



Appeal Decisions

Site visit made on 24 June 2024

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

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal A Ref: APP/Z1510/C/24/3338938

Land known as 4 Tey Grove, Elm Lane, Feering, Essex CO5 9FS

- 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 Stuart Banning against an enforcement notice (EN) issued by Braintree District Council.
- The EN was issued on 24 January 2024.
- The breach of planning control as alleged in the EN is without planning permission, the material change of use of the land to a mixed use for the storage and maintenance of vehicles including an associated office/studio together with the construction of 3 no. buildings and a shed, as described, to facilitate the unauthorised mixed use:
 - Building 1: measuring approximately 3480mm in height, 6000mm in width and 6000mm depth. Its main use being to store vehicles.
 - Building 2: measuring approximately 4487mm in height, 6080mm in width and 11080mm in depth. Its main use being as a workshop to store and maintain motor vehicles.
 - Building 3: measuring approximately 4735mm in height, 6000mm in width and 4000mm in depth, being used as an ancillary office and studio. Along with an associated shed consisting of a floor space of measuring approximately 2.6 square metres and being used to store tools/equipment.
- The requirements of the EN are:
 1. Cease using the land for storage and maintenance of vehicles.
 2. Demolish and remove from the land all buildings which facilitate the unauthorised mixed use. Namely, building 1, building 2 and building 3 along with the associated shed.
 3. Remove and dispose of all waste and materials which result from the above steps.
- The period for compliance with the requirements is: six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the 1990 Act.

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

Appeal B Ref: APP/Z1510/W/23/3336054

4 Tey Grove, Feering, CO5 9FS

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr Stuart Banning against the decision of Braintree District Council.
- The application Ref is 22/01555/FUL.
- The development proposed, as originally described, is retention of existing garaging, store and home office.

Summary Decision: Planning permission is granted subject to conditions in the terms set out below in the Formal Decision.

Preliminary Matters

1. In relation to Appeal B, I saw that four buildings have been constructed and appear to match that shown on the submitted drawings. The planning application form confirms that the development has been completed. Part E of the appeal form confirms that the description of development has not changed from that stated on the planning application form. Nevertheless, a different wording was entered on the Council's decision notice. Based on the evidence before me, my observations and my findings below in respect of the ground (b) appeal (Appeal A) I consider that an accurate description of the development is *'Two detached garages, an office/studio and a shed, with associated hardstanding'*. Even though the appellant owns 4 Tey Grove he lives elsewhere, and the use of the appeal site is currently not associated with 4 Tey Grove. Therefore, the reference to a home office is inaccurate. In addition, I have omitted the reference to *'retention of'* as it is not an act of development under section 55 of the 1990 Act. As such, I have determined Appeal B on this basis and I have used that description within my formal decision.
2. I note that the appellant considers that Mr and Mrs Morgan the owners of Great Domsey Farmhouse were incorrectly issued with the EN. However, that matter is not within my jurisdiction in determining Appeal A.
3. Initially, the procedure proposed to determine Appeal A was an Inquiry as it appeared that evidence would need to be heard under oath/affirmation. However, following the submission of an agreed Statement of Common Ground (SoCG) by the main parties it was apparent that no evidence would need to be given on oath/affirmation. As such, the appropriate procedure is written representations and all parties have been notified of the change in procedure in respect of Appeal A.

Appeal A

The ground (b) appeal

4. 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 had formed part of a larger site. Planning permission was granted on that larger site for *'the change of use of land to Class B1 and related ancillary uses'*. There is no dispute that the lawful use of the appeal site now falls within Class E(g), the former Class B1, of the Town and Country Planning (Use Classes) Order 1987 (the UCO). There is also no dispute that a material change of use to a mixed use has occurred as a matter of fact.
5. The dispute relates to the mix of uses alleged within the description of the breach of planning control. The description within the EN relates to a *'mixed use for the storage and maintenance of vehicles including an associated office/studio'*. However, the appellant maintains that buildings 1 and 2 are used for the storage of vehicles and personal chattels and that any vehicle maintenance consists only of the monitoring, preparation and topping up of fluids to allow the vehicles to run when necessary to move them. There is little evidence before me to contradict that. In addition, I observed at my site visit that the number and type of tools, relating to vehicle maintenance, visible within the buildings support the appellant's evidence in this matter. As such, any vehicles repairs/maintenance is, more likely than not, ancillary to a primary use of vehicle storage. The appellant also states that building 3 is

used as an office for the appellant's property development company rather than an office associated with the vehicle storage.

6. The Council has not contradicted the appellant's evidence and has suggested that the description of the allegation can be corrected in relation to the mix of uses that has occurred. It is apparent that the use of the appeal site consists of 2 primary uses, the storage of vehicles and personal chattels and an office. Those uses are not incidental or ancillary to each other, the appellant carries out both of those uses and there is no dispute that the appeal site forms one planning unit in a mixed use. Therefore, there is one planning unit in a mixed use yet the mix of uses that has occurred is not as described in the EN. I therefore conclude that the alleged breach of planning control set out in the EN is incorrect. The appeal succeeds on ground (b) to that extent.
7. In my judgement the description of the alleged breach of planning control should be corrected by deleting the wording within section 3 of the EN and substituting it with *'Without planning permission, the material change of use of the land to a mixed use for the storage of vehicles and personal chattels and as an office; together with the construction of 3 No. buildings and a shed, as described, to facilitate the unauthorised mixed use: Building 1: measuring approximately 3480mm in height, 6000mm in width and 6000mm depth. Its main use being to store vehicles and personal chattels. Building 2: measuring approximately 4487mm in height, 6080mm in width and 11080mm in depth. Its main use being to store vehicles and personal chattels. Building 3: measuring approximately 4735mm in height, 6000mm in width and 4000mm in depth. Its main use being as an office. Along with an associated shed consisting of a floor space of measuring approximately 2.6 square metres and being used to store personal chattels.'* To ensure consistency with the corrected allegation I intend to delete the wording *'using the land for storage and maintenance of vehicles'* within requirement 1 and substitute it with *'the mixed use'*.
8. The description of the uses that had been occurring on the site prior to the EN being issued was incorrect in relation to what constituted a primary use/s and ancillary use/s. However, the components of the uses that had occurred has not altered. Both main parties' grounds of appeal have been made on the basis of the use/s that have occurred on the site. Moreover, even though requirement 1 did not cite the cessation of the office use that office use was cited as being associated with the storage and maintenance of vehicles use and therefore would have had to cease as part of that requirement. Therefore, the varied requirement 1 would not be more onerous to the appellant. I consider that no injustice would be caused by correcting and varying the EN in these respects.

The ground (c) appeal

9. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the onus is on the appellant to show on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. The appellant's case within this ground of appeal is that the use of building 3 as an office is within Class E of the UCO and that the de minimis maintenance and preparation works that take place on vehicles which are stored in the buildings 1 and 2 is also a Class E use as such works would

amount to an industrial process. He therefore considers that in these respects there is not a breach of planning control.

10. Nevertheless, the alleged breach of planning control (as corrected) relates to a mixed use. A mixed use is a single mixed use and thus 'sui generis' and outside of any use class defined in the UCO. There is no suggestion that the alleged mixed use (as corrected) is not a breach of planning control. Moreover, as stated previously there is no dispute that a material change of use to a mixed use has occurred. Thus, it constitutes development for which planning permission is required. There is no evidence of any planning permission having been granted for the mixed use as alleged (as corrected). On that basis, the appeal on ground (c) fails.

The ground (d) appeal

11. This ground of appeal is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The appellant is not contesting that the material change of use is immune from enforcement action. The appellant's case on ground (d) is limited to the buildings cited as Building 1 and Building 2 in the description of the alleged breach of planning control. Therefore, there is no basis on which the EN could be quashed under ground (d), but there is scope for argument over whether it can require removal of Buildings 1 and 2.
12. There is no dispute that Buildings 1 and 2 were substantially complete 4 years prior to the EN being issued, 24 January 2020. Based on my observations and the evidence before me I have no reason to disagree. As such, in line with the time limit set out at section 171B(1) of the 1990 Act these buildings would be immune from enforcement action. Furthermore, having regard to the very recent *Caldwell*¹ judgment the principle set by the *Murfitt*² judgment, that an enforcement notice directed at a breach of planning control by the making of an unauthorized material change of use may lawfully require the land or building in question to be restored to its condition before that change of use took place by the removal of associated works as well as the cessation of the use itself, does not apply in this case. This is because Buildings 1 and 2 are more than merely ancillary or secondary to the material change of use as they are fundamental to or causative of that material change of use. The Council has now reconsidered its position in light of the *Caldwell* judgment, and it acknowledges that *'the comments made by the Court of Appeal in clarifying the law mean that it is now much more likely that Buildings 1 and 2 would be considered to fall outwith the kind of operational development which could be required to be removed by this enforcement notice'*.
13. On this basis I am satisfied that the operational development of buildings 1 and 2 is immune from enforcement action. The appeal succeeds on ground (d) to that extent. As a result, I intend to vary requirement 2 by deleting the wording *'building 1, building 2 and'* that is within that requirement.

The ground (f) appeal

14. An appeal on ground (f) is made on the basis that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is

¹ *SSLUHC v Caldwell & Timberstore* [2024] EWCA Civ 467

² *Murfitt v SSE* (1980) 40 P. & C.R. 254

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. The purpose of the EN (as corrected and varied) is clearly to remedy the breach of planning control since the mixed use of the land is to cease, the buildings that are not immune from enforcement action are to be removed and the land is to be restored to its previous condition prior to the breach taking place.

15. The appellant considers that given the lawful use of the land the buildings could be used for uses that fall within Class E if the storage use ceased. However, it is not disputed that Building 3 and the shed are fundamental to the alleged mixed use (as corrected). Moreover, there is no ground (a) appeal and deemed planning application before me in relation to the EN to enable me to assess the planning implications of using the buildings in this way.
16. The requirements, as varied, of the corrected EN are necessary and sufficient to remedy the breach by ceasing the unauthorised mixed use of the land, removing the buildings that are not immune from enforcement action and returning that land to its former condition prior to the breach taking place. Given that the corrected and varied EN does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The ground (f) appeal fails.

Formal Decision – Appeal A

17. It is directed that the enforcement notice is corrected by:
 - deleting the wording within section 3 of the EN and substituting it with *'Without planning permission, the material change of use of the land to a mixed use for the storage of vehicles and personal chattels and as an office; together with the construction of 3 No. buildings and a shed, as described, to facilitate the unauthorised mixed use: Building 1: measuring approximately 3480mm in height, 6000mm in width and 6000mm depth. Its main use being to store vehicles and personal chattels. Building 2: measuring approximately 4487mm in height, 6080mm in width and 11080mm in depth. Its main use being to store vehicles and personal chattels. Building 3: measuring approximately 4735mm in height, 6000mm in width and 4000mm in depth. Its main use being as an office. Along with an associated shed consisting of a floor space of measuring approximately 2.6 square metres and being used to store personal chattels.'*

And varied by:

- deleting the wording *'using the land for storage and maintenance of vehicles'* within requirement 1 and substitute it with *'the mixed use'*.
- deleting the wording *'building 1, building 2 and'* that is within requirement 2.

Subject to the corrections and variations the enforcement notice is upheld.

Appeal B

Main Issues

18. The main issue is whether the development represents appropriate development in the countryside taking into account the effect of the development on the intrinsic character and beauty of the countryside.

Reasons

19. Policy LPP1 of the Braintree District Local Plan 2013-2033 (adopted in July 2022) (the BDLP) states, amongst other things, that development outside of development boundaries, will be confined to uses appropriate to the countryside ...to protect the intrinsic character and beauty of the countryside. The supporting text to that policy states, amongst other things, that in order to protect the intrinsic beauty of the countryside, development outside of development boundaries is normally restricted to that which supports countryside uses. The policy does not define what uses are to be treated as uses appropriate to the countryside.
20. The four buildings and the associated hardstanding have been constructed near to a farmhouse and an 'L' shape building that has been converted to form several dwellings. There is mature landscaping between the appeal site and the farmhouse and as a result the farmhouse is largely screened from view when standing within the appeal site. On the opposite side of the farmhouse there are a number of large buildings that the evidence before me indicates are in commercial use.
21. The current use of the buildings cited as buildings 1 and 2 on the submitted plans involves the storage of vintage military vehicles and associated memorabilia. Those vehicles are also repaired/maintained, by the appellant within those buildings, to ensure that they are in working order. The vehicles are entered into and displayed at shows and used in Remembrance Day parades. Building 3 is used by the appellant as an office in connection with his property development company. The appellant states that he visits the site several times a week and that on occasions others will visit him at the site. He also states that the visitors to discuss work are infrequent and not more than once a month. The shed and all the other buildings are also used to store the appellant's personal items/chattels. Whilst the appellant owns one of the nearby dwellings he does not live there. There is little evidence before me to indicate that these existing uses of the appeal buildings constitute uses appropriate to the countryside. Therefore, the development conflicts with BDLP Policy LPP1 in that respect.
22. BDLP Policies LPP47, 52 and 67 state, amongst other things, that the Council will promote and secure a high standard of design and layout in all new development, that planning permission will be granted where the scale, layout, height and massing of buildings and overall elevation design shall be in harmony with the character and appearance of the surrounding area and that the Local Planning Authority will recognise the intrinsic character and beauty of the countryside. Policy 2 of the Feering Neighbourhood Plan (FNP) states, amongst other things, that all development proposals should reflect and respond positively to the scale, design, character, density, layout and height of existing development in the surrounding area.
23. The appeal site formed part of an overall site that was granted planning permission in the 1990's for '*the change of use of land to Class B1 and related ancillary uses*'. There is no dispute that the lawful use of the appeal site now falls within Class E(g), the former Class B1, of the UCO. Whilst the offices associated with that former use have now been converted to dwellings there are disused structures on other parts of the overall site, including a large green/glass house. The appeal site and the adjacent farmhouse, dwellings and

commercial buildings are located off a long access drive from Elm Lane. The surrounding land is mainly comprised of agricultural fields.

24. The four buildings as a group have introduced built form onto the appeal site. Nevertheless, the evidence before me indicates that there have been structures on the site previously and the access road was utilised by the previous use. As such, I consider that the site can reasonably be treated as previously developed land. Therefore, prior to the alleged breach occurring the site made a limited contribution to the intrinsic character and beauty of the countryside.
25. The dark coloured timber cladding on the walls and profile metal sheeting to the roofs of the three larger buildings mean that these buildings reflect the appearance of traditional agricultural buildings. Building 2 is relatively large for a garage but it appears to have been designed to store the larger vintage military vehicles. Buildings 1 and 2 front onto the access drive with building 3 and the shed to the rear of them. As such, the buildings are tightly clustered and any visitors to the office must walk between buildings 1 and 2. Nevertheless, this means that when viewed from the access drive building 3 and the shed are largely screened from view. Furthermore, the mature landscaping along the boundary with the farmhouse and western site boundary restricts intervisibility between the appeal site and the agricultural fields to the south and west. In this location the elevational design, materials, scale, layout and massing of the buildings does not appear incongruous.
26. Furthermore, the location of the development in proximity to the dwellings and farmhouse when combined with the mature landscaping on the boundaries cited above means that there is a suitable transition between built form and the countryside. Moreover, additional landscaping on the undeveloped parts of the site adjacent to the dwellings could be required through the imposition of a planning condition to minimise any visual impact of the development when viewed from those dwellings. As a result, I consider that, although the development alters the visual character of the appeal site and immediate surroundings, with the imposition of the planning condition, it would not be harmful to the character and appearance of the surrounding area and the intrinsic character and beauty of the countryside would be preserved. Consequently, in these respects the development complies with BDLP Policies LPP47, 52 and 67 and FNP Policy 2.
27. Additionally, I have found that the operational development of buildings 1 and 2 is immune from enforcement action within my substantive decision on Appeal A. Even though the mixed use of the appeal site for the storage of vehicles and personal chattels and as an office would cease, when the EN was complied with, buildings 1 and 2 would remain on the site. Given the resources and cost involved, it is more likely than not that the appellant would retain buildings 1 and 2 and seek to utilise them for another use. As stated, in my substantive decision on Appeal A, there is no dispute that the lawful use of the appeal site now falls within Class E(g), the former Class B1, of the UCO. Therefore, once the EN has been complied with and even though buildings 1 and 2 were designed and built to store vehicles, it is highly likely that the appellant would implement a use or uses of those buildings that would comply with the lawful use of the land. There is no evidence before me to indicate that such a use/s would be a use appropriate to the countryside for the purposes of BDLP Policy LPP1.

28. Consequently, the larger buildings on the site would remain on the site and could be used lawfully without complying with BDLP Policy LPP1 even if I refused planning permission for the development. In addition, the appellant has suggested that the existing mixed use of the buildings and appeal site can be controlled by condition/s. Both parties have had the chance to comment on suggested conditions in this respect. Whilst the development consists of 4 buildings, buildings 1 and 2 are the largest ones. Additionally, it appears based on the evidence before me that the storage of vehicles and personal chattels that occurs within buildings 1 and 2 relates to the appellant's hobby and interest in vintage military vehicles and memorabilia. It is highly likely that a use/uses of those buildings that would comply with the lawful use of the land would generate more trips by private vehicle than their existing use. As a result, this would represent a fallback position that would have appreciable weight.
29. I have found that the development complies with BDLP Policies LPP47, 52 and 67 and FNP Policy 2. However, I have found that the development conflicts with BDLP Policy LPP1. Nevertheless, as stated above that policy states, amongst other things, that development outside of development boundaries, will be confined to uses appropriate to the countryside ...to protect the intrinsic character and beauty of the countryside. As such, I consider that the conflict with that policy has little weight and that it is outweighed by the appreciable weight to be given to the fallback position. Therefore, material considerations indicate that the appeal should be determined other than in accordance with the development plan.

