



Appeal Decision

Hearing Held on 9 and 10 April 2024

Site visit made on 9 April 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/K0235/C/21/3279088

Land at The Nurseries, New Road, Great Barford Bedfordshire outlined in red on the attached plan

- 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 A Llaveshi against an enforcement notice issued by Bedford Borough Council ('the Notice').
 - The enforcement notice, numbered 20/00086/UNAUTU, was issued on 16 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to use for the storage and sorting/grading of building aggregates, sand, soil and cement and as a waste transfer facility for the storage and sorting of non-hazardous waste including soils and concrete/brick rubble.
 - The requirements of the notice are i) Cease the use of the land for the storage and sorting/grading of building aggregates, sand, soil and cement and as a waste transfer facility for the storage and sorting of non-hazardous waste including soils and concrete/brick rubble ; and ii) Remove all aggregates, sand, cement and non-hazardous waste including soils and concrete/brick rubble from the land and the blocks which form the storage bays for such materials; and iii) Remove all vehicles and machinery associated with the use from the land; and iv) Remove all containers, office and staff rest building from the land; and v) Re-instate the land to its condition before the use, and associated works, took place as demonstrated on the survey plan 'Site Layout – as existing' reference 942.12 dated November 2017 shown in Appendix 1 of this Notice..
 - The period for compliance with the requirements is: for i), ii) and iii) Two months from the date this notice takes effect; and for iv) and v) Three months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (e) (f) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

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

Deleting the words "as demonstrated on the survey plan 'Site Layout – as existing' reference 942.12 dated November 2017 shown in Appendix 1 of this Notice' from requirement v) of section 5 of the Notice, 'What you are required to do'; and

deleting "Two months" as the Time for Compliance in section 6 (i), (ii) and (iii) of the Notice and substituting "Eight months"; and omitting "Three months" as the Time for Compliance in section 6 (iv) and (v) of the Notice and substituting "Nine months".

Subject to the 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.

The Notice

2. At the Hearing, the Appellant commented that the plan attached to the Notice had some minor discrepancies. However, following discussions, he agreed that the plan was sufficient and this had not caused him any disadvantage.
3. The Appellant queried whether the Council had the authority to issue the Notice, given that it relates in part to waste operations. For its part, the Council explained that as it was a unitary authority the matters that are the subject of the Notice fell within its jurisdiction. This was accepted by the Appellant, and I took the matter no further.
4. In the period between the issuing of the Notice and the Hearing, the nature of the use carried out on the land changed. The Appellant positioned a crusher on the land, for the purpose of crushing imported waste building materials. The crushed materials are then sold as aggregate and delivered from the site.
5. The Council suggested that the allegation in the Notice might be corrected to include reference to those activities and that the requirements be varied to include cessation of the activities related to the crusher.
6. The Appellant opined that his position would be prejudiced were that to occur. This, he said, was not a matter that was covered by the Notice, and he did not have any arguments prepared, nor any noise studies carried out, for these activities.
7. After hearing the arguments regarding the nature of the crushing activities, my finding was that the use to which the land was being put, including the crusher-related activities, was materially different to that which is alleged in the Notice. As such, I informed all parties present that it would be prejudicial to the Appellant and, quite possibly, to third parties to extend the scope of the appeal to include those activities. The Council accepted this position.
8. The Notice was issued before the Great Barford Neighbourhood Plan, 2020-2030 ('GBNP') was made. I have taken the relevant policies of the GBNP into account in my decision.

Ground (e)

9. An appeal made under Ground (e) is that copies of the Notice were not served in accordance with the provisions of s172 of the Act. S172(2) states that a copy of an enforcement notice shall be served—(a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. S329 of the Act sets out the procedure for serving copies of Notices.
10. The Appellant's case is that one of the owners, a Mr Isaacson, did not appear to have been served with a copy of the Notice, though a copy was served on Mrs Isaacson. I was told by the Appellant that Mr Isaacson was the owner of the access that runs from the public highway to the land on which the use is being carried out. That access was included in the land to which the Notice relates.

11. The Council informed me that the land was owned by Annmat Holdings Limited, of which Mr Isaacson was an officer. The Council provided oral and written evidence to show that it had served a copy of the Notice on the company secretary at its registered address in Bedford on 16 June 2021.
12. S329(1)(d) sets out the process for serving a Notice on an incorporated company. It states that this can be done by "delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office". There is no requirement to serve on all officers of an incorporated company. I was told by the Council that Mrs Isaacson was the company secretary at the time that the Notice was served.
13. The Appellant did not counter what the Council said in its submissions.
14. In the light of the above, I find that copies of the Notice were served in accordance with ss172 and 329 of the Act. Therefore, the Ground (e) appeal fails.

