



Appeal Decision

Inquiry held on 1-2 October 2024, and 11 November 2024 (virtual session)

Site visit made on 1 October 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2024

Appeal Ref: APP/X0360/C/24/3344473

Land known as Brookfield Farm, Old Wokingham Road, Crowthorne, Wokingham RG40 3BU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Stuart Brooks against an enforcement notice issued by Wokingham Borough Council.
 - The notice was issued on 22 April 2024.
 - The breach of planning control as alleged in the notice is (i) the material change of use of 'the land' from agriculture and equestrian to vehicle storage, vehicle repairs and restoration and general storage with ancillary office, (ii) the erection of 2 no. buildings in connection with the unlawful use of 'the land' as outlined in blue on plan 2, (iii) the laying of hard-surfacing in connection with the unlawful use of the land as outlined in green on plan 2, (iv) the erection of a wall and boundary treatments in connection with the unlawful use of 'the land' in the areas outlined in green on plan 2.
 - The requirements of the notice are:
 - (i) Cease the use of 'the land' outlined in red on plan 1 for vehicle storage, vehicle repairs and restoration, and general storage with ancillary office.
 - (ii) Remove all vehicles, chattels, including containers and building materials, equipment, and associated paraphernalia from 'the land' outlined in red on plan 1.
 - (iii) Remove buildings 1 and 2 outlined in blue on plan 2, including foundations associated infrastructure, service connections, fixtures, and fittings from 'the land'.
 - (iv) Excavate and remove all hardstanding and boundary treatments, including walls, from 'the land' as outlined in green on plan 2.
 - (v) Spread topsoil to a depth of 15cm and grass seed over '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), (c), (d), 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 corrected by:
 - Substituting Plan 1 and Plan 2 attached to the notice with the amended Plans 1 and 2 annexed to this decision.
 - In section 2 the deletion of the duplicated words "Brookfield Farm,".
 - In section 3(i) the deletion of the words "with ancillary office".
 - In section 3(ii) the deletion of the words "2 no. buildings" and substitute the words "one building".
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- In section 3(iv) the deletion of the words “a wall” and substitute the word “walls”.
 - In section 5(i) the deletion of the words “with ancillary office”.
 - In section 5(iii) the deletion of the words “Buildings 1 and 2” and substitute the words “Building 1”.
 - In section 5(v) the deletion of the words “to a depth of 15cm”.
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by Wokingham Borough Council against Mr Stuart Brooks. This application is the subject of a separate decision.

Procedural Matters

4. A Case Management Conference (CMC) was held online on 15 August 2024 with the appellant and representatives of the Council. The CMC was held to discuss the arrangements for the Inquiry and not the merits of the appeal.
5. The Inquiry commenced on 1 October 2024 and was programmed to sit for 2 days. However, an additional sitting day was required to hear closing submissions and applications for costs. This was held virtually on 11 November 2024. All oral witness evidence to the Inquiry in relation to grounds (a), (c), and (d) was given by sworn affirmation.

Matters concerning the notice

6. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
7. During the Inquiry the appellant’s position in relation to the use of Building 2 changed. The enforcement notice alleges a material change of use of the land “*from agriculture and equestrian to vehicle storage, vehicle repairs and restoration and general storage with ancillary office*”. The ancillary office element of the alleged material change of use was said to be taking place within “Building 2” which forms part of the operational development attacked by the notice.
8. During evidence in chief the appellant stated that Building 2 was formed by two shipping containers being bolted and joined together and initially used as an office and animal feed store. This changed in 2021 when the building was converted into “*a studio flat*” which had subsequently been occupied by three individuals, firstly by Mr Thomas Donker, followed by “Bradley”, and finally the current occupant who was said to be a Romanian called “Robert”.
9. In cross-examination the appellant further stated that Building 2 was occupied as a residential unit when the Council’s Officer Mr Croucher visited the site on

