



Appeal Decision

Inquiry held 14 – 16 May 2024

Site visit made on 13 May 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Appeal Ref: APP/J0405/C/23/3320988

Land at Oving Road, Quainton, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
- The appeal is made by Mr Jake Putnam (Putnam Construction Services Ltd) against an enforcement notice issued by the Buckinghamshire Council – North Area (Aylesbury).
- The enforcement notice was issued on 27 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from agriculture to a mixed use of storage, parking, residential, and depot use with associated operational development consisting of the creation of hard standing and earth bunds, and the construction of buildings.
- The requirements of the notice are:
 1. Permanently cease the use of the land for storage, parking, residential and depot use.
 2. Demolish and permanently remove the office building shown, in the approximate location, with a black 'O' on the attached plan (Plan 2 – buildings and bunds), from the land.
 3. Demolish and permanently remove the maintenance building shown, in the approximate location, with a black 'M' on the attached plan (Plan 2 – buildings and bunds), from the land.
 4. Permanently remove the mobile home shown, in the approximate location, with a black 'R' on the attached plan (Plan 2 – buildings and bunds), from the land.
 5. Break up and permanently remove all hard standing shown, in the approximate location, with black cross hatching on the attached plan (Plan 3 – Hardstanding), from the land.
 6. Permanently remove all non-agricultural vehicles, plant and equipment from the land.
 7. Permanently remove all skips from the land.
 8. Permanently remove the shipping containers from the land.
 9. Permanently remove all non-agricultural items and materials, including but not limited to, building materials, aggregates, rubbish, and containers, from the land.
 10. Permanently remove the earth bunds shown, in the approximate location, with black hatching on the attached plan (Plan 2 – buildings and bunds), from the land.
 11. Remove all debris resulting from compliance with steps 2 to 10, from the land.
 12. Restore the land to a condition suitable for agricultural use by laying topsoil and grass seed.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a),(b),(d),(f) and (g) of the Act.

Summary of Decision: The appeal is dismissed. The enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

APPLICATION FOR COSTS

1. An application for an award of costs was made by the Council against Mr Jake Putnam. That application is subject of a separate Decision.

PROCEDURAL MATTERS

2. The road from which the appeal site is accessed was referred to by the parties as being Oving Road or Blackgrove Road. However, there is no dispute or confusion as to where the site is located given the description and plan attached to the enforcement notice.
3. The parties agreed that the requirement at Section 5.4 of the notice referring to a mobile home was erroneous and could be corrected without injustice by referring to it instead as a building. Since the dispute between the parties and their respective cases throughout the appeal related to it on the basis of it being a building, occupied as a residential dwelling, I agree no injustice would result by my correcting the notice accordingly. I will therefore do so using powers available to me under section 176(1) of the Act.
4. The appellant's case includes legal grounds of appeal (b) and (d). In these legal grounds of appeal the Courts have established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities². As such, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted³.
5. All witness evidence to the Inquiry was given on Oath or Affirmation.

APPEAL SITE AND BACKGROUND

6. The appeal site is identified by the thick black line drawn on Plan 1 attached to the enforcement notice. At one time the appeal site area was part of a large single open field, but the buildings, hardstanding and activities on the appeal site are now all physically and functionally separated from the rest of the field by tall bunding. As such, the site occupies the north-western part of the former field with a single pedestrian and vehicular access gate directly from the road. Single storey buildings on the site include an office building (building O), a maintenance workshop (building M), and a building used as residential dwelling (building R). Other than the bunding and a small pond most of the ground area within the site comprises hardstanding, upon which I saw a significant amount of plant equipment, industrial vehicles, storage units, building materials, skips, tyres and other items related to the appellant's use of the site.

APPEAL ON GROUND (b)

7. An appeal on ground (b) is a claim that the alleged matters (i.e. those matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact. It should be noted that "not occurred" in s174(b) of the Act is past tense. Hence, the appellant must demonstrate, on

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasylvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

³ *Gabbittas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

the balance of probability, that any use or operations, as alleged in the notice, had not occurred up to the date the notice was issued.