Other Matters

30. No objections from third parties were received in relation to this appeal, but a number of objections were received from the Parish Council and local residents in connection with the planning application. These concerned, in addition to the above matters, the buildings are for social and pleasure use only, they have been built without consent, impacts of increased parking spaces, impacts on biodiversity, impacts on the living conditions of nearby residents, poor air quality, increase in noise pollution, the use of heavy machinery, loud music late at night and the use of Tey Grove utilities.
31. These matters were précised in the Council's Officer report and they did not form part of the Council's reasons for refusal relating to the development. Within that Officer Report it is found that there would be no unacceptable impact to neighbours' amenity from overlooking or outlook and from noise or disturbance. It also states that the development would not result in unacceptable harm to air quality and that the development would not result in harm to highway capacity nor highway safety. I am satisfied that based on my observations that I have no reason to dispute those findings.
32. The Council's Ecology and Natural Environment Officer has provided evidence in relation to biodiversity as part of the Council's case. Within that evidence it states the development is within the Impact Risk Zone of Abberton Reservoir Site of Special Scientific Interest (SSSI), and Tiptree Heath SSSI. It goes on to state that as the development site is located a sufficient distance away from the designated sites no further mitigation measures and no further consideration is required for these statutory designated sites. It also considers that as the development does not relate to residential dwellings that no further

consideration of its impact on the Blackwater Special Protection Area (SPA)/Ramsar site and Essex Estuaries Special Area of Conservation (SAC) is required. No reed bed was found to be present on the site through the desktop study that was carried out and therefore no mitigation was required in this respect. I have no reason to disagree with those findings.

33. The fact that the development has been constructed without permission is not a reason in itself to dismiss Appeal B. The development should be judged against material planning considerations. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of Appeal B.

Conditions

34. The Council has suggested four conditions that could be imposed if I was minded to grant planning permission for the development. As the development has been constructed the approved plans condition is not necessary. The suggested condition in relation to details of hard and soft landscaping is required to ensure that the character and appearance of the area is not harmed. BDLP Policy LPP66 states that enhancement of biodiversity should be included in all proposals, commensurate with the scale of the development. Therefore, a condition requiring the details of biodiversity enhancements is necessary. In the interests of conciseness and enforceability the wording of these suggested conditions has been amended.
35. The fourth suggested condition relates to the submission of a swept path analysis with regard to articulated lorries, transporter and fire appliances. However, there is little evidence before me to indicate that large vehicles such as these would have difficulty in accessing the appeal site. Moreover, I note that the condition was not requested by the Council's Highways consultee. As such, in my judgment the condition is not necessary.
36. Three conditions in relation to the use of the buildings and precluding external storage on the site are required to ensure the character and appearance of the area is preserved and the living conditions of the nearby occupiers are not harmed.

Conclusion

37. For the reasons given above the appeal should be allowed.

Formal Decision – Appeal B

38. The appeal is allowed and planning permission is granted for two detached garages, an office/studio and a shed, with associated hardstanding at 4 Tey Grove, Feering CO5 9FS in accordance with the terms of the application, Ref 22/01555/FUL, and the plans submitted with it, subject to the following conditions:
- 1) Within 6 months of the date of this decision, a scheme including details of all hard and soft landscaping, gates/fences/walls or other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment where appropriate. A watering and

maintenance regime shall be provided. The landscaping scheme shall be carried out in accordance with the approved details. The approved landscaping scheme shall be carried out during the first available planting season after the approval of the details. Any trees or plants which die, are removed or become seriously damaged, or diseased within a period of five years from the completion of the approved landscaping scheme shall be replaced in the next planting season with others of a similar size and species. All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the Local Planning Authority. The details shall include position, design, height and materials of the enclosures. The enclosures as approved shall be carried out as approved, within 3 months from the date of approval of the details and shall be permanently maintained as such.

- 2) Within 6 months from the date of this decision, a Biodiversity Enhancement Layout for biodiversity enhancements shall be submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Layout shall include the following:
- detailed designs or product descriptions for bespoke biodiversity enhancements; and
 - locations for bespoke biodiversity enhancements on appropriate drawings.

The enhancement measures shall be implemented in accordance with the approved details within 3 months from the date of approval of the details and all features shall be retained in that manner thereafter.

- 3) The garages hereby approved shall be used solely for the purpose of storing vehicles and personal chattels, any vehicle repairs/maintenance shall be ancillary to the vehicle storage use, and for no other purpose.
- 4) The storage of vehicles and/or personal chattels shall only occur within the buildings hereby approved and no external storage shall occur on the site.
- 5) The office/studio hereby approved shall be used solely as an office and for no other purpose.

D Boffin

INSPECTOR