- 19 December 2023. When asked about the use of building 2 during this site visit the appellant told Officers that it was used as an office and did not advise them of its residential use "*because of the 4 year rule*".
10. Despite his own evidence indicating that the mixed use alleged in the notice should have included the residential use of building 2, when pressed by the Council's Barrister as to whether he intended to submit an appeal under ground (b) the appellant confirmed that he did not. Nevertheless, I have a duty to ensure that the enforcement notice is in order and to rectify any errors or misdescription. The critical question for me to answer in this instance is whether, on the date the notice was issued (22 April 2024), building 2 was in use as an ancillary office or a self-contained residential unit.
 11. The Council question whether, on the balance of probabilities, the appellant has shown that building 2 was in residential use when the notice was issued and that it is for the appellant to establish an appeal on a relevant ground¹. The evidence in support of the appellant's claim is restricted to his oral evidence which was given under sworn affirmation and tested by cross-examination, as well as his written proof of evidence which also stated, "*Building 2 was erected for agricultural storage (when it was still in shipping container form) and then a studio flat*".
 12. The Council do not have any direct evidence to contradict the appellant's version of events, and the Council's Officer Mr Croucher confirmed to the Inquiry that he had never been into building 2 during previous site visits. The view that building 2 was an office was based primarily on what the appellant had told him verbally in December 2023.
 13. The Council instead seek to argue that the appellant's evidence regarding building 2 is insufficiently precise and unambiguous. Whilst I acknowledge that the appellant provided no internal photographs or any documentary evidence such as tenancy agreements, it may simply be that no such evidence exists. I also accept that the building does not appear inherently "domestic" when viewed externally, however the lack of any private external amenity space or domestic paraphernalia does not preclude the building itself from being a self-contained residential unit.
 14. The Council also consider that reduced weight should be given to the appellant's evidence due to his willingness to provide false and incorrect information to the Council's Officers in December 2023. However, particularly given the planning history of the wider Brookfield Farm site which has seen the appellant obtain Lawful Development Certificates for the use of other buildings as residential units, I find it highly likely that the false nature of the appellant's verbal claims in December 2023 were purely to avoid the detection of another residential unit which did not have the requisite planning permission.
 15. Furthermore, whilst the Council cannot be blamed for the appellant's failure to respond to the Planning Contravention Notices issued or for being provided false information, given the site's history, in my view it would have been prudent to gain access inside building 2 prior to the issue of the notice to firmly establish its use.

¹ R (ZZZ Incorporated) v Secretary of State for Transport, Local Government and the Regions [2003] EWHC 1092 Admin

16. Based on my own observations at the site visit undertaken on the first day of the Inquiry, it was readily apparent that Building 2 was a self-contained residential unit that appeared to currently be occupied, with day to day living facilities including kitchen, bathroom, living space, and bedroom. I also observed that many of the fixtures and fittings appeared used and to have been in situ for some time, and there was nothing to suggest that the domestic amenities had been installed in the recent past. Given that the notice was only issued just over five months prior to the date of my visit, I find it probable that the internal layout will have been the same on the date that the notice was served.
17. Although finely balanced, I find, on the balance of probability, that building 2 was in use as a self-contained residential unit on the date that the enforcement notice was issued. The consequence of this is that the mixed use as currently described in section 3 of the notice is incorrect.
18. I have considered whether it would be possible to correct the notice in its current form so that the allegation refers to a residential use instead of the ancillary office. However, it is clear that such a correction would result in the allegation being inconsistent with the stated reasons for issuing the notice and would cause injustice to both parties, as they have not had opportunity to provide evidence in relation to the residential use as part of the deemed planning application. There would also be injustice to the current occupier of building 2 who was not served a copy of the notice and who may well have appealed.
19. The Council accepts that, in the event that it is found that building 2 was in residential use when the notice was issued, the notice will require correction. In light of the potential injustice set out above, the Council's suggested solution is to amend the enforcement notice red line so to exclude building 2. This would enable the appeal to be determined without the need to consider matters pertaining to the residential use of building 2.
20. I concur with the Council's view that, when applying the relevant tests as set out in *Burdle*², building 2 is a separate planning unit which makes its exclusion from the notice more straightforward. Building 2 is a self-contained separate unit of occupation, with the evidence given to the Inquiry indicating that it is occupied by a third party who has no interest or involvement in the other activities taking place across the appeal site.
21. The exclusion of building 2 can also not be said to result in injustice to any party. The Council will not suffer any injustice as they will retain the ability to issue a further enforcement notice in respect of building 2 should they consider it expedient to do so. Equally, the appellant nor the occupier of building 2 cannot be said to suffer an injustice as they are clearly aware of the existing residential use of the building which would remain unaffected by the outcome of this appeal. Furthermore, both the appellant and occupier of the building would have the ability to appeal against any new enforcement notice attacking the residential use of building 2, should the Council issue one.
22. In view of the above, I shall correct the notice by substituting plans 1 and 2 that were attached to the notice with amended plans 1 and 2 which exclude building 2 from the red line. I shall also remove any reference to building 2 and

² *Burdle & Williams v Secretary of State for the Environment & New Forest DC* [1972] 1 W.L.R 1207

ancillary office from both the allegation in section 3 and the requirements in section 5 of the notice.