Ground (a)

15. An appeal made under Ground (a) is that planning permission should be granted for the development that is the subject of the Notice.

Main Issues

The main issues are:

- (i) Whether the appeal site is an appropriate location for the development;
- (ii) The effect of the development on the character and appearance of the area;
- (iii) The effect of the development on biodiversity; and
- (iv) The effect of the development on highway safety.

Reasons

Site Location and Description

16. Great Barford is a village that offers a small range of services. It lies to the east of Bedford, between the A421 and the River Great Ouse. New Road runs north-eastwards from the bridge over the river in the village. About 600m along this road, on its western side, is a fairly large area that is primarily in commercial use. This was formerly the site of a nursery business. The exception to the commercial use of this land when I visited was a place of worship at its northern end, fronting New Road. I was told that this and an adjacent tool hire business benefit from planning permission. Both have independent accesses from New Road.
17. The remainder of the commercial land is served by a single access from New Road. This runs roughly westwards through the former nursery site, and provides the access to the appeal site. The site lies at the northwest corner of the former nursery land. It is bounded by the tool hire business and what appeared to be a car dealership on two sides and by an agricultural field on its other two sides. The Council was not certain which of the existing uses on the former nursery site benefited from planning permission and said that enforcement investigations were on-going. However, evidence was brought

forward to show that planning permissions had been granted for commercial development on both the appeal site and others within the nursery area.

18. Access to the appeal site is via a gate at its south corner. A large part of the site was covered by a hardstanding. The remainder, towards the northeast end of the site was of what appeared to be compacted soil and aggregate. Close to the gate, along the site's boundary with the tool hire business, are a number of portacabin type buildings that provide staff amenity, office and storage space. There is a cement store at its southwest corner. Cement powder is lifted from this, using a diesel generator, into waiting mixer lorries. Running northeast from these are a number of open bays which are used for the storage of aggregate and sand. I saw that roughly the north-eastern third of the site was taken up by piles of waste material awaiting sorting. There were a number of vehicles on site, including a large digger, a front loader, lorries and the crusher.
19. The site is enclosed by a high wall, made of what I describe as large concrete 'building blocks' that interlock with one another. Along the northwest boundary, they had been painted green on their exterior faces. Evergreen trees had been planted along the outer face of the wall.
20. The agricultural field that bounds the appeal site is flat and is unbroken by hedges between the site and the nearest housing, some 160m away on Addingtons Road.

Whether an appropriate location

21. The parties disagreed on the lawful use of the land. The Council say that as a 2019 planning permission for the temporary use of the land lapsed on 4 April 2024, the use of the land reverts to a nursery use. The Appellant's position is that the land has a 'nil' use. It is not disputed, however, that there has been a material change of use of the land that requires planning permission.
22. Waste is brought to the site from construction sites, where it is sorted on site for hardcore and the like before being distributed to other sites. In addition, aggregate is brought to the site from quarries and is stored for sale and onward distribution to customers. I was told that the majority of the materials are sold to customers in or near Bedford, with the remainder going to places such as Luton and Cambridge. The business primarily serves small companies and private individuals. Currently, the site handles about 20,000 tons per annum, though its permit from the Environment Agency is for up to 75,000 tons. Cement from the store on-site is loaded into 8-wheeled mixing lorries, with the mixing occurring off-site. The business employs 10 people and has invested in lorries and plant.
23. In October 2016, the Council granted planning permission¹ for land consisting of the appeal site and part of the land now used by the tool hire business for the erection of B1 office units and B8 storage and distribution units. Planning permission was granted in April 2019² for the use of the land for the siting of self-storage containers for a temporary 5-year period. That permission had lapsed by the date of the Hearing.