8. For the appellant it was argued that the buildings O and R resulted from alterations to an existing stable building, rather than erection of new ones as alleged. Also, that building R is a single planning unit by itself such that the mixed use as alleged had not occurred across the whole of the appeal site.
9. It was also suggested the description of commercial activity on the site might be more aptly described as a "demolition contractor's yard" encompassing all of the commercial activities described in the notice. However, there is no dispute the commercial activities as alleged have occurred. Furthermore, it was common ground between the parties that nothing in the determination of the appeal turns on the different descriptions. As such, I see no need to correct or otherwise substitute the alleged description with the appellant's alternative one.

Operational development – the residential and office buildings

10. It is clear from the historical site photographs and from aerial imagery⁴ that the only original building on site was a single corrugated metal stable building comprising two elements either side of a small area open at both ends, and the whole of which was combined and covered by a single mono-pitch roof. Mr Einig in his evidence refers to first seeing the building in 2010. He also describes it at that time as a single building. He states in 2012 he met Mr Elgy on site who was living "in a section of the stable block".
11. The appellant's initial case was that the buildings O and R now on site resulted from alterations and conversion of the original stable building, rather than the erection of two new buildings. This position changed somewhat by the end of the Inquiry in that it was accepted⁵ that works undertaken after 2020 to create building O amounted to major reconstruction rather than just alterations or conversion.
12. From the evidence before me and from my own observations on site, none of the corrugated metal walls and roof of the original stable building appears to remain externally. Both of the buildings external elevations comprise a new facing lower brick base with horizontal timber weather-boarding above to roof level. Both have new roofs, albeit the new roof to building R overlays part of what may have been there originally. The roof to the office is an entirely new hipped tiled roof. Additionally, new windows and doors have been inserted throughout in both buildings, and there has been extensive internal works carried out. It was also acknowledged that three external walls of the original single building were now in different locations⁶.
13. Even accepting the appellant's argument that there are elements of some original frame and material remaining in building R, I find as a matter of fact and degree that what exists on site now are two separate buildings instead of one, with each building being substantially constructed from new materials. Hence, consistent with the judgment in *Oates*⁷ I find they are new buildings, not the alteration or conversion of an existing one.

⁴ Clare Merrit, Appendix 8

⁵ Mark Spragg – cross-examination

⁶ Jake Putnam – cross-examination, Mark Spragg – cross examination

⁷ *Oates v SSCLG* [2018] EWCA Civ 2229

14. As such, I conclude that the construction of buildings as alleged in the notice has occurred as a matter of fact and the appeal on ground (b) in respect of this matter must fail.

Whether the appeal site is in mixed use/whether two separate planning units

15. For reasons set out above, and also later in ground (d), I have found that building R is a new building, substantially completed and occupied for less than 4 years before the notice was issued. There is no dispute that it has all the facilities necessary for it to be considered a dwellinghouse in accordance with *Gravesham*⁸. However, the key issue in dispute in this ground (b) appeal is whether its residential use forms part of a wider mixed use across the appeal site, or whether it is a singular primary use as a separate dwellinghouse and planning unit.
16. In reaching my decision I will follow the approach and principles in *Burdle*⁹ in which it was held that the planning unit should be determined with regard to the unit of occupation, and the concept of physical and functional separation. Three broad categories of distinction were identified:
- (1) a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
 - (2) a single planning unit where the whole unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another;
(The Council's arguments are consistent with this category)
 - (3) the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes, in which case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit;
(The appellant's arguments are consistent with this category).
17. The whole of the appeal site is owned by the appellant, with Mr Elgy living in building R as a tenant. The appeal site occupies an extensive area of ground which has been altered and enlarged over the years. As described earlier it comprises the three buildings O, R and M with extensive hardstanding and bunds, and together with a significant amount of plant equipment, industrial vehicles, storage containers, building materials, skips, tyres and other items related to the appellant's use of the site. There is a single gated access into the site.
18. In his evidence the appellant Mr Putnam stated that there are currently about 45 employees, 5 based on site (2 in the office, 1 maintenance worker, and 2 lorry drivers). On an average day he estimates 10-20 car movements and 6-10 lorry movements. He states, as did Mr Elgy in his evidence, that there is a car parking space at the rear of building R used solely by Mr Elgy.
19. Mr Elgy stated that although he has never had a formal rental agreement or contract with the appellant he pays him £600 per month rent in cash inclusive of all bills. In terms of his occupation of building R he also has 2 children who

⁸ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

⁹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

stay with him every other weekend and during parts of school holidays. He states he has worked for the appellant company at the site on and off over the years undertaking more work for them more recently.

20. For the appellant it is argued¹⁰ that building R is physically and functionally separate from other uses on site; that no use other than residential use takes place within the building. Also that a functional link with the use of the rest of the site is not established simply by the building's 'cheek by jowl' proximity with such other use. In this regard a comparison is made with apartments above shops being separate planning units while sharing a staircase and entrance.
21. I acknowledge a flat within a building is capable of being a separate planning unit to a shop situated below. However, it does not follow that a flat and a shop below cannot be occupied as a single mixed planning unit. Each case will be fact sensitive.
22. In this case, having regard to physical and functional separation, there is no separate vehicular or pedestrian access from the highway to building R. Access from the highway can only be obtained through the site security gate which is electronically controlled and operated by the employee in the business office. Once inside the gate, access to building R is across open land within the wider site. There is no physical separation of building R from the commercial uses surrounding it. Hence, access for any occupier of building R (and access for any visitors to such occupier) is dependent upon and shared with the operation of the business use.
23. Also, there is no physically separated parking or amenity area for building R. The front of the building sits directly onto and facing the commercial yard and activities taking place there. In his oral evidence Mr Elgy confirmed that in addition to parking his car behind building R his children played outside the building, and he described having family barbeques. Hence, the residential use of the building extends out into the area also used for business purposes. That such use of the land is shared with the business is also evidenced by the Council's photographs of industrial items stored on the land immediately abutting the walls and windows of building R.
24. It is argued that occupation of building R is not tied to employment in the business; that anyone could live there. However, the evidence of *actual* use, rather than hypothetical use, is that only Mr Elgy has ever occupied the building. He has done so since its completion, and for some considerable periods of time as an employee of the business, undertaking work activities across the site.
25. Even if at times he has not been directly employed by the appellant his occupation of building R, at a substantially below market value rent, automatically provides on-site security for the business. Building R and building O also share utility services and a septic tank, the appellant disposes of Mr Elgy's household rubbish, and the address of building R shares the same address and post box as the business. In my view all of these factors, together with the restricted and shared access, shared external space, and together with the effects of surrounding noise, disturbance and visual effects of commercial activity all around the dwelling are inconsistent with the character of use of a

¹⁰ Mr Smyth – Closing Submissions

typical dwellinghouse occupied as a separate planning unit. They are far more consistent with occupation being necessarily functionally and physically integrated with the business use.

26. While individual factors alone are not determinative, the combination of all those I have outlined above indicate to me a shared and mixed residential and commercial use of the site. While there has been a degree of fluidity between residential occupation as an employee and non-employee, there is in my judgment, as a matter of fact and degree, far more to indicate a mixed use within a single planning unit, rather than two primary uses in two separate units. Overall, I find that the appellant has failed to demonstrate, on the balance of probability, that the mixed use as alleged had not occurred when the notice was issued.

27. For all these reasons the appeal on ground (b) fails.

APPEAL ON GROUND (d)

28. An appeal on ground (d) seeks to establish that at the date an enforcement notice was issued any breach of planning control was immune from enforcement action due to the passage of time. Since the notice relates to matters which pre-date 25 April 2024 the transitional provisions¹¹ for time limits relating to enforcement action apply.

29. In support of his case the appellant therefore needs to show that the operational development (buildings, hardstanding and bunds) were substantially completed more than 4 years before the notice was issued; i.e. before 27 March 2019, and the material change of use to the mixed commercial and residential use commenced 10 years before the notice was issued; i.e. before 27 March 2013. The burden of proof, tested on the balance of probability, falls to the appellant.

Analysis - Use

30. In summary, the appellant's written and oral evidence to the Inquiry was that commercial use commenced on site in 2010, with residential use by Mr Elgy commencing in 2012. This included an annotated 'timeline' plan of development on the appeal site, Google Earth images, and three invoices for building works¹².

31. Mr Elgy stated he moved into the original stable building in January 2012. He referred to a video shown to the Inquiry of the site and surroundings said to have been taken by him on his mobile phone on 12 March 2012.

32. Mr Einig a visitor who carried out works on site stated he first visited in July 2010, and stated that from 2012 he recalled Mr Elgy occupying "a section of the stable block".

33. Mr Spragg, acting as the appellant's planning agent, had not visited the site before the enforcement notice was issued. Consequently he could give no direct witness evidence as to historical activities that had taken place on site. As such his evidence on this ground of appeal was his own interpretation and opinion based on the information he had been given.

