



Appeal Decision

Inquiry held on 1, 2 and 14 May 2024

Site visit made on 1 May 2024

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/N0410/C/23/3335891

**Land on the south side of Twin Trees Farm, Rowley Lane, Wexham,
Buckinghamshire SL3 6PB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The appeal is made by Mr Marco D'Auria against an enforcement notice (EN) issued by Buckinghamshire Council.
- The notice was issued on 6 December 2023.
- The breach of planning control as alleged in the notice is: A material change of use of the Land to a mixed use (sui generis) comprising of:
 - agriculture, and;
 - vehicle repairs,
 - vehicle breaking,
 - vehicle maintenance,
 - external storage and storage within buildings (including but not limited to vehicles, car parts, wood, and floor screed related products),
 - wood workshop,
 - storage and distribution of building materials,
 - storage and distribution of ice cream and associated products,
 - the stationing of a mobile home for residential occupation, and,
 - residential (the Unauthorised Use)
 - and the carrying out of operational development to facilitate the unauthorised material change of use to residential, comprising the erection of a log cabin for residential occupation.
- The requirements of the notice are:
 1. Cease the use of the Land for vehicle repairs;
 2. Remove all vehicles, items, machinery, car parts and equipment bought onto the Land in connection with the unauthorised vehicle repairs use, from the Land;
 3. Cease the use of the Land for vehicle breaking;
 4. Remove all vehicles, items, machinery, car parts and equipment bought onto the Land in connection with the unauthorised vehicle breaking use, from the Land;
 5. Cease the use of the Land for vehicle maintenance;
 6. Remove all vehicles, items, machinery, car parts and equipment bought onto the Land in connection with the unauthorised vehicle maintenance use, from the Land;
 7. Cease the use of the Land and buildings for storage purposes;
 8. Remove all items bought onto the Land in connection with the unauthorised storage use (including but not limited to vehicles, car parts, wood, and floor screed related products), from the Land and buildings;
 9. Cease the use of the Land as a wood workshop;
 10. Remove all wood, items, machinery and equipment bought onto the Land in connection with the unauthorised wood workshop use, from the Land;
 11. Cease the use of the Land for the storage and distribution of building materials;
 12. Remove all building materials, vehicles, items, machinery and equipment bought onto the Land in connection with the storage and distribution of building materials, from the Land;

13. Cease the use of the Land for the storage and distribution of ice cream and associated products;
 14. Remove all vehicles, items, machinery and equipment bought onto the Land in connection with the storage and distribution of ice cream and associated products, from the Land;
 15. Cease the use of the Land for the stationing of a mobile home for residential occupation;
 16. Disconnect and permanently remove the mobile home and incidental works, including, but not limited to, the shed, all hardstanding, surrounding skirts/plinths, steps, utility connections and pipes and supports (shown in the approximate position labelled on the plan attached at Appendix A), from the Land;
 17. Cease the use of the Land for residential purposes;
 18. Disconnect and demolish/remove the log cabin and all facilitative ground works, including but not limited to, hardstanding, surrounding skirts/plinths, steps, utility connections and pipes and supports (shown in the approximate position labelled on the plan attached at Appendix A), from the Land;
 19. Remove all residential paraphernalia, vehicles, items and equipment bought onto the Land in connection with the unauthorised residential use, from the Land;
 20. Reinstate the Land to its condition prior to the unauthorised development taking place;
 21. Remove all material and debris from the Land resulting from complying with Steps 1 to 20 of this Notice.
- The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the 1990 Act.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Applications for costs

1. Applications for costs were made by both main parties. These applications for costs will be the subject of separate decisions.

Procedural Matters and Background

2. The Inquiry commenced on 1 May 2024 and was programmed to sit for 2 days. However, an additional sitting day was required to hear all the evidence, and this was held virtually on 14 May 2024. I undertook an accompanied site visit on the 1 May 2024. All the oral evidence given to the Inquiry was given by sworn affirmation.
3. The written and oral evidence before me refers to the planning merits of the development. However, there is no ground (a) appeal and no deemed planning application. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability. The appellant's evidence does not need to be corroborated by independent evidence for it to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
4. The appeal site formed part of the wider Twin Trees Farm until 2013 when it was bought by the appellant from his father. His father still owns the dwelling that fronts onto Rowley Lane and the remaining part of Twin Trees Farm that is between Rowley Lane and the appeal site. Twin Trees Farm was purchased by the appellant's father in 1985. Access is from Rowley Lane adjacent to that

dwelling. Part of the land owned by the appellant's father was being used to park/store vehicles on at the time of my site visit. There is no evidence before me to indicate that the use of that land is connected or associated with the use of the appeal site.

5. The evidence before me refers to the units and parts of the site with various citations. Therefore, for the purposes of clarity I have referred to the units and parts of the land with reference to the annotations as shown on the plan at page 281 of the Core Documents (281 CD Plan).
6. At the Inquiry I requested that both parties submit a list of the uses that they agreed/disagreed were occurring on the site at the time the EN was issued. Moreover, I also requested that both parties submit updated plan/s marked up with the planning unit/s clearly shown on it that they believe was/were present on the appeal site at the time immediately prior to the current notice being issued. Moreover, to accompany that plan/s a statement providing the reasoning behind their assessment was also requested. I acknowledge that the Council considers that the appellant's evidence on the planning unit/units has introduced late evidence. The plan produced by the appellant included areas annotated as P, Q and R (APP PU Plan). Those areas were not annotated on the 281 CD Plan.
7. However, the use of the containers (P), whether they were on the site at the date of the notice and the use of the access and parking areas (Q) was covered during the appellant's oral evidence at the Inquiry. The structure annotated as R was not covered in the oral evidence, but it is clearly apparent that it has been in a bad state of repair and disused for some time. Moreover, 281 CD Plan indicates 'uses at the time of the EN' whereas the plan submitted in response to my request indicates 'the planning units at the time of the EN'. Additionally, the Council had the chance to respond to the appellant's evidence on the virtual day of the Inquiry and in closing submissions. As such, I consider that the evidence provided is relevant, necessary for my decision and that procedurally there was no unfairness in accepting that evidence.

The ground (b) appeal

8. To succeed on this ground, the onus is upon the appellant to show on the balance of probabilities that the allegation has not occurred as a matter of fact. The appeal site contains several buildings, a mobile home, a number of containers and an undeveloped area on which several animals were grazing at the time of my site visit. Under this ground of appeal the appellant's primary submission is that the whole of the appeal site was not, at the date the EN was issued, in the mixed use alleged in that EN. This is because he considers that the Council has incorrectly identified the whole appeal site as one planning unit (PU).
9. There is now no dispute that vehicle breaking was not taking place on the appeal site immediately prior to the EN being issued. Moreover, the submitted list of uses that the parties agree were taking place on the appeal site at that time comprise agriculture, storage and distribution with wholesale sales, storage, vehicular repairs, carpenter's workshop and residential. The appellant also considers that circulation and service areas ought to be added to that list. Nevertheless, the Council maintains that the whole site is one PU and that a mixed use was occurring at the time the EN was issued.

10. The PU is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of a change of use. Under this ground of appeal, the materiality of the change of use is not to be considered. However, the concept of the PU is useful in assessing whether the use of the site comprises a composite/mixed use covering the whole appeal site. The leading case is the *Burdle* judgment¹ where Bridge J suggested three criteria for determining the appropriate PU.
11. These are *'first, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.... But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land. Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.'*
12. Bridge J goes on to state that *'to decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree'*.
13. In the *Johnston* judgment² it is stated that *'the identification of the planning unit is entirely Judge-made law and, as is to be expected, the rules which have been laid down for guidance are generally not rigid rules but guidelines or pointers'*. That case involved forty-four garages built in a courtyard and some of those garages were let to individual tenants to garage individual cars. In some cases, individual or groups of garages had been used for the repair of vehicles as opposed simply to the garaging of vehicles. The Local Planning Authority issued five enforcement notices relating to certain garages/groups of garages. Widgery LJ stated that the Secretary of State had not made an error in determining that each garage or group of garages should be considered as a separate planning unit and that what is the proper planning unit is a matter of fact and degree. He also made obiter comments that *'In the course of argument today the premises in question were likened to a purpose-built block of flats I would have thought that in almost every case of a block of flats, the flats being let to separate and different tenants, the planning unit would be the flat in question'*.
14. The *Church Commissioners* judgment³ related to a case where the question was whether planning permission would be required to change the use of a single retail unit within the Gateshead Metro Centre to use as a restaurant. The landowners argued that the whole of the Metro Centre was the appropriate planning unit, in that it was an area of land in one occupation (that of the landlord) and comprised in a single building. Hence, a change of use of any part of the Metro Centre was not a change of use of the planning unit, but the

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

² *Johnston & Johnston v SSE & Haringey LBC* [1974] 28 P&CR 424

³ *Church Commissioners v SSE & Gateshead MBC* [1995] 71 P. & C.R. 73; 2 P.L.R. 99

adjustment of ancillary uses. The local planning authority maintained that each of the units in separate occupation within the Metro Centre (which had some 300 different units) was the appropriate planning unit. This judgment included a review of the *Burdle* and *Johnston* judgments.

15. The judgment states that '*As it seems to me, it is possible, and indeed was the position in the present case, for there to be two types of occupation and for those two types of occupation to be of relevance depending on the point which falls to be considered with regard to the separate occupants with their two different forms of occupancy.*' It also states that '*In the present case, it seems to me that the Secretary of State was entirely justified, as a matter of law, to start with Bridge J's useful working rule, to take the Unit B12 and to find as matter of fact and degree that Unit B12 was the appropriate planning unit. That was essentially a matter for the Secretary of State to determine.*' I acknowledge that this case related to a large shopping complex in an urban area which differs from the circumstances of this appeal site. Nevertheless, I do not believe that those differences undermine the matters of principle which can be derived from the findings set out in that judgment.
16. A number of other judgments were also cited at the Inquiry, and these comprised *Gregory*⁴, *Ralls*⁵ and *KP JR*⁶. *Gregory* related to two appeals, *Gregory* and *Rawlins*, and each appeal was made by groups of travelling showmen and their families who had placed their caravans and equipment on former agricultural land. Both sites had been in split into individual plots that had been sold off, but the enforcement notices covered each entire site as a whole. The judgment states that '*these two cases have unusual if not exceptional features and characteristics in common which justify the less usual procedure adopted, but which do not appear to have arisen before and are therefore unlikely to arise frequently.*' The planning unit was held to be the entire site in each of those two cases.
17. *KP JR* related to a certificate of lawfulness of existing use of development certifying the use of a pontoon at Kew Marine for the mooring of boats for residential and private leisure purposes. It was held that the Council was entitled to conclude that the mooring and pontoon area as a whole was the appropriate planning unit. The Council had stated that individual boats can move their positions and are free to come and go and share the common facilities offered by the pontoon when in situ.
18. *Ralls* related to appeals against enforcement notices alleging the use of land for the holding of markets. The notices referred to five parcels of land some contiguous with each other and two were separate. The parcels of land had been within the same ownership but at the time the notice was served some had been sold to different owners. In that case it was held that the planning unit was the parcels of land together as a whole due to the co-ordinated pattern of use of the land for markets.
19. In relation to the appeal site the appellant is the owner of the whole site and in that sense the appellant is the occupier of the whole appeal site. However, there is not a single main purpose of his occupation of the whole appeal site .

⁴ *Gregory v Secretary of State for the Environment* [1990] 60 P&CR 413

⁵ *Ralls v Secretary of State for the Environment* [1998] J.P.L 444

⁶ *KP JR Management Company Limited v London Borough of Richmond upon Thames* [2018] EWHC 84 (Admin)

As such, taking into account the cited judgments, it is matter of fact and degree as to whether the appeal site forms one planning unit in a composite/mixed use or there is more than one planning unit within it.

20. The appellant states that he lives in the log cabin (F) and has done since it was erected in 2019. Prior to that he has stated that he lived in the mobile home (E) from 2014 to 2019. Since 2019 the mobile home has been occupied by people associated with the ice cream business and most recently by a gentleman called Muhammad who is seeking asylum in this country. The occupiers of the mobile home have not paid rent and Muhammad is not employed by and does not have any association with any of the businesses on the appeal site. The appellant stated at the Inquiry that he has paid for all the utilities consumed by the occupiers of the mobile home. As such, even though the mobile home is physically separated by fencing/gate from the rest of the site it is functionally linked to the appellant's occupation of the site.
21. The appellant stores vehicles on the appeal site that he repairs or has repaired and then he sells them via various internet-based applications/websites. He stated at the Inquiry that he aims to sell 2 vehicles a month mainly in the winter to supplement his income. As such, given the small amount of vehicle sales I consider that those sales are ancillary to the primary use of storage of vehicles. It appears that those vehicles are and have been stored in the area annotated as N on the 281 CD Plan. Nevertheless, within the letter dated 28 July 2023 submitted from Birketts (the Birketts letter) it is stated '*you park those vehicles across the site in no particular area. This use is unrelated to any of the other businesses on site and does not encroach into the areas which are exclusively occupied by them*'. It also appears from my observations and the evidence before me that the area annotated as N is in reality a larger area extending to the gates that provide access to the area between B, C, D, E and F (the gates) bounded by the hedge and the access drive. On the 281 CD Plan the wording 'ACCESS TO CABIN' is written across part of that larger area. Thereon, when I cite area N I am referring to this larger area rather than just that shown on the 281 CD Plan. The appellant also explained in his oral evidence that he manoeuvres cars/vehicles between area N, the area adjacent to unit C/C1 and the area in front of F (before the fence/gates, recently erected, were in place) according to when he needed/needs them.
22. The appellant and his family run an ice cream business from unit C/C1 which comprises the operation of several ice cream vans, the storage of those vans and the products sold from the vans and wholesale sales of ice cream products. I observed several ice cream vans on the site – some clearly in operational order whereas some did not appear to be operational due to their state of repair. At the time of my visit the vans were located in the parts of unit C adjoining unit D and in the area between units B, C, D and E. Within C and C1 there was also a retail counter and various ice cream and related products being stored, some in a large cold store/freezer. There was also several chest freezers and other ice cream machines and mobile storage boxes. Within unit C, the part with a roller shutter facing the access drive, there was a relatively large structure that I was told at the Inquiry was a cold room/freezer before the installation of the large cold store/freezer. I was also told by the third parties that before the alleged breach of planning control began ice cream vans were parked on the site. It is therefore apparent that at the time the notice was issued and for some time previously an ice cream business has been

operated by the appellant and his family from the site. This is a primary use of part of the appeal site.

23. It may be convenient for the appellant to live close to the ice cream business for security and emergency purposes but there is little evidence before me to indicate that in that respect there is a functional link to his residential occupation of the log cabin. Nonetheless, it appears that the appellant and his family regularly utilise the area between units B, C, D, E and F to park/store vehicles related to the ice cream business, the residential use and/or the vehicle storage use. Moreover, the appellant appears to have regularly parked his own vehicles associated with the residential use within area N adjacent to the hedge and close to the gates. As a result, even though there are boundary treatments between the ice cream business, the log cabin and area N there is and has been functional/physical intermingling in relation to vehicles parked and stored in the area between those units and in area N. Additionally, the domestic waste from the log cabin is disposed of via the ice cream business's waste bin.
24. Units B are shown as being empty on 281 CD Plan and the appellant's statement of case indicates that they had been cleared out prior to the issuing of the EN and were empty at the date of issue. I noted that the smaller unit annotated as B on that plan now appears to be utilised as a domestic garage. The appellant's evidence indicates that it is now used in connection with the log cabin. However, at the relevant date these units were empty. The structure annotated on the APP PU Plan as R, as stated above, has been in a bad state of repair and disused for some time. Consequently, at the time the notice was issued they were unused, but they were functionally linked to the appellant's occupation of the appeal site. Furthermore, the appellant's statement of case indicates that units B have historically been used in connection with the ice cream business.
25. The appellant states that the storage containers close to A1 are used for general storage by him. I observed that one of the containers was being used for general storage purposes at the time of my site visit. The items stored at the time of my visit appeared to largely relate to the ice cream business and domestic items and therefore the storage use is more likely than not ancillary to the primary uses of the parts of the site occupied by the appellant. The storage use of these containers can reasonably be treated as being functionally linked to the appellant's occupation of the land.
26. Area M is shown on the CD 281 Plan as a triangular area but from my own observations, the drone photographs and the oral evidence it is clearly apparent that in reality this area extends along the southern boundary of the site between A1 and L2. The written and oral evidence before me is that vehicles are stored in this area by a vehicle recovery business. That business does not have a lease to use that area of land and they do not pay any rent for their use of it. It is stated that the owners of the business have a verbal agreement with the appellant that they can use that part of the site to store their vehicles on, in return for them recovering the appellant's vehicles as and when required, be that ones he intends to store within area N or ice cream vans. If they recover vehicles for the appellant they unload them into area N. This is a financial arrangement, but it can also be reasonably be regarded as a functional link between the occupation of area M and the appellant's occupation of the land. Additionally, the informal agreement covering the occupation of

area M means that the vehicle recovery firm has little control over area M. There appears to be very little to stop the appellant from utilising area M to store his own vehicles if area N becomes full. As such, I consider that as a matter of fact and degree that area M is functionally linked to the appellant's occupation of the appeal site.

27. The appellant indicates that Unit A1 and area A were in agricultural use at the date the notice was issued. I observed that area A has several animals grazing on it and that Unit A1 houses different pieces of agricultural machinery and there is hay stored within it. I acknowledge that the third parties stated that the animals have been introduced recently onto area A. In addition, in the drone photographs dated April 2023⁷ there is a van/truck parked within area A next to a small boat. There are numerous items within the rear part of the van/truck. The appellant stated during cross examination that this material may have included scrap material/metal but that it would have been associated with the agricultural use and the family's other agricultural land. Nevertheless, there is little evidence to contradict the appellant's evidence that this part of the appeal site has been/is in agricultural use.
28. At the time the notice was issued there was a metal interlinking fence along the boundary of area A with the access drive. This has been recently replaced as the larger animals could escape through the previous fencing according to the appellant's evidence. When the animals escaped, they were found within the remaining parts of the appeal site. Again, whilst it may be convenient for the appellant to live close to the agricultural use for security and emergency purposes there is little before me to indicate that the residential and agricultural uses are functionally linked in that respect. However, it is also apparent that the agricultural use of A1 and A is functionally linked to the agricultural use of the adjoining undeveloped land owned by the appellant's father. Physically the animals escaping into the remainder of the site is an unplanned and unexpected event therefore I do not consider that this factor indicates that the agricultural use is physically linked to the remainder of the site.
29. Units D, G, H, J, K and L are all rented out to various lessees. Copies of the leases for all the units except for unit J, the carpenter's workshop, have been submitted. In his oral evidence, the appellant indicated that he composed the lease documents from ones he downloaded off the internet for the lessees and him to sign. The leases, before me, date from 2021, 2022 and 2023 prior to the EN being issued and the lessees, or their representatives, occupying units D, K and L gave oral evidence at the Inquiry. I note that the leases state that the appellant has the right to move the lessees from one part of the site to another but there is no evidence before me to indicate that this has happened. At the time the notice was issued there is little to indicate that the units had any external signage on them.
30. Unit L has been occupied since May 2022 by a builder's merchant and the lease covers the use of L and L1. Nevertheless, L2 is also used to store building materials in association with that builder's merchant and the oral evidence stated that a verbal agreement allowed the use of that part of the site to be added to the lease for an increase in rent from July 2022. The drone photographs from April 2023 indicate that L2 appears to be in that use at that

⁷ Core Documents pages 64 and 65

time. There is no boundary treatment across the drive restricting access to the builder's merchants. Nonetheless, it appears that there was heras fencing demarking part of the extent of L1 and L2 at the time the drone photographs were taken. Some of that heras fencing between L2 and M has recently been replaced. A portacabin has recently been moved onto the site, after the EN was issued, and it is located near to unit K and is used as the trade counter. A portable toilet provided by the appellant is located adjacent to the portacabin.

31. The heras fencing between units L and C is only secured with string/rope which can easily be removed to allow access and the appellant has stated that he has walked through there to go and see the occupier of unit L. The occupier of the unit stated that he does not use that route and that he had not seen anybody else using it. Moreover, even though there is a roller shutter on the end of unit C that would allow access into areas L1 and L2 I heard that it has been broken for some time and the occupier stated that he had not seen it being used. All of the utilities for this unit are included in the rent. The occupier uses a skip to dispose of any waste from the builders' merchants.
32. Based on the evidence before me, even though the appellant has walked between the areas adjacent to units C and L by moving the heras fencing it appears that this is an occasional occurrence. Moreover, the increase in the area occupied by the builder's merchant appears to have occurred shortly after their lease began and has remained largely unaltered since that time. I consider that the builder's merchant can be treated as being a physically separate and distinct area. Utilities, such as water, electricity and toilet facilities are provided by the appellant as part of the rental payment. Nonetheless, the functional links between the builder's merchant and the appellant are those that can be treated as being reasonably expected between a landlord and tenant. Therefore, in my judgment the builder's merchant is functionally separate to the appellant's occupation of the site.
33. Unit K has been occupied by a car repair and body shop since January 2022 and it is clearly apparent that this unit has been substantially extended since the drone photographs were taken. The lease refers to a Schedule A and plan but those parts of the lease are not before me. There are wooden walls separating the unit from the adjoining units. I was told at the Inquiry that there are similar wooden walls between units G, H and J as access to those units was not available at the site visit. Those walls appear to provide little noise insulation between the units. Yet, they seem to be fixed in place and provide a physical partition between the units.
34. Units G and H are both used for storage by different occupiers and Unit J is the carpenter's workshop. Various wood working machinery was visible through a window in that unit. The functional links between the occupiers of units G, H, J and K and the appellant appear to be ones that can be treated as being reasonably expected between a landlord and tenant. There does not appear to be any functional links between the occupiers of each of these units. Furthermore, within the leases of units G and K the occupiers have the exclusive use of a parking area outside of their respective units. I acknowledge there is little to indicate the size of those parking areas within the leases or on the ground. There is no differentiation in materials between the parking areas and the access drive and no lining out or edging/kerbs. Moreover, the parking areas as indicated on CD 281 Plan are restricted in size. As a result, it is more likely than not that in reality customers and delivery drivers, for units G, H, J

and K, park on any available space whether that is outside another of those units or within the access drive close to those units. However, in my judgement even if the parking areas are in reality not exclusively utilised each unit is physically separated from the others and occupied for a different and unrelated purpose. Parts of the overall building have been extended but there appears to be little fluidity in the occupation of each unit. Moreover, there is little to indicate that the parking and vehicle storage associated with the appellant's occupation of the site intermingles with the parking for these units.

35. Unit D is occupied by a car repairer and a small part of Unit C has been utilised to serve as a customer waiting area. Access to the customer waiting area is from Unit D and there are wooden walls partitioning that area and Unit D from Unit C. Unit D has exclusive use of a parking area in front of Unit D and another area opposite unit B adjoining the access drive. The latter is marked on an aerial photograph attached to the lease. However, it is not clear if the area opposite unit B is within the land owned by the appellant taking into account the site ownership boundaries relating to title number BM 378956⁸. Furthermore, it appears that the occupiers of this unit may have been disposing of some of their waste in the commercial bin associated with the ice cream business. Nonetheless, the functional links between the occupiers of this unit and the appellant appear to be ones that can be treated as being reasonably expected between a landlord and tenant.
36. As stated above, there is more than one type of occupation on the appeal site and I consider that based on the evidence before me that there is more than one planning unit within the appeal site. I acknowledge that in the *Gregory, Ralls* and *KP JR* judgments the entire sites, covering several ownerships and/or occupancies, were as a matter of fact and degree found to be the planning units.
37. Nevertheless, in this case the development appears to have been developed on a piecemeal basis rather than being carried through as a concerted whole. The access drive provides access to all the parts of the appeal site but it also provides access to the adjacent land owned by the appellant's father. There does not appear to be a co-ordinated pattern of use of the entire appeal site. Whilst the appellant provides utilities for each tenant in return for rent/payment each of them occupies their own unit. Units D (and part of C), G, H, J, K and L are occupied by several tenants in physically separate areas that are occupied for substantially different and unrelated purposes. As such, taking into account *Burdle, Church Commissioners* and *Johnston* and the evidence before me each of those units appears to be, as a matter of fact and degree, a separate planning unit.
38. Moreover, for the reasons given above I consider that as a matter of fact and degree the physical and functional links between units B, the parts of unit C occupied by the ice cream business, the residential use (E and F), the disused building (R), vehicle storage (areas M and N) and the storage containers (P) results in those areas forming one planning unit in a mixed use of residential, storage and distribution with wholesale sales (the ice cream business) and vehicle storage. Area A together with unit A1 as a matter of fact and degree appears to form another separate planning unit, or part of a planning unit (with the adjoining undeveloped land in the father's ownership), in agricultural use.

⁸ Core Document page 57

Conclusion

39. Having regard to all of the evidence before me I therefore find, on the balance of probabilities, that the alleged mixed use of the appeal site has not occurred as a matter of fact. This is because the appeal site, prior to and on the date the EN was issued, was more likely than not split into a number of planning units.
40. The description of the breach of planning control in the enforcement notice is therefore incorrect since there are several planning units with different uses. I have considered whether I could correct the allegation and the plan to refer to the separate planning units and their uses through section 176 (1) of the 1990 Act. That section states that I can correct or vary the terms of the EN if I am satisfied that it will not cause injustice to the appellant or the local planning authority. However, I consider that the required corrections to the notice and plan would significantly alter the substance of the EN and it is highly likely that the appellant may have made differing grounds of appeal in relation to those planning units. Although other parties are not expressly referred to in section 176 (1) in my experience, in the interests of natural justice, they are taken into account in considering whether or not to correct or vary a notice. In this case, the tenants of the units have not appealed against the EN and some of them appeared at the Inquiry in support of the appellant. Nevertheless, they may have submitted grounds of appeal, including ground (a) appeals, if the allegation/s was/were clearly directed at the use of their unit therefore, injustice would potentially be caused to them.
41. Moreover, I have considered reducing the area enforced against to just the land that forms the planning unit in a mixed use of residential, storage and distribution with wholesale sales (the ice cream business) and vehicle storage. Nonetheless, I have concluded that it is not possible to do that since it is not clear whether the containers and the items within them would be affected by the requirements of the EN. There are no specific requirements in respect of the removal of those containers and I do not consider that it would be clear to a recipient of the notice that the items stored within the containers would be affected by those requirements. To vary the requirements to require the removal of the containers and the items within them would make those requirements more onerous to the appellant and would therefore cause injustice to him. Moreover, the grounds of appeal with regards to that mixed use may have been different to that before me. Injustice would therefore be caused to the appellant.
42. The matters alleged in the EN have not occurred and the appeal on ground (b) therefore succeeds. Since the notice cannot be corrected without injustice, it must be quashed. In these circumstances the appeal under ground (d) does not fall to be considered.

Formal Decision

43. The appeal is allowed and the enforcement notice is quashed.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Deborah Sharples	Advocate; instructed by Mr M D'Auria
Mr Marco D'Auria	Appellant
Mr Thahir Hanif	Factual witness
Mr Manpreet Singh Khokhar	Factual witness
Mr Muhammad Nadeem	Factual Witness
Mr Sanjiv Kumar Sehjal	Factual witness

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark O'Brien O'Reilly	Counsel, instructed by Ms R Steele, Buckinghamshire Council (BC)
Mrs Selina Islam	Senior Planning Enforcement Officer, BC

INTERESTED PARTIES:

Linda Eade	Neighbour and Parish Councillor
Alison Vincent	Neighbour

DOCUMENTS

DOC 1: Photograph February 2024
DOC 2: Planning Contravention Notice Response October 2023
DOC 3: Colour copies of photographs from the Core Documents
DOC 4: Birketts Letter dated 28 July 2023
DOC 5: Joint Note on List of Uses
DOC 6: Planning Unit Statement and Plan – Appellant
DOC 7: Planning Unit Statement – Council
DOC 8: *Gregory* judgment
DOC 9: *Caldwell v Secretary of State for Levelling up, Housing and Communities* [2023] EWHC 2053 (Admin), [2024] EWCA Civ 467
DOC10: *Ralls* judgment
DOC 11: *KP JR* judgment