¹ Council reference 16/01502/MAF

² Council reference 18/02778/COU

24. Both permissions pre-date the Bedford Borough Local Plan 2030, adopted January 2020 ('BBLP'). However, the Council did not make the case that the use of the land for commercial purposes was wrong in principle. Its position was that the use to which it was being put by the Appellant did not accord with the terms of the development plan.
25. The Appellant says that he previously ran his business from another part of the former nursery site. That land was given planning permission³ in March 2010 for the construction of a yard area and the insertion of a door into a building. The application form for that application shows that the land was in a B8 storage and distribution use at that time.
26. Mr Llaveshi says that he ran his business from that land for 7 years, starting in 2012, before moving it to the appeal site. Details of the nature of his business during that period are scant. However, if it was the same mixed use as that which he runs from the appeal site then that would have been materially different from the B8 use referred to in the application form. This would have been the case irrespective of the Appellant's point that the permission did not restrict what might be stored on the land. There is nothing before me to show that planning permission was granted on that other site for the mixed use that is the subject of this appeal.
27. Therefore, it was either the case that the Appellant's business was different on that site, and therefore was in accordance with the B8 use of the land, or that it was the same use as that before me, but it did not benefit from planning permission. If the former, then the move to the site does not represent an expansion of an established business, as claimed. If the latter, and the mixed use before me was being carried out without planning permission, then it had not become lawful, as it had not been carried out continuously for 10 years.
28. This is important when the proposal is assessed in the light of Policy WSP 6 from the Minerals and Waste Local Plan: Strategic Sites and Policies, adopted January 2014 ('MWLP') jointly produced by the Councils of Bedford Borough, Central Bedfordshire and Luton Borough. This policy, entitled 'Non-hazardous waste transfer and materials recovery', is the most relevant to the development amongst a suite of policies that has been brought to my attention.
29. MWLP Policy WSP 6 sets out that planning permission will be granted for waste transfer and materials recovery operations, subject to a number of criteria. Amongst these is that the development proposed is on "an existing employment area of similar uses". The Council agreed that the former nursery site is an existing employment area. It argued that this is not a similar use. In answer to my question, what does "similar" mean in this context, the Council said that it was a use where there "might be some differences, but, overall, the same". It said that there was no similar use on the wider land. For his part, the Appellant set out that as the tool hire business used machinery, so it was similar to his use of the land.
30. Although the tool hire business involves the movement of plant and equipment, some of which appeared quite large, I do not find it to be similar to the use undertaken by the Appellant. It cannot be held to be a similar use in the manner of Policy WSP 6.

³ Council reference 10/00206/FUL

31. The proposal does not accord with the other criteria in Policy WSP 6, as: it is not a strategic site set out in MWLP Policy WSP 2; it is not within an area that has an existing planning permission for a waste related or minerals extraction use; nor has it been shown to be despoiled, contaminated or derelict land.
32. Where a waste transfer or materials recovery scheme does not accord with the criteria referred to, above, they will be permitted "where it can be demonstrated that: They serve an identified need which cannot be met by existing facilities; and No land in the above categories is available". The onus lies with an applicant or appellant to demonstrate either of these, not with the Council to demonstrate otherwise.
33. The Appellant said that as his business has traded since 2012, a demand for the business was demonstrated. He said that the larger sites do not service the same small businesses his does. Further, he said that there would be an increase in construction and demolition waste to 2028, and referred to materials arising from two large infrastructure projects in the area – East-West Rail and improvements to the A421. These were acknowledged by the Council.
34. Whether there is a demand for the business is different from the requirement to demonstrate a need for the business. In respect of the claim that the larger sites do not cater for smaller businesses and individuals, no evidence was brought forward. Furthermore, the evidence before me, including the 'Central Bedfordshire, Bedford Borough and Luton Borough Councils' Local Aggregate Assessment' 2023, shows that there is ample capacity to serve the area's needs from other sites with planning permission. The Council's enforcement report set out that there was an existing inert waste recycling capacity of 700 000 tonnes per year in the area covered by the MWLP. The evidence available showed that sites were operating, on average, at 30% of this total. That figure dated from 2021 and the Council said in the Hearing that the 2022-23 position was unchanged. This was not challenged by the Appellant. The Council said that this capacity would meet future need.
35. In conclusion on the matter, I find that there is no need for the use to be carried out from the site. Therefore, I find the use of the land to be contrary to the terms of MWLP Policy WSP 2 and BBLP Policy 75, which sets out criteria against which development outside settlements should be assessed.
36. I am aware of other development plan policies that support employment-related propositions, such as BBLP Policies 75 and 7S and GBNP Policy LE1 and, in this regard, I give considerable weight to the fact that the business employs 10 people. However, their support is not unconditional and the proposal does not meet their terms. Similarly, whilst the National Planning Policy Framework ('the Framework') provides support for employment-related uses, this has to be read against the terms of the Framework as a whole and, in particular, its reiteration of s38(6) of the Planning and Compulsory Purchase Act 2004, and its fundamental support for sustainable development.
37. It is not uncommon for development plan policies to pull in seemingly different directions and, notwithstanding this, MWLP Policy WSP 6 specifically relates to the siting of the activities that are the subject of the Notice and its terms should be given greater weight in the planning balance.
38. On the basis of the evidence put before me, I find that the appeal site is not an appropriate location for the development. It is, therefore, contrary to the terms

of MWLP Policy WSP 6. I find that the other policies referred to in Reason ii) of the 'Reasons for Issuing the Notice' relate more pertinently to the other main issues and I address them there.

Character and appearance

39. The open countryside, in which the appeal site lies, is flat and open and not subject to any landscape designation. A large field encloses the former nursery site on its north and west sides, with another field to its south. To its east, on the other side of New Road, are further large fields.
40. I saw that much of the former nursery site was taken up with car sales and storage uses. However, in the absence of accurate details from any party as to just what uses that are carried out on the former nursery site are lawful, it is difficult to fully assess its lawful character. Notwithstanding this, as it has been used as a nursery and I am aware that there have been permissions for a B8 storage use and a tool hire business, there is an established commercial nature to the land.
41. From the evidence, including that of my site visit, the activities undertaken at the former nursery, outside of the appeal site, do not have a significant adverse effect on the generally quiet character of the wider area. In this assessment, I note the movement of vehicles and plant associated with the tool hire business.
42. The character of the Appellant's business is different. There is a more intense level of activity with a large number of heavy vehicle movements bringing materials in and out of the site, and heavy plant moving and helping to sort imported materials. The movements and noise associated with the business are at odds with the rural character of the area.
43. Here, I make a distinction between the noise generated by the business and the effect of noise on the living conditions of the area's residents. The Notice does not refer to any noise nuisance arising from the mixed use that is its subject. Furthermore, the parties agree in the Statement of Common Ground that there is no objection on the grounds of noise or dust generation arising from the use alleged in the Notice. From the evidence before me, I agree that the activities attacked by the Notice cause no significant harm on residents' living conditions by way of noise generation.
44. The evidence shows that the external appearance of the appeal site has changed since the Appellant moved onto it. It was bounded by what I am told was a mature hedgerow with trees in it. I do not have specific evidence of the nature of the hedge. It appears in a series of aerial photographs that were supplied by the third-party attendees. Given their aerial vantage points, they provide evidence of the position of the hedgerow, but not of the species contained nor its characteristics.
45. It is probable that it was similar to the length of hedgerow that I saw towards the southwest corner of the former nursery site. It had a thick understorey, interspersed with mature trees and provided an attractive and meaningful screen to that part of the land. Its removal was contrary to the terms of BBLP Policy 40 that seeks the retention of hedgerows, unless there are overriding benefits arising from their removal. This was not the case here.

