



Appeal Decisions

Hearing Held on 5 November 2024

Site visits made on 5 and 6 November 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal A: APP/J1860/C/24/3342762

Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stephen Trotman against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice, numbered ENF/21/0226/A, was issued on 19 March 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of land to a mixed use of agriculture, dog hydrotherapy (sui generis), butchery (B2), vehicle repair (B2), and storage (B8).
- The requirements of the notice are 5.1 Permanently cease the use of the land edged red on the attached plan for the purposes of dog hydrotherapy (sui generis), butchery (B2), vehicle repair (B2), and storage (B8); 5.2 Permanently remove the buildings approximately edged blue on the attached plan and remove all resulting materials from the land edged in red on the attached plan.
- The periods for compliance with the requirements are in respect of 5.1 – 9 months and in respect of 5.2 – 12 months.
- The appeal is made on the grounds set out in section 174(2)(a), (b), (c), (d), (f) 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.

Summary of Decision: The ground (a) appeal succeeds in part and permission for that part is granted, but otherwise the ground (a) appeal is withdrawn and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Appeal B: APP/J1860/W/24/3338065

Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Stephen Trotman against the decision of Malvern Hills District Council.
- The application Ref M/23/00027/FUL, dated 31 December 2022, was refused by notice dated 9 November 2023.
- The development proposed is Retrospective Planning Application for the Retention of Unit 4 and 5 for Use Class E(g).

Summary of Decision: The appeal is withdrawn and therefore no further action is taken in relation to it.

Appeal C: APP/J1860/C/24/3342953

Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stephen Trotman against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice, numbered ENF/21/0226/B, was issued on 19 March 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of land to a mixed use of vehicle bodyshop repairs and paint spraying (B2), and tractor repair (B2).
- The requirements of the notice are Permanently cease the use of the land edged red on the attached plan for the purposes of vehicle bodyshop repairs and paint spraying (B2), and tractor repair (B2).
- The period for compliance with the requirements is 9 months.
- The appeal is made on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is withdrawn and therefore no further action is taken in relation to it. The enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

Enforcement Notices – Appeals A and C

1. Crowcroft House Farm comprises several businesses operating from various buildings, some of which are sub-divided into smaller units. The enforcement notices allege mixed uses. In the case of Appeal A this involves various businesses across two of the aforementioned buildings. In the case of Appeal C this involves two businesses within a separate building.
2. However, at the Hearing the main parties agreed that the uses targeted by the notices were taking place within discrete parts of the broader site. It is also undisputed that the relevant businesses each comprise different units of occupation, occupied by unrelated companies, which are physically and functionally separate from one another. I have no reason to take a contrary view.
3. Accordingly, it would not be appropriate to regard the alleged breaches of planning control as mixed uses, but rather as the change of use of several individual planning units. Notwithstanding this I am satisfied that the wording of the notices can be amended to more accurately describe the alleged breaches of planning control, without resulting in prejudice to the parties.
4. In addition, the Council submitted amended enforcement notice plans to more accurately illustrate where the alleged breaches of planning control have taken place. The appellant did not resist these proposed amendments and again I am satisfied that the notices may be corrected accordingly, to substitute the relevant plans, without resulting in injustice.

Appeal A

5. The Council confirmed, prior to the Hearing, that it conceded the appellant's ground (f) appeal in relation to Appeal A. This was on the basis that it

accepted, in accordance with a relevant Court of Appeal judgment¹, that the buildings where the alleged material change of use had occurred had themselves gained immunity from enforcement action, due to the passage of time. I have no reason to take a contrary view, and will therefore correct the notice by deleting the requirement stated at paragraph 5.2, namely to remove the buildings in question, and the corresponding compliance period stated in paragraph 6.

6. At the Hearing the appellant also confirmed the following:
 - That the appeals on grounds (b) and (c) were withdrawn;
 - That the ground (a) appeal was withdrawn in relation to the butchery use as a B2 use; the vehicle repairs (B2) uses; and the larger of the two storage (B8) uses (that occurring in the centre unit);
 - That the ground (a) appeal was maintained only in relation to the dog hydrotherapy use and the storage (B8) use occurring in the smaller unit (the south-western unit on the plan);
 - That the ground (g) appeal was withdrawn, in light of the reduced requirements in the amended notice.
7. The Council confirmed that it did not oppose the grant of planning permission on ground (a) for the retention of the dog hydrotherapy unit and the storage (B8) use occurring in the smaller unit, subject to suitable planning conditions.
8. The Council had suggested in its statement of case, if the subject buildings were found to be lawful, that I consider adding further requirements to the notice to include removal of all internal equipment and alterations, facilitating the unauthorised change of use. At the Hearing, however, the Council resiled from this point, considering such amendments to be unnecessary. For the avoidance of doubt, I consider that extending the requirements of the notice would be potentially prejudicial to the appellant, and I therefore decline to do so.

Appeal B

9. The appellant confirmed at the Hearing that the appeal was withdrawn. I therefore take no further action in relation to it.

Appeal C

10. The appellant confirmed at the Hearing that the appeal against the notice was withdrawn. Subject to correcting the notice, I therefore take no further action in relation to it.

Appeal A - the ground (d) appeal

11. The 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. In order to succeed on this ground, in accordance with Section 171B(3) of the 1990 Act, it would be necessary for the appellant to show, on the balance of probability, that the alleged material change of use of land had commenced at

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

least ten years before the notice was issued, that is by 19 March 2014, and had continued in such use(s) over a ten-year period. It must be shown that there has not been any significant interruption in the use(s), in order to demonstrate the necessary continuity. It is undisputed that the alleged material change of use commenced less than 10 years prior to the enforcement notice being issued. The ground (d) appeal must therefore fail.

12. However, in practice, the appellant's ground (d) appeal is confined to the argument that the buildings in which the alleged uses are taking place, rather than the uses themselves, are immune from enforcement action due to the passage of time. As set out above I will be correcting the notice to omit the requirement for the buildings to be removed, in light of the Council conceding the appellant's ground (f) appeal.

Appeal A - the ground (a) appeal

Main Issues

13. The ground (a) appeal is that planning permission should be granted. In light of the amendments to the appellant's ground (a) appeal, my assessment is therefore confined to the merits of the dog hydrotherapy use and the storage (B8) use occurring in the smaller unit. The main issues are:
 - Whether the development accords with the Council's policies for employment in rural areas?
 - The effect of the development on the living conditions of nearby residents.
 - Highway and pedestrian safety.

Reasons

Employment

14. Policies SWDP 2, SWDP 8, SWDP 12 and SWDP 4 of the South Worcestershire Development Plan 2016 (DP) set out the Council's development strategy and approach to employment development in rural areas.
15. Policy SWDP 8E seeks job creation, where development supports an existing business or new enterprise, of a scale appropriate to the location. Policy SWDP 12 supports the expansion of existing employment sites, where intensification is not viable or practical; and farm diversification where, amongst other things, the scale of activities is appropriate to the rural character of the area and where existing buildings are used where possible. Policy SWDP 4 seeks development to minimise travel demand and to offer genuinely sustainable travel choices.
16. The proposed dog hydrotherapy use is run by a single employee most of the time, dealing with a single client at any one time, treating injured animals through use of a pool or treadmill. I am told that that a second employee would also work at the site on a Saturday morning, allowing for two dogs to be treated at a time and, inevitably there would be a degree of overlap of clients arriving and departing. However, it seems to me that the overall level and

frequency of traffic movements associated with the business would be very limited in scale.

17. The other use for which planning permission is sought would involve the storage of tools and equipment in relation to an arboricultural contractor's business. The unit is relatively small and it would be attended, in order to collect and deposit equipment at the beginning and end of the working day. Accordingly, I would not expect the traffic flows associated with that unit to be significant.
18. The Council confirmed at the Hearing that, having regard to the aforementioned *Caldwell* case, it regarded the buildings subject to the enforcement notice as 'existing buildings', despite them not benefitting from express planning permission. The Council also confirmed it considered the residual scale of the proposed development to be compliant with policies SWDP 8 and 12. For the aforementioned reasons I concur with these points, and by implication agree that the proposal also complies with the Council's development strategy set out in Policy SWDP 2.
19. Given the site's rural location, the absence of a frequent and reasonably accessible bus service and the absence of roadside footpaths and street lighting connecting the site, it would be realistic to conclude that for convenience and distance reasons, and safety during hours of darkness, there would need to be significant reliance on private vehicles in order to gain access to the site. I am not therefore persuaded that the appeal site offers genuinely sustainable travel choices and that it could reasonably be described as being in a sustainable location. The proposals are not therefore compliant with the wording of Policy SWDP 4.
20. However, the National Planning Policy Framework (the Framework) supports a prosperous rural economy and the sustainable growth and expansion of all types of business in rural areas. In addition, it acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. It also seems to me that the limited scale of development proposed would not give rise to excessive car movements. It is therefore important to balance these considerations with the development plan policy conflict. I consider this significantly moderates the weight I attach to that conflict.

Living Conditions

21. Objections were raised by third parties on grounds of noise and disturbance associated with the various industrial related activities, and associated vehicular movements, connected with the originally proposed development types. The nearest residential property to the site is Crowcroft Lodge, situated immediately adjacent to the estate entrance. However, both the Council and the occupiers of Crowcroft Lodge confirmed at the Hearing that on the basis of amendments to the deemed planning application, restricting the nature and scale of the development proposed, they were no longer concerned in terms of impact on living conditions.
22. As a result of the appellant's amended ground (a) appeal, I consider any noise and other disturbances arising from the inherent characteristics of the residual uses, namely the dog hydrotherapy and small scale storage use, and their associated traffic movements, very unlikely to be significant. I therefore

consider that the proposed uses would not result in harm to the living conditions of local residents. Accordingly, I conclude that the development would not be in conflict with Policy SWDP 31 of the DP insofar as it seeks to avoid significant adverse impacts on human health and wellbeing.

Highway Safety

23. Several local residents raised concerns about the development in terms of impact on highway safety, including as a result of traffic emerging onto the A4103 road from the access road leading away from the site (Crowcroft Lane). I have taken into consideration the reduced scale of development proposed; that from evidence provided in the appellant's recent transport statement² there is satisfactory visibility for drivers at the aforementioned junction, and there have been no reported personal injury collisions associated with that junction in recent years. I am also mindful that the Highway Authority has raised no objections. Furthermore, from my visit to the site, I observed there was a good standard of visibility at the junction both in a north-easterly direction and, despite the presence of a crest in the road alignment, to the south-west as well.
24. The access road leading to the estate entrance narrows for a relatively short stretch, prior to the entrance. However, I am satisfied there are passing places for vehicles along the route, together with sufficient inter-visibility between those places, such that obstructions resulting from traffic moving in opposite directions would not be expected to occur. There is nothing to persuade me that drivers would not exercise due caution around this area, including when exiting the estate. I am also satisfied that the limited amount of additional traffic associated with the development would not be reasonably expected to result in harm to the safety of any pedestrians walking in the locality.
25. Drawing the above considerations together I conclude that the development would not result in harm to highway and pedestrian safety. I do not therefore find conflict with Policy SWDP 21 of the DP insofar as it is concerned with these matters.

Conclusion on ground (a) appeal

26. Having regard to the above matters, I conclude the proposed development is compliant with the development plan, read as a whole, despite the dependency that would result on the use of private vehicles.
27. However, even if I were to take the view that the proposal would be in conflict with the development plan, on the grounds of being at odds with Policy SWDP 4, I would nevertheless conclude there are material considerations in this case, as set out above, that outweigh the conflict, therefore justifying a decision not in accordance with the Plan. Planning permission will therefore be granted for the deemed planning application, as amended.

Conditions

28. I have considered the conditions suggested by the Council, as discussed at the Hearing. Conditions are required restricting working hours at the units and the nature and scale of the uses there, in the interests of protecting the living conditions of nearby residents and the character and appearance of the area.

² Transport Statement – Banners Gate Highways and Transportation – 18 May 2023.

A condition is required prohibiting the outside storage of materials and equipment in the interests of visual amenity.

29. The Council accepted at the Hearing that conditions requiring the submission of a travel plan and a noise assessment would not be necessary, on the basis of being too onerous, considering the revised nature and scale of development. I concur.

Appeal A - the ground (f) appeal

30. I have set out above that the Council conceded the appellant's ground (f) appeal, and that I had no reason to take a different view. For the avoidance of doubt the ground (f) appeal succeeds and the notice will be corrected accordingly.

Overall Conclusion

31. I will grant planning permission for part of the matters the subject of the enforcement notice (the dog hydrotherapy use and the smaller of the two storage uses) but otherwise I will uphold the notice, with corrections, and refuse to grant planning permission on the other parts. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act.
32. Consequently, the notice ceases to have effect with regard to the dog hydrotherapy use and the smaller of the two storage uses, because they will benefit from planning permission and are therefore lawful for planning purposes.

Formal Decisions

Appeal A

33. It is directed that the enforcement notice is corrected by:

The substitution of 'Plan A' annexed to this decision for the plan attached to the enforcement notice; and

At paragraph 3, by the deletion of the wording describing the breach of planning control in its entirety and substitution of the following wording instead:

"Without planning permission the material change of use of land and buildings to comprise dog hydrotherapy (sui generis), butchery (B2), vehicle repair (B2) and storage (B8) as identified on the plan attached to the notice"; and

At paragraph 5, by the deletion of the following wording:

"5.2 Permanently remove the buildings approximately edged blue on the attached plan and remove all resulting materials from the land edged in red on the attached plan."; and

At paragraph 6, by the deletion of the following wording:

"In respect of 5.2, **12 months** beginning with the date on which this notice takes effect."

34. Subject to the corrections, the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the material change of use of land and buildings to comprise dog hydrotherapy (sui generis) and storage (B8 in relation to the smaller storage unit only, as identified on the plan attached to the notice) at Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED subject to the conditions in the schedule below.
35. The appeal is withdrawn, and the enforcement notice is upheld, as corrected, in respect of the material change of use of land and buildings to comprise butchery (B2), vehicle repair (B2) and storage (B8 in relation to the larger storage unit, as identified on the plan attached to the notice) at Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED.

Appeal C

36. It is directed that the enforcement notice is corrected by:

The substitution of 'Plan B' annexed to this decision for the plan attached to the enforcement notice; and

At paragraph 3, by the deletion of the wording describing the breach of planning control in its entirety and substitution of the following wording instead:

"Without planning permission, the material change of use of land and buildings to comprise vehicle bodyshop repairs and paint spraying (B2) and tractor repair (B2) as identified on the plan attached to the notice."

37. Subject to the corrections the enforcement notice is upheld.

R. Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) There shall be no working at the premises or deliveries to or collections from the premises outside the hours of 08:00 – 18:00hrs Monday to Saturday. There shall be no such working, deliveries or collections on Sundays, bank holidays or public holidays.
- 2) The storage use hereby approved shall be limited to the storage of tools, equipment and wood in connection with an arboricultural contractor and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).
- 3) The floorspace of the units hereby granted planning permission shall not be expanded, within the confines of the building in which they are contained, without the prior written consent of the local planning authority.
- 4) There shall be no outside storage of vehicles, materials or equipment associated with the uses hereby approved, other than the parking of vehicles in adjacent parking bays.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A, E, H, I, J, and K of Part 7, Schedule 2 of the Order shall be carried out.

END OF SCHEDULE OF CONDITIONS



Plan A

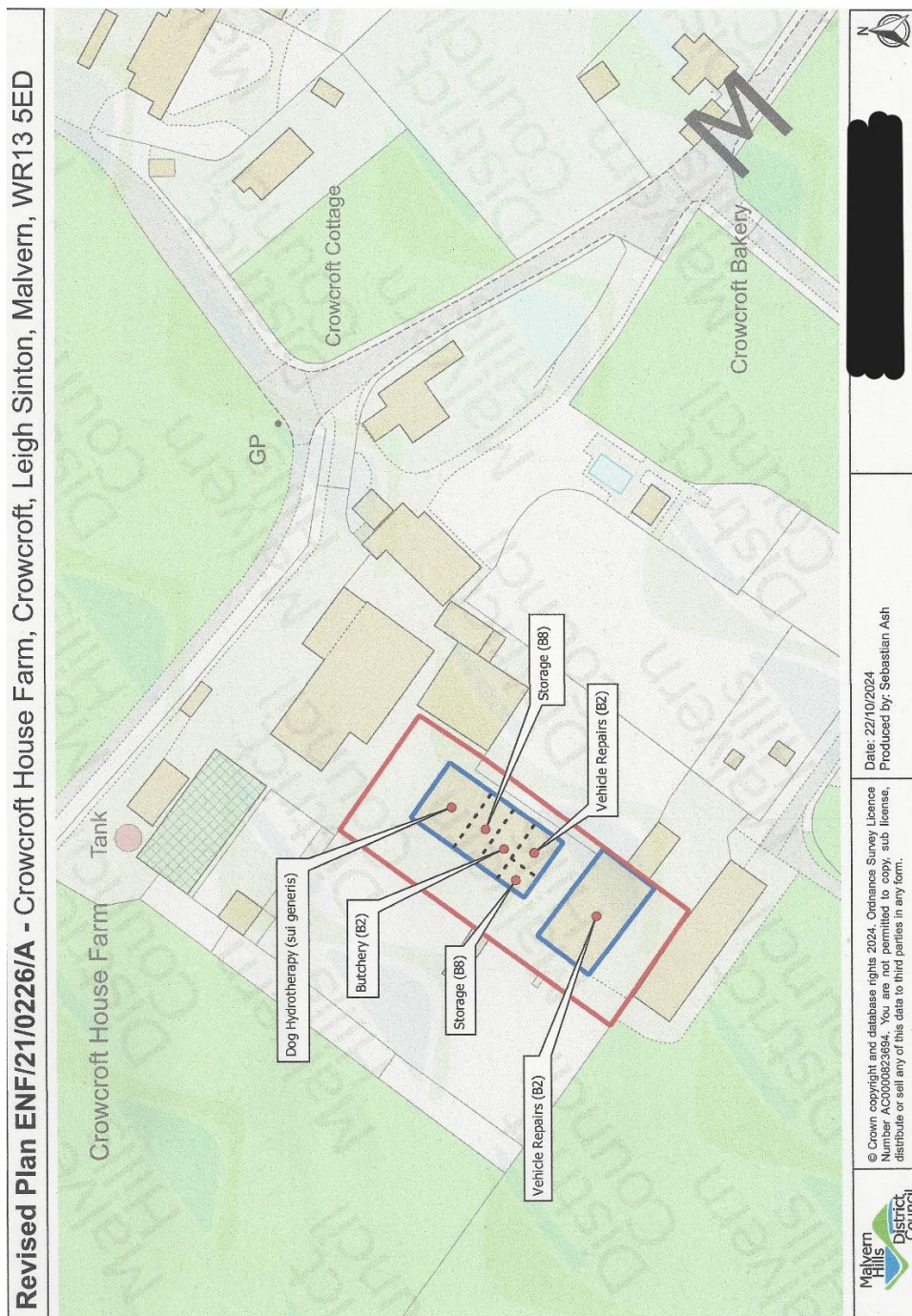
This is the plan referred to in my decision dated: 18 November 2024

by **R Merrett Bsc(Hons) DipTP MRTPI**

Land at: Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED

Reference: APP/J1860/C/24/3342762

Scale: Not to Scale





Plan B

This is the plan referred to in my decision dated: 18 November 2024

by **R Merrett Bsc(Hons) DipTP MRTPI**

Land at: Crowcroft House Farm, Crowcroft, Leigh Sinton, Malvern WR13 5ED

Reference: APP/J1860/C/24/3342953

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Christian Hawley	Barrister
Bruce Malin	Planning Agent
Stephen Trotman	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Scott Stemp	Barrister
Sebastian Ash	Senior Planning Enforcement Officer
Anna Priestley-Clarke	Principal Planning Officer

INTERESTED PERSONS:

Paul Webb	Local Resident
Sarah Webb	Local Resident
Duncan Williams	Speaking on behalf of interested party
Mark Lennard	Local resident
Joseph Trotman	Appellant's son

Documents submitted following the Hearing:

1. Agreed note on Resolution of Appeals