23. Whether requirement 5(v) was excessive was also discussed at the outset of the Inquiry. There is no evidence to suggest that the land was anything other than grassed agricultural or equestrian land prior to the developments taking place, and therefore the requirement to spread topsoil and grass seed the land is both reasonable and necessary to return the land to its previous condition. Nevertheless, the requirement to spread topsoil to a depth of 15cm appears arbitrary and unsupported by any credible evidence or reasoning. I shall therefore delete the specific reference to 15cm from requirement 5(v).
24. It was common ground between the parties that as there was more than one wall within the confines of the appeal site, the breach at section 3(iv) should be corrected to state the erection of "walls" instead of "a wall". Finally, in the interests of clarity I shall delete the duplicated "Brookfield Farm" from the land affected in section 2.

Ground (c)

25. An appeal on ground (c) is a claim that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test is on the balance of probabilities.
26. The appellant's case on this ground relates solely to the erection of one fence and two walls at the appeal site. For ease of reference, I shall identify the fence and walls by referring to the coloured lines that denoted the different walls, gates, and fences on the annotated aerial photo³ provided by Mr Croucher. The appellant's argument is that the fence and walls are permitted development by virtue of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").
27. Part 2, Class A of the GPDO grants planning permission for the "*Erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*" subject to the various limitations set out at paragraph A.1 being met. There is no dispute that the fence shown in green and the walls shown in yellow and purple are less than 2 metres in height, and therefore do not exceed the height limit at paragraph A.1(b).
28. In addition to meeting the limitations set out under paragraph A.1, case law⁴ sets out that in order for a structure to fall under Class A of Part 2, it must have "*some function of enclosure*". It is also possible for a means of enclosure to have a "hybrid" function, for example a wall could act as both a means of enclosure and a retaining wall. I must therefore establish whether the fence and walls operate as a means of enclosure.
29. Turning firstly to the fence shown in green located towards the northern end of the appeal site. This fence is a relatively short section of standalone fencing which does not join to building 1 and is isolated from any other means of enclosure. There are clear gaps either side of the fence meaning it is possible to pass either side of it. The appellant stated in cross-examination that the fence had been erected to act as a windbreak when he was working in the

³ Appendix 2 to Mr Croucher's Proof of Evidence

⁴ *Pregate Properties Ltd v SSE* [1973] 25 P&CR 311

yard. Whilst that may be the case, it does not alter the fact that the fence plays no part in physically, functionally, or visually enclosing the land. Accordingly, the fence is not an enclosing function and therefore is not permitted by the GPDO.

30. The walls shown in purple and yellow however do have “some function” of enclosure as they visually, physically, and functionally surround part of the appellant’s land which is used in relation to the vehicle repairs, storage, and restoration use. Despite the modest height of the walls, in conjunction with building 1, building 2, and storage containers they form almost a continuous boundary along the western edge of the appeal site. The fact that these walls also retain some slightly higher land does not detract from their function of enclosing part of the site.
31. Nevertheless, the Council considers that the walls are operational development which is integral to the alleged breach of planning control, namely the material change of use, and therefore the notice can require their removal taking into account the judgement in *Murfitt*⁵. The more recent *Caldwell*⁶ judgement clarified that an enforcement notice could only lawfully require the removal of operational development that was ancillary in nature to the unauthorised use of land.
32. Mr Brooks gave evidence as to the reasons why the walls were erected, which in the case of the wall shown purple was to prevent animals from walking over the septic tank that was used in relation to the unauthorised use and to stop horses getting near the electrics. The wall shown yellow was to “finish off” the land and “make it look pretty”. It was also apparent that the wall assists in containing the unauthorised use within the appeal site and prevents vehicles and other items from migrating further west.
33. Given those reasons it is more likely than not that but for the unauthorised change of use, the walls probably would not have been constructed. Their provision was part and parcel of the physical works associated with that change of use and not for a different, lawful use. Therefore, having regard to the judgements in *Murfitt* and *Caldwell* the notice can nevertheless require their removal.
34. Taking all of the above into account, the matters stated in the notice constitute a breach of planning control and the appeal on ground (c) fails.

Ground (d)

35. This ground of appeal is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The appellant is not contesting that enforcement action can be taken in respect of the material change of use. Using the coloured lines on Mr Croucher’s appendix 2 to help identify the various walls and fences, the appellant’s case on ground (d) is limited to building 1, the hard-surfacing, the fence coloured green, the walls coloured yellow and purple, the wall and fence coloured red, and the most westerly wall coloured blue. Therefore, there is no basis on which the notice could be

⁵ *Murfitt v Secretary of State for the Environment & East Cambridgeshire CC* [1980] JPL 598

⁶ *Caldwell & Timberstore Ltd v Secretary of State for Levelling Up, Housing and Communities & Buckinghamshire Council* [2024] EWCA Civ 467