46. A mixture of tall, steel palisade fencing and large concrete interlocking blocks now form the external boundaries to the site. The blocks have been painted green and some evergreens have been planted on the field side of them.
47. Given the intervening uses and buildings, views to the site from New Road are limited to gaps in the roadside hedge to the northeast of the site's main entrance. From these, the upper parts of plant working on the site are seen, as are piles of imported material. This and other views to the site are affected by the erection of very high storage racks on the tool hire site. I enquired whether these had planning permission, and the Council informed me on the second day of the Hearing that they did not. As the Appellant did not counter this, I take it to be the case. Therefore, I discount these from my assessment of the visual effect of the development.
48. I also viewed the site from a number of vantage points along Addingtons Road, to the north and northwest of the site, as well as a public footpath that runs from Roxton Road to New Road. From these I could appreciate the movement and activity at the site, as well as the piles of imported material on it.
49. I could also see that despite being painted, the concrete wall was an alien feature in the landscape. This was still apparent despite the planting of evergreen trees on its field side.
50. The Appellant was of the view that the use of the land caused no visual harm; a position that, for the reasons above, I disagree with. However, he suggested that space might be set aside for landscaping that would mitigate any harm that I might identify. In this, he said, the wall of large concrete blocks might be moved into the site by 2m to accommodate landscaping in the manner identified in the Preliminary Ecological Appraisal produced by Eco-Check Consultancy Ltd. However, there was an inconsistency in the report inasmuch as, in its paragraph 5.1.1, it stated that "hedgerows should be planted in a minimum 1.2m root ball size, double rowed". As the Appellant agreed, this would require more than a 2m wide strip of land. However, in principle, there is no apparent reason why a wider landscaping scheme could not be provided.
51. Notwithstanding this, as the appropriate planting would be deciduous, in the manner of other hedges I saw in the area, when fully developed, which might take some considerable time, the hedges would not to my mind provide sufficient year-round mitigation. The wall, which causes harm to the appearance of the area, would be likely to be seen in the winter and, even if the suggested condition restricting the height of materials stored on the site to 3m were applied, diggers moving material around the site would still be seen.
52. I find that the removal of a short portion of hedgerow to create the improved access onto New Road would have a limited effect on the character and appearance of the area and I do not dismiss the appeal on this basis.
53. My finding on this issue is that the development harms the character and appearance of the area and that the harm could not be satisfactorily mitigated by conditions, including those requiring the landscaping of the site and controlling the height of stored materials. For the reasons given above, the development is contrary to BBLP Policies 3S and 75 that require developments to recognise and safeguard the intrinsic character and beauty of the countryside and would adversely affect peoples' enjoyment of it. The use fails to respect its setting, nor does it have a positive relationship with it, and it fails

to integrate successfully with the surrounding countryside as required amongst the terms of BBLP Policies 28S and 29. It is, as I have said, contrary to BBLP Policy 40, as no overriding benefits arise to justify the removal of the hedge, even though a replacement might be conditioned. It is also contrary to GBNP Policy NE1 that seeks to protect and enhance the landscape. Furthermore, for these reasons, it does not accord with the terms of chapter 15 of the Framework, which seek to protect the countryside.

54. The Council also referred to BBLP Policies 37 in respect of this matter in the reasons for issuing the Notice. I do not use it, as it refers to key landscapes identified in the Council's Landscape Character Assessment, May 2014. I have not been given a copy of this, so cannot conclude that the development is contrary to its terms.

Biodiversity

55. Part of the reasoning for the issuing of the Notice refers to the loss of the hedgerow that lay between the site and the adjacent field and the installation of an area of hardstanding. These, the Council claimed, showed that the development would fail to provide a net increase in biodiversity. It cited BBLP Policy 40, which requires that hedgerows should be retained, unless there are overriding benefits that justify their removal. I was not given evidence to show that the hedgerow and its trees were protected; though I understand the Council's comment that it could not be sure whether it would have merited protection by reason of The Hedgerows Regulations 1997.
56. As I have said, it is difficult for me to be sure as to the nature of the boundary hedgerows before their removal and the nature of the habitat they provided.
57. By the time of the Hearing, the Council's position had changed. Accompanying an application⁴ to regularise the use of the land was a Preliminary Ecological Appraisal ('PEA'). Amongst its conclusions was that the effects of the development could be mitigated through the use of conditions relating to landscape planting and a Biodiversity Enhancement Scheme. This was accepted by the Council in its Officer report and conditions relating to their provision were included within the Statement of Common Ground (SoCG), should the appeal have been allowed.
58. Given the age of the PEA, the Council's position in the SoCG was caveated as being subject to an appropriately updated version being submitted. A revised PEA and a 'Letter of Reliance' from EcoCheck Ltd, dated 3 April 2024, was submitted prior to the Hearing. Its author stated that, in the light of a re-visit to the land in March 2024, the PEA can still be used for this planning appeal without further surveys or updating of these documents. This was not countered by the Council in the Hearing.
59. Read in a straightforward manner, the removal of the hedgerow was contrary to the terms of BBLP Policy 40. However, when read as a whole with other relevant policies from the development plan - BBLP Policies 42S and 43 and GBNP Policy NE2 that seek to protect and enhance biodiversity - I agree with the parties' positions that the effects of the hedgerow removal on biodiversity could be mitigated through the use of conditions of the type proposed in the SoCG. Therefore, I find that although there has undoubtedly been harm to the

⁴ Council reference 21/02185/S73A – prepared by EcoCheck Consultancy Ltd.

area's biodiversity, as recognised in the PEA, as this harm could be addressed and the area's biodiversity enhanced, I shall not refuse planning permission for this reason.

60. There was some debate as to the extent of the hardstanding when discussing this main issue. However, as the matter was mainly debated in relation to the Appellant's Ground (f) case, I shall address it there.

Highway safety

61. The Council told me that, in a previous withdrawn planning application, the Council's Highways Officer made recommendations and comments concerning visibility and junction radii at the junction onto New Road, as well as the provision of a footway there. The Appellant showed, through a Technical Note⁵ that he submitted, that he could achieve these requirements. As such, the Council agreed that were the Ground (a) appeal to be allowed, the matters could be conditioned and the development would accord with BBLP Policy 31.

Conclusion on Ground (a)

62. I find that the development would significantly undermine the Council's approach to planning for the siting of this type of development, and that it causes significant and demonstrable harm to the character and appearance of the area. Whilst I find that the harm caused to biodiversity could be overcome by the use of conditions, as could the provision of a safe access from New Road, neither these nor any other matter outweigh the harm that I have identified. For the reasons that I have set out above, the Ground (a) appeal fails.

Ground (f)

63. An appeal made under Ground (f) is that 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 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. Here, the purpose of the Notice is to remedy the breach of planning control.
64. When he made his appeal, a part of the Appellant's Ground (f) case was that the land had planning permission to be used for the siting of storage containers. As I have said, that permission has lapsed. However, he argued in the Hearing that as a storage use had previously been allowed, such use should be allowed again. Furthermore, he argued that the hardstanding that served the use of the land for the siting of the containers should be allowed to remain.
65. The Council's view is that the storage use that is the subject of the Notice should cease and that any such use would require a planning application to be made and properly assessed. On the question of the hardstanding, its Notice requires reinstatement of the land to its condition shown in the drawing 'Site Layout – As Existing', numbered 942.12 and dated November 2017. An A1 copy of the drawing was submitted to me in the Hearing. That drawing was based on a survey that was undertaken prior to the commencement of the storage container use, approved by planning permission 18/02778/COU.

⁵ Cotswold Transport Planning, Dated July 2021

66. The date of the decision for the earlier approved storage container use was in April 2019. It was made under the terms of a previous iteration of the Bedford Borough Local Plan, dated 2002, and the Council's Core Strategy and Rural Issues Plan, dated 2008, ('CSRI'). That version of the Local Plan, and quite likely the CSRI, have been replaced by the BBLP. I cannot be sure that I have before me all of the relevant policies from the BBLP to be able to fully address the question of allowing a storage use to continue. In any event, making a decision on this, here, would preclude appropriate public participation in the assessment which should be properly made through a planning application.
67. The Council could provide no first-hand evidence to show the extent of hardstanding on the land when the Appellant commenced his activities. In support of its case that the whole of the hardstanding should be removed, it points to the Appellant's answer to questions in a Planning Contravention Notice ('PCN'). His completed PCN, dated 12 May 2020, states that he created an area of hardstanding.
68. For his part, the Appellant stated that an area of hardstanding was created for the storage container use. He said that, although there were fewer containers on the land than were shown in the approved layout drawing for planning permission 18/02778/COU, the area of hardstanding was quite extensive. It covered the area from the southwest boundary to just short of the 'Dilapidated Greenhouse' shown on Drawing 942.12. He said that this was created to provide a hard and stable surface for the containers and to provide access to them. Here, I note that an extensive area of hardstanding was shown on the approved layout, including under the containers.
69. The series of aerial images I have previously referred to, present photographic evidence of the layout of the site on various dates between 2011 and 2022. However, given their small size, they lack sufficient detail for me to reach a conclusion on the extent of the hardstanding, on the balance of probability. The Notice requires the land to be returned the condition shown in Drawing 942.12. As this is dated November 2017, which is to say before works associated with the storage container use were undertaken, I find it to be of limited use in respect of the extent of the hardstanding before the Appellant moved his business to the site.
70. On the basis of the evidence before me, as a matter of fact and degree, I find that there was a fairly extensive area of hardstanding on the land, as claimed by the Appellant. There was no substantive evidence to the contrary and the Appellant's evidence was sufficiently precise and unambiguous.
71. Save for the small, 10m by 15m, area of hardstanding that the Appellant admits creating in the centre of the site, I find that the majority of the hardstanding was constructed, on the balance of probability, as part of the storage container planning permission and 'inherited' by the Appellant. The area that the Appellant created is a very small part of the overall hardstanding and causes no harm to the character and appearance of the area. Furthermore, there is no evidence that it affected biodiversity.
72. The Council claims that the storage container permission was not commenced lawfully, as conditions 4, 5, 7 and 8 were conditions precedent. To be a condition precedent, it must both prohibit the commencement of development until a requirement has been met and go to the heart of the permission. The Officer's report sets out that the development had commenced by the time the

