has occurred. There are no obvious alternatives apparent to me which would overcome the planning difficulties with less cost or disruption.
67. I therefore conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

68. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months.
69. The appellant has not suggested what period of compliance would be appropriate. The appellant does however request that I take into account that the family have been operating on the land for at least seventeen years and that finding an alternative site for the groundwork machinery, forestry contracting and the log production would be unviable, counterproductive and unreasonable in light of the government policies of working from home, climate change, and reducing the vehicle movements.
70. The first point to make is that, on the evidence before me, the current use of the land has only been taking place since the last quarter of 2022. Nevertheless, I recognise that the Reynolds family has been farming on the land since circa January 1996.
71. I also recognise that finding an alternative site is unlikely to be straightforward. However, the appellant has not provided any evidence that to show that he has conducted or commissioned a systematic site search of the local area to establish whether any suitable sites would be available. In the absence of that evidence, I cannot discount the possibility that there are suitable sites available in the local area to which the appellant's business could relocate within the period of compliance stated in the notice.
72. Similarly, I have been provided with no evidence to show that relocating the business would result in an increase in the number of vehicle movements. Moreover, there is no evidence before me, in either financial or logistical terms, to show that relocating the business would be unviable or counterproductive.
73. Neither has the appellant indicated through evidence that there are any technical or logistical reasons why the notice could not be fully complied with within the period of compliance stated in the notice. For example, there is no evidence before me to suggest that clearing the land would require any specialist skills or equipment beyond that already available to the appellant in his business.
74. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. The public interest includes the impact on the living conditions of neighbouring residential properties and the impact on users of Bridleway 285.
75. In weighing that balance, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am therefore not persuaded that there is any need to extend the period for compliance with the notice and am satisfied that the period of compliance of six months stated in the notice is a proportionate response to the breach of planning control that has occurred.
76. Accordingly, the appeal on ground (g) fails.

Conclusion

77. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation, 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 Decision

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

- in paragraph 3.1 of the notice, insert the word 'Material' before the words 'Change of use'.

79. It is directed that the enforcement notice is varied by:

- deleting paragraph 5.1 in its entirety and substituting there:

Cease the mixed use of the Land comprising i. Parking of vehicles associated with a groundworks business ii. Storage and distribution of plant associated with a groundworks business iii. Storage and distribution of logs associated with forestry contracting.

80. Subject to that correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR