



Appeal Decisions

Hearing held on 24 July 2024

Site visit made on 25 July 2024

by Mr Phillips BA(Hons), DipTP, MTP, MRTPI, AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 21 August 2024

Appeal A Ref: APP/N0410/C/23/3326781

Appeal B Ref: APP/N0410/C/23/3326782

Marlian Rowley Lane, Wexham, Bucks, SL3 6PB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Harpreet Singh of UK Readymix Concrete Limited and Mr Mark Smith against an enforcement notice issued by Buckinghamshire Council - South Area (South Bucks).
- The notice was issued on 21 June 2023.
- The breach of planning control as alleged in the notice is the material change of use of the Land to a mixed use (sui generis) comprising of agricultural, importation, storage and distribution of primary aggregates, the preparation, storage and distribution of ready-mix concrete and the parking of HGV's used in connection with the concrete business (the Unauthorised Use). To facilitate the unauthorised use, the carrying out of operational development, comprising of the laying of hardstanding, the erection of gates and fences, the siting of containers, the siting of a fuel tank and the siting of a silo for concrete.
- The requirements of the notice are:
 1. Cease the use of the Land for the importation, storage and distribution of primary aggregates and the preparation, storage and distribution of ready-mix concrete and the parking of HGV vehicles (the unauthorised use);
 2. Remove from the Land all equipment, items and paraphernalia used in connection with the importation, storage and distribution of primary aggregates;
 3. Remove from the Land all equipment, items and paraphernalia used in connection with the preparation, storage and distribution of ready-mix concrete;
 4. Remove from the Land all vehicles, equipment, items and paraphernalia used in connection with the parking of HGV's;
 5. Rip up and remove the hardstanding (shown in the approximate position labelled and marked hatched in black on the attached plan), from the Land;
 6. Remove the fences and gates (shown in the approximate position labelled and marked in black block on the attached plan), from the Land;
 7. Disconnect and remove the containers (shown in the approximate position labelled and marked in black block on the attached plan), from the Land;
 8. Disconnect and remove the fuel tank (shown in the approximate position labelled and marked in black block on the attached plan), from the Land;
 9. Disconnect and remove the silo (shown in the approximate position labelled and marked in black block on the attached plan), from the Land;
 10. Remove all material and debris from the Land resulting from complying with Steps 1 – 9 of this Notice.
- The periods for compliance with the requirements are:

Step 1 – within 1 month of this Notice coming into effect.
Steps 2 to 10 – within 9 months of this Notice coming into effect
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended). Appeal B is proceeding on grounds (b), (c), (d), (e), (f) and (g).

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with variations.

Preliminary Matters

1. It is common ground that the Notice Plan has been drawn to cover the whole of the wider site known as Marlian and it is also agreed that the alleged breach of planning control has occurred on the hatched areas of the Plan. Therefore the requirements also only apply to those areas. The Statement of Common Ground includes *Figure 1: Plan showing planning history and boundary of enforcement Notice as served*.
2. The dwelling known as Marlian and shown shaded purple on Figure 1 is not the subject of the Enforcement Notice and the access, driveway and hardstanding area shaded orange on Figure 1 up to the section of cross hatched area on the plan are not the subject of the current Enforcement Notice. Neither are the paddock to the north east of the site nor the stables shown within the hatched area and shaded purple.
3. It is agreed between the main parties that Figure 1 is an accurate representation of the planning history of the appeal site, the lawful uses on site and the areas to which the Enforcement Notice relates. As such the current Enforcement Notice Plan entitles "Location Plan" should be deleted and substituted with Figure 1.
4. It is also agreed that the fuel tank is not actually fixed to the ground and requirement 8 of the Notice should be amended to reflect that. Furthermore, it is agreed between the main parties that requirement 4 should be amended to refer to the removal of vehicles, equipment, items and paraphernalia used in connection with the unauthorised use of the Land and that "agriculture" can be deleted from the alleged unauthorised mixed use.
5. On 31 July 2024 the Government issued its National Planning Policy Framework (NPPF) draft text for consultation. Where relevant, I have taken this into account when determining these appeals.

The appeals on ground (e)

6. Due to agreement that the enforcement notice plan should be substituted, the appellants have withdrawn the appeals on ground (e)

The appeals on ground (b)

7. Due to agreement that the enforcement notice plan should be substituted, the appellants have withdrawn the appeals on ground (b)

The appeals on ground (c)

8. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The matters the subject of the Enforcement Notice have been clarified by the substitution of a new plan which shows the different breaches of planning control and their disposition across the site. The matters which remain controversial under ground (c) are the material change of use, the hardstanding, the silo and the mounds of sand/aggregate. I deal with each of these, below.

9. The appellants contend that a baseline authorised use has been established by the Lawful Development Certificate (LDC) reference PL/20/0542 for *"the storage on a daily basis of up to 60 skips, the storage of aggregate and crushed concrete piles of no greater than 3.5 m in height, the parking of no more than 11 vehicles overnight, with 20 to 50 vehicle movements (two-way) daily between Monday to Saturday between the hours of 6am to 7pm only"*. It is argued that the aggregates are stored in the area subject to the LDC and there are less vehicles on site than the established use.
10. There is a sui generis mixed use approved for part of the site, but the Council considers that the alleged development the subject of the Notice has taken place on the whole site rather than within specific pockets of land within the wider site. Consequently, the whole of the site is alleged to have been used for the sui generis mixed use comprising of the importation, storage and distribution of primary aggregates, the preparation, storage and distribution of ready-mix concrete and the parking of HGVs in connection with the concrete business. It may be the case that the storage of aggregates remains within the area permitted for *"the storage of aggregate and crushed concrete in piles of no greater than 3.5m in height"*, but that does not persuade me that a material change of use of the appeal site has not occurred.
11. The Council also argue that the mix of uses on site as a whole has materially changed to those related to the ready-mix concrete business. Indeed, in my judgement the use of the site as alleged in the Notice is materially different from the previously established skip, storage and parking use. There may be an established baseline in terms of the planning effects associated with the use of the land, but that is a different consideration to whether or not a material change in the use of land has occurred.
12. The appellants' case is that the silo is not operational development as defined by s55 of the Act. Their case is that it has no permanent fixings and is stationed on part of the site which benefits from the previously approved LDC. The courts have held¹ that it is not possible to construct an exhaustive test of what is or is not in the nature of a building or structure. While no one test is conclusive, the main characteristics of a building are that it is of a size that it would normally be constructed as opposed to being brought ready-made onto the site; it would cause a physical change of some permanency; and there would be physical attachment to the ground.
13. The silo measures approximately 5.8 metres high with a width of 8.2 metres and depth of 2.9 metres. It is of a substantial size which is not capable of simply being moved around the site without being taken apart and re-assembled elsewhere. In addition, it does have a degree of permanence as it has been placed on a bespoke concrete base and is also attached to other equipment which cannot simply be moved around the site.
14. The silo's supports may not be secured to the ground in any way, but by virtue of its size and weight it is in effect a building. It may not require demolition, rebuilding or structural alterations or additions and it is a piece of machinery which is delivered to the site, but it appears that there is a degree of on-site fabrication and assembly by a specialist contractor. As such, as a matter of fact and degree it is a building for which planning permission ought to have been granted. In any case, irrespective of whether or not the silo is a building,

¹ Barvis v SSE [1971] 22 P&CR 710 and Cardiff Rating Authority v Guest Keens [1949] 1 KB 385

it is used as part and parcel of the unauthorised material change of use of the land that has occurred and facilitates that unauthorised use. As such it is perfectly reasonable for the Council to include it as part of the alleged breach of planning control and requirements of the Notice.

15. With reference to the hardstanding areas, the appellants have drawn my attention to aerial photographs from 2017. There is some evidence of the hardstanding areas being in place at that time. However, even if that was the case, it is very clear to me that the hardstanding facilitates the unauthorised material change of use and as such should be removed in order to remedy the breach that has occurred.
16. The previously approved lawful development certificate covers the storage of aggregates. However, that was as part of a different use of the land whereas the Council has confirmed that in this case the unauthorised mixed use is, in part, facilitated by the importation, storage and distribution of primary aggregates. Therefore, because planning permission has not been granted for the material change of use of the land, it is not authorised in this case.
17. Therefore, for the reasons I have set out above, the appeals on ground (c) do not succeed.

The appeals on ground (d)

18. The ground of appeal is that at the time the Notice was issued, it was too late to take enforcement action against the matters stated in the Notice. The burden of proof is on the appellants and the test of evidence is on the balance of probabilities. There is also a dispute about timescales; the Council contending that the 10 year rule applies to the whole of the site as the operational development is part and parcel of the alleged unauthorised material change of use, whereas the appellant contends that 4 years is relevant to the operational development.
19. Other than with respect to the hardstanding, the appellants' case does not clearly argue that the matters alleged are immune from enforcement action due to the passage of time. Instead, the arguments presented under ground (c) are summarised; relating to the baseline conditions of the site established through the grant of the previous LDC.
20. As previously concluded, there is no planning permission in place for the unauthorised sui generis mixed use, nor is there any permission in place for the facilitating operational development. There is no clear dispute that the unauthorised use did not begin until around February 2022 and therefore it is not immune from enforcement action as it has not taken place for a continuous period of 10 years. Therefore, the dispute regarding the timescales for immunity is irrelevant in this case.
21. With reference to the hardstanding the appellants state that the land to the south of the site where an LDC has been granted has hardstanding which was laid before the appellant purchased the site and can be seen on aerial photographs before April 2017. The photographs do appear to show areas of hardstanding on parts of the appeal site, but these are not supported by any further evidence such as sworn affidavits. No planning permission has been granted for the unauthorised use of the site which is facilitated, in part, by the hardstanding.

22. Consequently, the appeals on ground (d) do not succeed.

Appeal A on Ground (a)

23. The ground of appeal is that planning permission should be granted. The agreed main issues are:

- i. Whether the development is inappropriate development for the purposes of the development plan and the National Planning Policy Framework (the Framework);
- ii. The effect on the openness of the Green Belt and the purposes of including the land within it;
- iii. The effect on the character and appearance of the area; and
- iv. If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Inappropriate development

24. The site is located within the Metropolitan Green Belt north of Slough and on the edge of the village of Wexham. It covers a total area of approximately 0.38 hectares and to the west is a gypsy and traveller residential site, to the immediate north is access onto Rowley Lane and to the east there is some sporadic development and Rowley Wood. Wexham Park Golf Club is situated to the south where there has been recent remodelling and reconfiguration works to the grounds as part of a previously approved planning permission. Therefore, there is some development in the locality and part of the appeal site itself benefits from an established use for the storage of skips, aggregates and crushed concrete and the parking of vehicles.

25. Paragraph 154 of the Framework establishes that the construction of new buildings is inappropriate development in the Green Belt. There are a number of exceptions to this, but the appellant's own evidence acknowledges that *"the proposal does not fit neatly into any of the exemptions, therefore it is classified as inappropriate development"*. Therefore, there is no dispute that the operational development conflicts with the Framework.

26. Paragraph 155 of the Framework also sets out that certain other forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land (such as use for outdoor sport or recreation or for cemeteries and burial grounds). Clearly, the material change of use of the appeal site does not fall within one of these categories of use. In addition, the material change of use of the land is not in accordance with Policy GB4 of the South Bucks District Local Plan Adopted March 1999 Consolidated September 2007 and September 2011 (the LP) which may allow for the re-use of a building because, as acknowledged by the appellant, there are no authorised permanent buildings on the site. Therefore, the development also fails to accord with Policy GB4.

Openness and purposes of the Green Belt

27. The appellants contend that the lawful use of the site for the storage of aggregates, skips and lorries is established in this part of the Green Belt. They state that the temporary nature of the containers and mounds of aggregate means that they could be removed relatively easily should the site no longer be required for those purposes with no lasting impact on the openness of the Green Belt.
28. The Framework states that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open. Indeed, one of the essential characteristics of Green Belts is their openness. The development the subject of the Notice covers a larger part of the Green Belt than the lawful use. In addition, there are a number of operational developments on the land which have a greater impact on the openness of the Green Belt than what was previously there. These include the silo, stacked containers, large piles of aggregate, areas of hardstanding, gates and fences and a fuel tank. Since some of these are present where there was previously no development and constitute permanent features, the development has a greater impact on the openness of the Green Belt than before they were on the site. For these reasons the development reduces the openness of the Green Belt and conflicts with the purposes of including the land within it. I give substantial weight to that harm.

Character and appearance

29. Policy GB4 provides for employment generating uses in the Green Belt provided they do not adversely affect the character and amenities of the Green Belt. The policy specifically states that *"Proposals to establish new employment generating or other commercial sites or extend the curtilages of existing sites will not be permitted in the Green Belt."*
30. The appeal site is not open agricultural land. To the west there is a gypsy and traveller site and the southern part of adjacent land is used for the storage of scrap vehicles and metal. It is my understanding that some of those uses are unauthorised. To the west of the adjacent Twin Trees site are various units and buildings at The Warren which are used for B8 storage purposes and for other commercial uses, including vehicle repairs and maintenance. At another nearby site known as Beech Tree Farm there is an historical use for parking of a lorry and storing skips. Therefore, parts of the nearby area are commercial in character.
31. However, the southern boundary is shared with a golf course and there is also a belt of trees and landscaping around parts of the site boundary. As such the appellants contend that the site is visually well-contained and does not have a lasting impact on openness or the character of the Green Belt.
32. In my judgement there is considerable visual impact arising from the development. It is a rather unsightly piece of land in its immediate vicinity comprising various containers, mounds of aggregates with dividing walls and structures, a silo, fuel tank, a range of vehicles and machinery and other paraphernalia associated with the production of cement. I am aware that part of the site has an authorised alternative use, but the development the subject of the Notice gives rise to significant visual intrusion into the Green Belt.
33. Some of the structures, materials and paraphernalia could quite easily be removed, but that does not mean that the development the subject of the

Notice is acceptable in visual terms. That visual harm is capable of being reversed, but the same could be said for many unauthorised developments in the Green Belt and therefore I attribute it little weight in this case.

34. On this issue I conclude that the development is harmful to the character and appearance of the area and conflicts with Policies GB1, GB4 and EP3 of the LP and the Framework. These seek to control development in the Green Belt and ensure that development is compatible with the character and amenities of the site itself, adjoining development and the locality in general.

Very special circumstances

35. The Framework sets out the general presumption against inappropriate development in the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
36. I have concluded that the development is inappropriate development in the Green Belt and therefore, by definition, would be harmful to the Green Belt. I have also concluded that the development conflicts with the purposes of the Green Belt and it is harmful to the character and appearance of the area. On the other hand I can see that the development is of some benefit to the local economy.
37. The substantial weight given to the harm arising from inappropriate development and its effect on the openness of the Green Belt and the character and appearance of the area is not outweighed by the economic benefit from the business. Therefore, this does not amount to very special circumstances necessary to justify it.

Other Considerations

38. Local residents have expressed their concerns with respect to a number of issues, including the effect of the development on highways safety and, in particular, the harm to the local road conditions, increased traffic movements especially HGVs and delays caused by large vehicles blocking the road. In support of their case my attention has been drawn to a Transport Statement relating to development at nearby Wexham Golf Course. The report provides pre-application advice of the suitability of potential roads in the network to transport material for the proposed releveling of the golf course. One of the options discussed includes Rowley Road which serves the current appeal site.
39. Whilst I can see that the report concludes that the use of a route which includes Rowley Road by HGVs may cause problems arising from an increase in vehicles unable to pass each other safely, restrictions in forward visibility, over-running of muddy verges and potential deposits of material on the road, the report clearly relates to a development which is very different from the one before me.
40. I understand local residents' concerns, but I have noted that there is no dispute between the main parties on this matter. Furthermore, whilst I can see that there may be some potential blockages arising from vehicles turning into the site and from HGVs passing, there is insufficient evidence for me to conclude that the development is harmful to the safety of highways users. In

any case, were I to grant planning permission for the development there are measures that could be secured through planning conditions to mitigate potential harm.

41. Residents are also concerned about the loss of trees from the development and the effect on nearby Ancient Woodland. There is insufficient evidence before me to conclude that the development has actually resulted in the loss of trees on site. Indeed, the appellants' own evidence is that no trees have been removed or damaged since the development started. There is no evidence that the development has affected, or is likely to affect, the nearby ancient woodland.
42. One main concern of the occupants of nearby residential properties is the effect on local environmental conditions. They have submitted an Environmental report and cement testing results prepared for Fulmer Parish Council. However, I do not know the particular expertise of the individual who wrote the report. The report does not specify the appeal site, but it is my understanding that it is in relation to the unauthorised activities taking place there. It makes various conclusions including that the site highlighted was not producing cement, but it is producing ready mix concrete. There was no evidence of cementitious material on the road at the unspecified time and date that observations were carried out, but numerous delivery truckloads of materials were seen to be arriving at and leaving the site. Samples of materials were taken but the specific location of those samples is not available to me.
43. The samples taken were tested by adding hydrochloric acid; the test being that any cement present will react with the acid to "bubble". The report states that this is a standard test procedure in the industry, geology and other industries to detect calcium carbonate in any material. I have no evidence that such a test is standard, nor that it complies with any British Standards. Nevertheless, evidence is that sludge by the side of the road is very much cementitious and therefore either cement lorries are spilling it or that it is airborne and settling on the roadside. According to residents, following the initial testing no further sampling or survey work was carried out.
44. I do not dispute the findings but the level of analysis and methodology used is rather limited with respect to demonstrating that any cement material is from the appeal site. In addition, the appellants' evidence is that any cement is dealt with on site by a sealed system and methodology which is designed to ensure that cement does not escape into the local environment. One local resident is experiencing health problems which he attributes to the unauthorised development. I have great sympathy for such effects but in this case there is insufficient evidence for me to conclude that the development is having a detrimental impact on the health conditions of local residents. Therefore, there is insufficient clear evidence to demonstrate that the problems local residents have experienced are directly attributable to the appeal development. In any case, there are other mechanisms available through environmental health legislation that may be used to deal with problems such as noise, disturbance and air quality.
45. I conclude that other considerations to which my attention has been drawn do not add to the conflicts with the development plan I have already identified above.

The appeals on ground (f)

46. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(a)) or to remedy injury to amenity (s173(b)). Since this notice requires the cessation of use of the land for the importation, storage and distribution of primary aggregates and the preparation, storage and distribution of ready-mix concrete and the parking of HGV vehicles, the removal of all items and paraphernalia associated with the unauthorised use, disconnection of items and removal of all material and debris arising from complying with the steps, the purpose is clearly to remedy the breach. In this respect ground (f) must fail.
47. However, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in appeal 3326781 it would be possible to grant permission for part of the development. The appellants have set out the reasons why they believe each requirement to be excessive, including lack of prescribed timescales, unreasonableness, insufficiency of the precise nature of requirements and the existence of a fallback position relating to the previously approved LDC.
48. Subject to the variations set out above, I consider each of the requirements to be reasonable and proportionate with respect to the breach of planning control alleged in the Notice. Since the purpose of the Notice is to remedy the breach it is incumbent upon the appellant to suggest lesser steps which would achieve that purpose. In this case the appellants set out reasons why each requirement is excessive but do not suggest alternatives or lesser steps. It is not for me to identify any such lesser steps and therefore the appeals on ground (f) cannot succeed in this case.

The appeals on ground (g)

49. The ground of appeal is that the time given to comply with the requirements is too short. The appellants have suggested a period of six months to cease the unauthorised use of the land and 12 months for the remaining steps 2 to 10. The Council has stated that there is little evidence of the need for 12 months but would be agreeable to extend the timescale for all requirements to 9 months.
50. Nine months would be sufficient time to cease the use of the land and to comply with all other requirements. It would allow sufficient time for the appellants to find an alternative site and arrange for the relocation of the operation and associated operational development. It would strike an appropriate balance without placing a disproportionate burden on the appellants. To this limited extent the appeals on ground (g) succeed.

Conclusion

51. A number of variations to the Notice have been agreed by the main parties. In addition, for the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall direct that the enforcement notice is varied prior to upholding it.

Formal Decision

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

- a) the deletion of the Enforcement Notice Plan entitled "Location Plan" and the substitution therefore of the Plan entitled "Figure 1" and attached at Appendix 2 to this decision;
- b) the deletion from paragraph 3 of the word "agriculture" from the matters which appears to constitute a breach of planning control;
- c) the deletion from requirement 4 of the Notice of the words "parking of HGVs" and the substitution therefore with the words "unauthorised use of the Land";
- d) the deletion of requirement 8 from the Notice and the substitution therefore with the words "remove the fuel tank used in connection with the unauthorised use (shown in the approximate position labelled and marked in black block on the attached plan), from the land"; and
- e) the deletion of the words "Step 1 – within 1 month of this Notice coming into effect and Steps 2 to 10 – within 9 months of this Notice coming into effect and the substitution therefore of the words "Steps 1 to 10 – within 9 months of the Notice coming into effect" as the period for compliance.

53. Subject to these variations, the enforcement notice is upheld.

A A Phillips

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/N0410/C/23/3326781	Mr Harpreet Singh of UK Readymix Concrete Limited
Appeal B	APP/N0410/C/23/3326782	Mr Mark Smith

Appendix 2

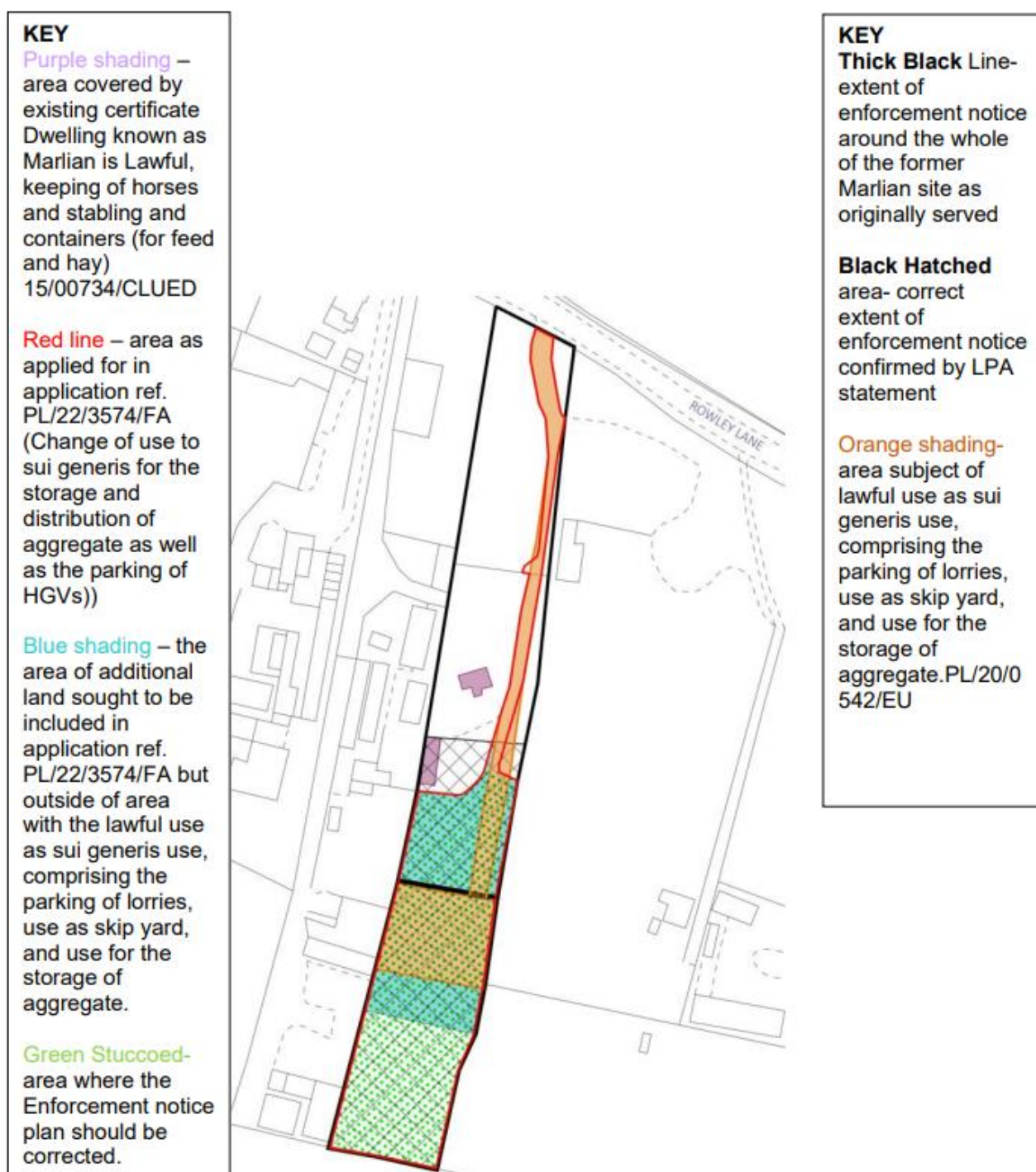


Figure 1: Plan showing planning history and boundary of enforcement notice as served

APPEARANCES

FOR THE APPELLANT:

Hannah Wiseman
Lyana Powlesland
Harpreet Singh
Sukhjit Bajwa
Baldev Singh
Mark Smith
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FOR THE LOCAL PLANNING AUTHORITY:

Selina Islam
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Senior Planning Enforcement Officer
Senior Planning Officer
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Planning Officer

INTERESTED PARTIES

David Power
Steven Perrett
Alison Vincent
Mrs P Paddison
Mrs B Norris
Mr Malcolm Sage
Celina Bushnell

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

1. Environmental report and cement testing results prepared by Mark Collinson BSc (Hons) PG Dip, PG Cert, MSc dated 5 March 2024
2. Transport Statement Appendices by Dermot McCaffery MIHE MIRSO Highways and Transportation Statement with respect to Wexham Park Golf Course, Wexham Street, Slough SL3 6ND dated October 2016
3. Various photographs
4. Appeal Decision Reference APP/N0410/C/23/3335891