

Appeal Decision

Site visit made on 29 August 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th September 2024

Appeal Ref: APP/Z2505/C/23/3326531

Land and buildings at Ulllyatts Drive, Amber Hill, Boston, PE20 3RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Willtrans Ltd against an enforcement notice issued by Boston Borough Council.
 - The notice was issued on 28 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land to storage and distribution as
 - defined by Class B8 of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 (as amended) and associated enabling development.
 - The requirements of the notice are to: i. Cease the use of the land and buildings for storage and distribution purposes, ii. Remove all temporary buildings and containers, iii. Remove all hardstanding (other than the 'original' concrete hardstanding to the front of the building known as/identified as 'Tractor Shed', iv. Remove all external lighting columns and lighting units, v. Remove metal mesh fencing and gates from the land, vi. Remove all other paraphernalia to include all pallets, tyres and items deposited on the land
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of 6 months and its substitution with 12 months as the period for compliance. Subject to the variation, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (a) and deemed planning application

2. The main issues are the effect of the development on the character and appearance of the area within open countryside, and the highway safety of the roads in the vicinity of the appeal site.
3. The appeal site was previously Grade 2 BMV agricultural land (classified as "very good quality agricultural land"). It had two buildings – the remaining 'Tractor Shed' which is being reused in the development, and a smaller

dilapidated barn which has been removed. It is surrounded by fields. The part of the appeal land being used by the B8 business site also includes hardstanding and the siting of several temporary structures including an office building and mobile toilet. It is accessed from a small lane, and the site immediate opposite has permission for a replacement dwellinghouse and on which there are ongoing buildings works.

4. The site is being used for a van delivery business which falls within B8 use, and the vehicles including vans no larger than 3.5 tonne, are parked there when not undertaking deliveries. One of the main customers is located at RAF Coningsby and there is a requirement to be within about 20km from their site in order to be able to undertake collections within a 1 hour window. The Highways Authority have expressed concerns about an unrestricted B8 use taking place on the site with much larger vehicles but this is not what is happening currently. The use could be controlled by the imposition of a condition to restrict the size and type of vehicles permitted, and I am satisfied that this would be enforceable as it could be readily seen from outside of the site as to whether vehicles larger than 3.5 tonne were being used.
5. Policy 1 of the South East Lincolnshire Local Plan 2011 - 2036 (adopted in 2019) ("the SELLP"), which is part of the development plan for the area, is a spatial strategy which directs development to defined existing settlements and centres. As the appeal site is located outside of these defined settlement boundaries it is in an area designated as Countryside, and as such the policy advises that development will be permitted that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.
6. The delivery business does not require a Countryside location. However, there are clear economic benefits in terms of the employment of staff and drivers, and the appellant's evidence is that much of the work is generated by local businesses as well as at RAF Coningsby which will support the local economy. There are no obvious community benefits, and it is far from clear that there are environmental benefits, given the additional hardstanding, increased vehicular movements in the vicinity and loss of BMV agricultural land.
7. Policy 1 does not include a sequential test but there are existing settlements with allocated employment land (including to the west of Boston) also within an approximate 20km distance from Coningsby. Overall, the development is not in direct conflict with Policy 1 due to the economic benefits that it brings, but it also needs to be considered in relation the development plan as a whole.
8. Whilst the existing barn building is being reused, the change of use of the land to B8 is evident on the external areas, where the vehicles are parked on the extended hardstanding. During the site visit, which was only a snapshot in time but took place around lunchtime on a weekday, there were many vehicles, both vans and cars parked on the site which were clearly visible from the public highways. This number of vehicles and use

also accords with the description of the use included in the officer's report following their site visit in March 2023.

9. The flat nature of the landscape, with the occasional low level farm building and house dotted between the fields, means that it is possible to see the appeal site from quite a distance. There has been planting by appellant along the boundary to the part of the appeal site used for the parking of the vehicles. Some of the views of the site are obstructed by hedgerows and vegetation but these elements are only partial and it is possible to see the development, particularly in terms of the many parked vehicles and the temporary structures, over a wide area.
10. The parked vehicles and associated additional hardstanding and structures are in conflict with Policies 2 and 3 of the SELLP in that they are very different in appearance to the predominantly rural nature of the area and do not respect the landscape character of the location. The appearance of the site has dramatically changed through both the use itself and the associated operation development. The parking of vehicles and siting of temporary structures makes the site more industrial in character than the previous use and has an urbanising effect. The planting and landscaping that have been undertaken do not prevent views into the site, and whilst it may be possible to implement a scheme that can adequately mitigate the harm to the character and appearance being caused by the development, and to meet the appropriate biodiversity net gain requirements, the details of such a scheme are not before me in order to make that judgement.
11. The National Planning Policy Framework 2023, which is a material consideration in this decision, advises that planning decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystems services including the economic and other benefits of the best and most versatile land. The appeal site was formerly classed as very good quality agricultural land, and therefore its loss is not enhancing the local environment.
12. The development therefore causes material harm to the character and appearance of the area and the countryside landscape, and is in conflict with the SELLP, notwithstanding that it does accord with other policies in the development plan.

Other Matters

13. The Parish Council had raised additional concerns regarding the drainage and sewage facilities on the site, and these could be dealt with through the imposition of a condition or separate planning application for permanent facilities. The business hours could also be regulated by way of a condition to ensure that the living conditions of any future occupiers of the dwellinghouse opposite would not be harmed by vehicular comings and goings at unreasonable times.
14. Class R of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order") would not apply, even if the development had not already taken place. The external area of land used

for parking would not fall within the definition of curtilage of the original agricultural building pursuant to the Order. This is not therefore a valid fall-back position.

Conclusion on ground (a)

15. The development causes material harm to the character and appearance of the area, and is therefore in conflict with Policies 3 and 4 of the SELLP, the development plan as a whole, and the Framework. As there are not material considerations that indicate otherwise, the appeal on ground (a) fails, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) is refused.

Ground (g)

16. The appellant seeks a longer compliance period than the 6 months stated in the notice. Taking into account the scale of the business including the number of vehicle and employees, and the number of local customers, it is reasonable to allow 12 months. This is to allow time to find an appropriately sized site with sufficient external parking in a location that can continue to service the existing work.
17. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Zoë Franks

INSPECTOR