¹¹ The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024).

¹² Putnam Proof of Evidence, Appendices 2, 3, 4, 6, and 7

34. Contrary to the evidence given in support of the appellant's case submitted in proofs and at the Inquiry, are the responses provided by the appellant to an earlier Planning Contravention Notice (PCN) questionnaire dated 12 December 2022. In the PCN questionnaire the appellant stated that residential use by Mr Elgy commenced in 2014. (This must refer to the original single stable building before it was replaced by buildings O and R as I have found to be the case). However, if residential use commenced on site in 2014, forming one element of the continuing mixed use of the site, then the mixed use commenced less than 10 years before the notice was issued and would not benefit from immunity. Mr Putnam stated at the Inquiry that the 2014 date given in the PCN response was an estimate and that he had not realised the importance or significance of the date when he completed the PCN.
35. A PCN is a legal notice issued by a local planning authority under section 171C of the Act, requiring written responses from the person on whom it is served. It is an offence to fail to comply with the notice requirements. It also includes a written warning that it is also an offence for a recipient to knowingly or recklessly give false or misleading information with regard to material particulars. The person completing the questionnaire is also required to sign and date a formal declaration confirming that the answers given are a true and correct statement of all the information required by the PCN so far as the same is within their knowledge.
36. Thus it is clear that a PCN imposes a serious and important obligation on its recipient to provide responses with great care. Moreover, it is clear that the intention of the Act in section 171C is to provide the local planning authority with accurate information such that it should properly be able to rely upon it in carrying out their planning functions. If that were not the case the planning system as a whole would be undermined. As such, notwithstanding Mr Putnam's subsequent explanation of his differing dates of commencement, I attach significant weight to the PCN response which states the residential element of the use commenced in 2014. This directly contradicts the evidence of the appellant and other witnesses in written and oral evidence to the Inquiry.
37. In addition to the above, the appellant's evidence also included a printed company¹³ invoice dated 27 April 2012 in respect of "conversion of existing stables building". In his proof he stated that to support his case (of when works were carried out and residential use commenced) "I was able to find a copy of the invoice for the work carried out".
38. However, this invoice cannot be relied upon. Firstly, the company was not incorporated until 5 September 2012, and the company did not change its registered address to that shown on the invoice until 2017, both of these dates being after the 27 April 2012. In cross-examination the appellant conceded the invoice could not be a true copy of an original invoice. He went on to explain that he contacted the company who in response produced a new (but "backdated") invoice because they could not find the original one.
39. This conflicts with his earlier proof which stated "I was able to find a copy". Also, if the company no longer had a copy of an original invoice from 2012 I cannot see how they would be able to provide the appellant's more recently produced "backdated" document, with details of works, costs and showing

¹³ Putnam Proof of Evidence, Appendix 4: AP Building and Landscaping Services invoice

the 2012 invoice date, unless Mr Putnam had supplied those details to the company himself. Taking account of all these factors I find this invoice to be false evidence. It is not what the appellant had claimed it to be; it is not a copy of an invoice. Rather, it is a recently produced document incorporating details provided to the company by the appellant, but which on its face gives the appearance of being a copy of an original historical invoice. As such, I attach no weight to it in support of the allowing the appeal.

40. Turning to Mr Elgy's evidence I am invited by Mr Smyth to compare Mr Elgy's physical appearance (in terms of age difference) at the Inquiry to that as he appeared in the video of himself on site, stated to have been recorded on 12 March 2012. In this regard I do accept that Mr Elgy appears younger in the video than he does now, but not to an extent where I can on balance conclude that it was recorded in 2012. Also, there are details in the video which appear to me to conflict with the claimed date of the recording. The trees and hedgerows surrounding the site in the video are in full leaf and there is long grass and flowers at ground level. To my mind such botanical features are not consistent with what is normally visible in early March.
41. There is also some conflict between his written and oral evidence. He states he occupied part of the original stable building from January 2012, after both his separation from his partner and the birth of his children. However, in oral evidence he confirmed his youngest child was born in December 2013, hence now 11 years old. This date conflicts with him moving onto site (after his children were born as claimed) in January 2012.
42. Mr Einig's evidence was based on his recollection of occasionally visiting the site from 2010 and recalling from memory that Mr Elgy was living on site from 2012. However, he also seemed unclear in his recollections. For example he was unsure whether the entrance gate to the site when he first visited in 2010 was a metal field type gate, or a solid timber one, the latter type being installed much later.
43. While I do appreciate recalling particular dates and/or the sequence of particular events from years ago can be inherently difficult, I find that there is overall a lack of precision and some clear ambiguities in Mr Elgy's and Mr Einig's evidence. Additionally, there is some clear conflict between their recollections and the Council's photographic imagery, and with the appellant's PCN response which I set out earlier.

Analysis – operational development: buildings, hardstanding and bunds

44. The appellant's case that buildings O and R were constructed before 27 March 2019¹⁴ primarily relied on them being conversion and alteration works of the former stable building. However, I have set out earlier why buildings O and R are new separate buildings and why the false invoice (said to relate to conversion works) cannot be relied upon, including for the date any works may have been carried out. A second invoice¹⁵ from the appellant stated to relate to conversion to offices of building O does not give the date of any works carried out on site. Additionally, the invoice itself is dated 23 July 2020 which is 15 months after the relevant date for immunity. It seems to me improbable that a company would construct the building before March 2019 and then wait 15

¹⁴ The relevant date for immunity from enforcement action

¹⁵ Putnam Proof of Evidence, Appendix 7: Westcoast Civils Limited

months before invoicing for the works. Far more likely is that the building was completed much closer to the invoice date and hence after the relevant date for immunity. Hence, it does not provide any convincing evidence in support of the appellant's case.

45. A third invoice¹⁶ submitted by the appellant in respect of building M is dated 18 December 2018. However, it also does not state the date of any works carried out on site.
46. Overall, in respect of buildings O, R and M there is a clear lack of convincing evidence of them having been constructed more than 4 years before the notice was issued. Furthermore, it is also directly and markedly contradicted by the Council's evidence.¹⁷ The Getmapping image of the site dated 14 September 2019 shows the stable building in its original form with no building M present. The GoogleEarth 2020 image shows building M for the first time on site, with the stable building still unchanged. The two separate buildings O and R are seen for the first time in the 2021 GoogleEarth image, with building O having a full hipped roof, and building R seemingly still under construction given the exposed roof trusses.
47. It is clear from the time lapse imagery of the site that some limited area of hardstanding and earth bunding is likely to have formed part of the site since before 27 March 2019. The bunding forms part of the boundary of the site and the hardstanding supports the activities comprised in the mixed use of the site. Along with the use and activities the physical site area has continued to expand along with the area and amount of hardstanding and bunding over the years, including more recently.
48. Since the purpose of all of the works of hardstanding and bunding has been entirely secondary to and facilitative of the material change of use over the years (rather than causative), with no convincing evidence to the contrary, and having regard to the principle set out in *Murfitt*¹⁸ (which related to the provision of hardstanding for the parking of HGV lorries) later reviewed and confirmed in *Caldwell*¹⁹, I find that the hardstanding and bunds do not benefit from immunity from enforcement action.

Conclusion on ground (d)

49. The appellant's evidence in terms of supporting documentation over the 4 and 10 year immunity timeline is very limited and sparse, not providing any convincing evidence of the form of works carried out, or of the dates when such works were said to have been carried out. His oral evidence and the supporting evidence from witnesses Mr Elgy and Mr Einig was also lacking in detail and in parts contradictory. Overall, the evidence in support of the appellant's case is very far from being sufficiently precise and unambiguous. Furthermore, it is also directly and significantly undermined by contradictory evidence submitted by the Council. In conclusion, the appellant has failed to demonstrate, on the balance of probability, that any of the development subject of the enforcement notice was immune from enforcement action at the date the notice was issued.
50. For these reasons the appeal on ground (d) fails.

¹⁶ Putnam Proof of Evidence, Appendix 6: RLR Demolition Ltd

¹⁷ Clare Merritt Proof of Evidence, Appendix 8, Timeline photographs

¹⁸ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

¹⁹ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

51. In view of this conclusion it is unnecessary for me to consider whether there was any positive deception.

APPEAL ON GROUND (a)/deemed application for planning permission

Main Issues

52. At the start of the Inquiry it was common ground between the parties that the Council's initial concerns relating to highway safety, access, and parking were capable of being controlled through the imposition of planning conditions if the appeal were to be allowed. The Council also accepted the additional survey information supplied by the appellant demonstrated the absence of any Great Crested newts being present on site. I have no reason to come to a different view on these matters.
53. Consequently, the main remaining issues in dispute between the parties are:
- (i) whether the site is in a sustainable location, and
 - (ii) the effect of the development on the character and appearance of the area.