report was written. From the evidence, some aspect of the approved development probably occurred between 30 October 2018, when the applicant stated in the application form that the development had not commenced, and early April 2019 when the report would most likely have been written. Given that the development had commenced, and the wording of those conditions allowed the use to continue for various periods of time before certain works or schemes were undertaken, these were not conditions precedent. There is nothing in the evidence to show that, on the balance of probability, the storage container use carried out was not that which was permitted. That certain conditions might not have been complied with would have been a matter for the Council to address at the appropriate time.

73. For the above reasons, I will correct the Notice by omitting reference to the Drawing 942.12 in requirement v). I will, however, retain the requirement to re-instate the land, as there are items such as the interlocking block walls, buildings and plant that need to be removed.

74. To the extent set out above, the Ground (f) succeeds.

Ground (g)

75. An appeal made under Ground (g) is that the period for compliance with the requirements of the Notice falls short of what should reasonably be allowed.

76. The Appellant's case is that the relocation of this established business would take considerably longer than the two- and three-month periods given as the times for compliance. It has to be borne in mind, he says, that the business employs 10 people and that finding a suitably located site, gaining planning permission and setting the business up there would require a period for compliance of around 20 months.

77. The Council, for its part, did not disagree with the time frames put forward by the Appellant for such matters as gaining planning permission. Nonetheless, given the harm that arises from the use, and, in this regard, it cited the highway safety issue in the Hearing, it felt that the periods for compliance were reasonable. The view of the third-parties present was that 20 months was "preposterous".

78. Assessing what is reasonable requires balancing the public interest of compliance with the Notice with the private interest relating to the development. My assessment has to be limited to the use set out in the Notice, I cannot take into account later operations on the land.

79. I have found that the use should not be located here and it undermines the Council's strategic policy aims and that it causes harm to the character and appearance of the area. These are considerations that carry significant weight.

80. Agreeing to an extension of the magnitude proposed by the Appellant would call into question whether it was expedient for the LPA to issue the Notice in the first place. However, the protection of the 10 jobs is a matter to which I give substantial weight.

81. On balance, I shall vary the Notice by extending the period for compliance to 8 months for requirements i)- iii) and 9 months for requirements iv) and v). This will provide additional time for the Appellant to make alternative arrangements.

Not only would this be the case, but it would allow the Appellant to make an application for the storage use, should he wish to.

82. I realise that this will come as a disappointment to the area's residents. However, I reiterate that this only relates to the use that is the subject of the Notice. As the crushing activities, which residents undoubtedly find to have an extremely adverse effect on their living conditions by way of noise and disturbance, are not included within the terms of the Notice, they are not permitted in any way by this decision.

83. For the above reasons, the Ground (g) appeal succeeds.

Conclusion

84. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with 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.

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANT:

A Llaveshi	Appellant
Francis Caldwell	Agent - Aragon Land and Planning

FOR BEDFORD BOROUGH COUNCIL:

Ian Johnson	Manager – Heritage and Planning Compliance
Alastair Wren	Senior Planning Officer
Bryn Hudson	Environmental Health Officer
Lee Ganderton	Planning Officer

THIRD PARTY

Graham Cross	Resident of Great Barford
Bill Jones	Resident of Great Barford

DOCUMENTS SUBMITTED AT/SHORTLY AFTER THE HEARING

- Council reference 16/01502/MAF - Planning Application Form, Drawings, Officer Report and Decision Notice
- Council reference 18/02778/COU - Planning Application Form, Drawings, Officer Report and Decision Notice
- Council reference 10/00206/FUL - Planning Application Form, Drawings, Officer Report and Decision Notice
- Council reference 13/01634/MAF - Drawings and Decision Notice
- Council reference 21/02185/S73A - Drawings, Officer Report, Noise Impact Assessment and Decision Notice
- PCN Response signed and dated - Mr Llaveshi, 12 May 2020
- A1 copy of Drawing 942.12, dated November 2017
- Great Barford Neighbourhood Plan
- Series of 7 aerial images of the site dated between 1 October 2011 and 20 April 2022