Reasons

Whether the site is in a sustainable location

54. The appeal site is located outside of any defined settlement boundaries and within the countryside. The nearest small settlements are Oving (including Pitchcott), Quainton, and Waddesdon, approximately 2.5 miles south-west of the site. The nearest larger settlements are Aylesbury and Bicester, about 6 and 14 miles away respectively.
55. The Vale of Aylesbury Local Plan (2021) (LP) forms part of the Development Plan for the area and sets out the strategic aims and objectives for development within the district to 2033. These are to be achieved through LP Policy S1, which reflects the overarching sustainability objectives of the Framework²⁰, and Policies S2 and S3, which together set out a hierarchical settlement approach with the primary focus for all development being directed towards the larger settlements, supplemented by growth at other larger, medium and smaller villages.
56. Outside of the defined settlements LP Policy S3 states that new development in the countryside should be avoided other than for specific proposals which accord with policies in the plan to support thriving rural communities and the development of sites allocated in the LP.
57. Policy WAD1 of the Waddesdon Parish Neighbourhood Plan (2017) states, amongst other matters, that development proposals on land outside of the settlement boundary will not be supported unless it is necessary for particular purposes, including for enterprise and diversification, that benefits the rural economy without harming countryside interests.
58. Framework paragraph 85 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth. Also, Framework paragraph 89 states that planning policies and

²⁰ National Planning Policy Framework (December 2023)

decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. However, it goes on to say that in such circumstances it will be important to ensure that development is sensitive to its surroundings. This would be necessary in my view to ensure that the development can properly be regarded as being sustainable overall.

59. As such, I consider the Council's strategic hierarchical approach to the distribution of development, set out in its Development Plan in LP Policies S1, S2, S3, and also WAD1, are consistent with the guidance and overarching principles for achieving sustainable development set out in the Framework.
60. LP Policy C1 provides for the conversion of existing rural buildings. However, as I set out earlier, rather than the appeal development including the conversion of existing buildings, it instead comprises the construction of two new buildings O and R and the addition of a third, building M. Consequently, the construction of the appeal buildings are not supported by this policy.
61. LP Policy D6 (criteria a-e) relates to the provision of new employment land in sustainable locations through allocations, intensification or extension of existing premises²¹, farm diversification schemes, appropriate replacement of existing buildings, or in a rural location where this is essential for that type of business. The policy also provides for suitable live-work developments which will not diminish normal residential amenity in locations considered suitable for open market residential development.
62. I consider the appeal site location to be clearly remote from settlements and services and cannot easily be reached on foot or by public transport. As such, access to and from the site for employment and residential use will be heavily dependent upon use of private motor vehicles. Consequently, the location of the site conflicts with the Council's planned strategy for growth in LP Policies S1, S2 and S3. While I accept the Council's area has constraints in the form of Green Belt and other designations, these do not prohibit all development in such areas, with each case to be decided on its merits. Moreover, such areas are already taken account of with regard to the planned distribution of development and the formulation of strategic Development Plan policies.
63. The employment use does not satisfy the criteria at (a) to (c) of LP Policy D6. As I set out later the activities and buildings on the site have a harmful impact on the surrounding area and thus conflicts with criterion (d), and Policy WAD1. The appellant argues that most industrial sites within an appropriate catchment area to serve the business operations, including the examples of vacant sites submitted by the Council, would be unsuitable due to insufficient site area and/or other operational reasons. However, there is no comprehensive survey or other analysis before me evidencing any wide-spread lack of availability of suitable industrial sites, or even that a rural location is "essential" for this type of business. As such, the development conflicts with criterion (e). Residential use of building R for open market housing would be unacceptable given its siting within a large scale industrial site with its associated noise and disturbance. As such the residential use of building R also conflicts with LP Policy D6.

²¹ "Existing premises" should be interpreted as lawful existing premises

64. Given the use of the site is in a mixed use, as alleged, it is not open to me to de-couple the elements of the mixed use and to consider granting planning permission for building R separately, as a single dwellinghouse. That notwithstanding, no case is made out that there is an essential need for a rural worker at this countryside location.

Effect on character and appearance of the area

65. The appeal site location is within the Northern Vale Landscape Character Area (LCA)²² described as being "open vale landscape emphasised by very low level of settlement, limited topography, large scale landscape pattern and the hills lying to the north and south which define the visual horizon in most views". The LCA sets out that the dominant land use is arable with fields generally large in scale and open with well-trimmed hedges. In particular, the site lies within the northern fringe of the LCA which contains better preserved field patterns and hedgerows.
66. Conservation of the landscape is sought in the LCA through the restoration and enhancement of the original field pattern through hedgerow and tree planting and management practices.
67. From my own observations of the site and the surrounding area I have no reason to disagree with the LCA and the Council's contention that the area has a distinctive and attractive and primarily open arable character, and a high overall degree of sensitivity to change. That said, the baseline for assessment of impacts of the appeal development on the landscape character includes not just the appeal site itself, being the original agricultural field with the former metal stable building, but also the existence of any lawful land uses and buildings within the nearby area, such as for example those nearest to the appeal site at The Paddock, and further beyond.
68. The subdivision of what was one of the larger flat open fields, as described in the LCA, is now subdivided across the site by tall bunding. Additionally, very large areas of hardstanding have been created and upon which is stored a substantial quantity of industrial vehicles, plant and other equipment. Also, the original stable building has been replaced with three separate buildings O, R and M, previously described. While there is other lawful development outside of the appeal site, it has a more muted and less harmful effect on the character and appearance of the area as a whole. However, I find the effect of this appeal development has been to obliterate the rural character of a substantial area of open field pattern, as described in the LCA, and replacing it with a highly urbanised industrial site which significantly detracts from and harms the character of the landscape.
69. In terms of visual effects the site has some natural screening to the roadside boundary, and the wider site could be further screened from views with additional planting and boundary treatment, secured through planning conditions. Similarly, the maximum height of roofs and external storage and lighting could be controlled through conditions. However, this would do little to ameliorate the significantly harmful effects on the landscape character I have described, and moreover would not mitigate external views of the site to an acceptable level.

²² Aylesbury Vale Landscape Character Assessment (2008)

70. For these reasons I find the development has a significantly harmful effect on the character and appearance of the area in conflict with LP Policy NE4 and also Policies S1, S3 and BE2.

Balance and conclusion on ground (a)

71. Having regard to the overarching strategy of the LP for economic growth and the distribution of development in line with the hierarchical settlement pattern, I find the development is remote and not sustainably located, thereby in conflict with in the LP. I have also found significant harm to the character and appearance of the area in conflict with the LP policies as set out above.
72. Planning conditions would not overcome the harm to the character and appearance of the area or the in-principle conflict with planned development in the LP strategy.
73. A time limited planning permission would reduce the harm I have described but it would nonetheless continue for an extended period of time, also in conflict with the Development Plan. I consider the harm should be undone sooner than a time limited permission would provide. I deal with this later in ground (g).
74. I acknowledge the site provides employment and some associated benefits to the economy, and the residential use provides one dwelling towards meeting overall housing need. However, the scale of these benefits is limited and moreover I see no reason why the same benefits could not be achieved in more sustainable locations and hence without the harm I have described. As such, I attach little weight to the these benefits.
75. Dismissal of the appeal would result in Mr Elgy losing his home. This would constitute an interference with his human rights under Article 8 of the European Convention on Human Rights and under Article 1 of the First Protocol. These rights are enshrined in the Human Rights Act 1998 and concern the right to respect for private and family life and the protection of property respectively. However, they are qualified rights, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest and well-being of the country, which has been held to include the protection of the environment and upholding planning policies.
76. I have also taken into account Article 3 relating to the *best interests of the child*²³. This requires me to treat the best interests of the children as my primary consideration, in terms of the need to safeguard and promote their welfare. In balancing and weighing this consideration, along with others in this case, no other single consideration can inherently be more important. In this regard there is no evidence before me to show there is any lack of residential properties available for Mr Elgy to rent in the wider area. While his children stay with him for certain periods of time, they also have other accommodation with their mother. As such they would not be at risk of being made homeless. There is no contrary evidence before me. Taking account of all these factors in respect of Mr Elgy and his children I attach only limited weight to them in support of the appeal in the overall balance.
77. In conclusion, the totality of the harm I have described resulting from the appeal development significantly and demonstrably outweighs the benefits and the weight I attach to other considerations in support of the appeal. As such,

²³ Article 3 of the United Nations Convention on the Rights of the Child

the development conflicts with the Development Plan as a whole. Dismissing the appeal would also be a proportionate interference with the rights of Mr Elgy and his children.

APPEAL ON GROUND (f)

78. Section 173(4)(a) and (b) of the Act states the two purposes the requirements of an enforcement notice can seek to achieve. The first (a) is to remedy the breach of planning control which has occurred, the second (b) is to remedy any injury to amenity which has been caused by the breach. Hence, an appeal on ground (f) is a claim that the notice requirements exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.
79. It is clear from the notice requirements in Section 5 that its purpose is to secure the cessation of the mixed use, the removal of the three buildings, hardstanding and bunds, and for the land to be restored to its former condition. Hence, the purpose of the notice falls within s173(4)(a) to remedy the breach of planning control.
80. Requirement 12 in the notice requires the land to be restored to a state "suitable for agricultural use". However, in terms of the notice not exceeding a remedy it is sufficient and more appropriate to require the restoration of the land to its condition before the breach took place, albeit that may coincidentally result in the land being suitable for agricultural use. I will vary the wording of the requirement accordingly.
81. Other than as varied above, the notice requirements go no further than securing the cessation of the unauthorised use and the removal of the operational development, vehicles, equipment and other items, so as to restore the land to the condition that existed prior to the breach occurring. Hence, the requirements go no further or beyond simply remedying the breach and are not excessive.
82. The appeal on ground (f) therefore fails.

APPEAL ON GROUND (g)

83. The ground of appeal is that the period of time for compliance with the notice requirements falls short of what should reasonably be allowed. The notice requires full compliance within 6 months. The appellant seeks a period of 18 months.
84. I consider that any period of time in excess of 11 months would be tantamount to a grant of temporary planning permission which is unjustified for reasons I set out earlier in ground (a).
85. I see no reason why the physical requirements of remediating the site could not be completed within 6 months. While I accept that finding an alternative industrial site might be difficult I am not persuaded that such would not be reasonably possible within the same timeframe.
86. With regard to Mr Elgy the Inquiry heard that he has no formal tenancy agreement, and hence there is no evidence of the appellant having to give him any extended notice period in requiring him to leave the site. Also, there is no evidence to show there is any lack of alternative residential properties in the

wider area available for him to rent. I have taken account of his children who stay with him for periods of time, but as they also have other accommodation they would not be at risk of being made homeless.

87. In light of all the circumstances, and taking account of the Article 3 and Article 8 rights of Mr Elgy and his children, I consider that 6 months would be proportionate and does not fall short of what should reasonably be allowed.

88. For all these reasons the appeal on ground (g) fails.

FORMAL DECISION

89. It is directed that the notice be corrected and varied by:

- in Section 5.4 deleting the words "mobile home" and substitute instead the word "building"; and
- in Section 5.12 deleting the words therein and substitute instead the following words: "Restore the land to its condition that existed prior to the breach of planning control taking place"; and

90. Subject to the corrections and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jack Smyth, Counsel	No5 Barristers Chambers
He called:	
Mark Spragg BA, DipTP, MRTPI	Director, Thame Planning Consultancy
Jake Putnam	Appellant
Nicholas Elgy	Occupier
David Einig	Contractor

FOR THE LOCAL PLANNING AUTHORITY:

Mr Alexander Greaves, Counsel	Francis Taylor Building
He called:	
Clare Merritt	Planning Enforcement Officer
Emma-Louise Mumby MSc	Senior Planning Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1	Ecology Report 03.05.2024, Bernwood Ecology
ID2	Addendum to Spragg proof – RDS traffic speed survey results
ID3	Rebuttal proof – Clare Merritt
ID4	Buckinghamshire Council - Highways consultation response
ID5	Buckinghamshire Council – Ecology consultation response
ID6	Other available sites – Council’s web-based research
ID7	Getmapping image
ID8	Plan/illustration of residential unit (Mr Spragg)
ID9	Plan of residential unit with access (Mr Spragg)
ID10	JPL commentary on <i>Oates v SSCLG & Canterbury CC [2017] EWHC 2716 (Admin)</i> , <i>[2018] EWCA Civ 2229</i> ; <i>[2019] JPL 251</i>