- quashed under ground (d), but there is scope for argument over whether it can require removal of the various operational developments listed above.
36. Given that the appellant's case on ground (d) relates only to operational development the relevant period in this case is 4 years prior to the issue of the enforcement notice. As the notice was issued on 22 April 2024, the relevant date is therefore 22 April 2020. However, as already discussed under the ground (c) appeal above, *Murfitt* and *Caldwell* have established the principle that an enforcement notice can legitimately require the removal of ancillary operational development intended to facilitate the unauthorised change of use.
37. There is no dispute that building 1 was substantially complete more than 4 years prior to the notice being issued. Based on my observations and the evidence before me, I have no reason to disagree. However, the Council contend that the building (as well as the hard-standing area and various walls and fences) is part and parcel of the change of use and therefore the notice can require its removal.
38. Mr Brooks stated within his oral evidence that "building 1" was initially built prior to December 2005 as an agricultural barn and field shelter, and was used to house ostriches and subsequently goats, wild boar, chickens, and turkeys. The building was an open sided structure which had an electricity supply from at least 2005. The building continued to be used for agricultural purposes and by 2015 part of its roof had blown off. The aerial photograph from March 2017⁷ showed that the entire roof had now been removed and the building, which remained open sided on its eastern elevation, appeared to be used for storing bales of hay. The aerial photograph from 2018⁸ produced by Mr Croucher showed little change from the 2017 position.
39. Mr Brooks confirmed under cross examination that the new roof was replaced in 2019. This is supported by the aerial photograph from 2019⁹ which shows the building with a complete roof, with several vehicles also visible in its immediate vicinity. By this point doors had also been installed on its eastern elevation.
40. In addition to the new roof and the enclosing of the eastern elevation including new roller shutter doors, other significant works to the building have taken place. The photograph produced by the appellant dated July 2016¹⁰ shows the building to have a metal corrugated roof with its sides (except the open eastern elevation) enclosed by timber fence panels. The ground inside the building appears as bare earth. A further photograph produced by the appellant dated September 2016 shows the same scenario, except blockwork walls were being erected on three elevations inside the existing timber fence panels.
41. From the evidence available to me it is apparent that there is very little remaining of the original building. Whilst the original timber roof purlins may remain, the works undertaken have involved an entirely new roof, the enclosing of the eastern elevation including roller shutter doors, full height blockwork walls, new concrete flooring, new timber cladding to the exterior of the building, and the fitting out of its interior including new internal walls and lighting. Other than its physical position within the appeal site, the building

⁷ Page 10 of Mr Brooks' proof of evidence

⁸ Page 13 of Mr Croucher's proof of evidence

⁹ Fig 3 of Mr Croucher's proof of evidence

¹⁰ Page 8 of Mr Brooks' proof of evidence

bears no resemblance to the original open sided structure. As a matter of fact and degree, I find that the totality of these works amount to the construction of a new building.

42. The majority of the works detailed above have occurred from 2018 onwards. Whilst it is not possible to identify the exact date on which the new building was substantially completed, it is clear that this would have been at some point between 2018 and 2019. The appellant confirmed in cross examination that the unauthorised use commenced in 2018/2019, and therefore the substantial completion of the building will have coincided with the material change of use taking place. Mr Brooks further confirmed in his proof of evidence that "*since being substantially completed, the barn [Building 1] has been used more as a workshop for vehicles*".
43. It was clear from my site visit that building 1 is currently used in association with the unauthorised use of the land. Any other agricultural or storage use is purely de-minimis or incidental. The building is part and parcel of the material change of use and is a physical manifestation of that change having regard to *Murfitt and Caldwell*. The building supports and facilitates the material change of use that has occurred on the appeal site. Therefore, even though building 1 was completed before 22 April 2020 and would normally be immune from enforcement action, the notice can nevertheless require its removal.
44. In terms of the hard surfacing the appellant contends that this was substantially completed before the 22 April 2020, and therefore no enforcement action can be taken against it. Mr Brooks explained that the hard surfacing was laid by digging out the land and putting in 40mm of hard core and that it was completed and useable by March 2014. In support of this he refers to an aerial photograph from March 2014¹¹ which has an area of land outlined in a blue circle. Originally, the area was intended to be used as a menage although after that failed to materialise, the hard core was laid to prevent ostriches from turning the area to mud.
45. Mr Brooks contends the March 2014 photograph shows the hard surfacing, particularly in the right-hand half of the blue circle. I accept that the appearance of the land within the blue circle is not uniform. There is a strip of land immediately to the south of the building which differs in appearance from the rest of the site and, on the balance of probability, is likely the hard core referred to by Mr Brooks. This area though is substantially smaller than the area of hard standing attacked by the notice and differs significantly in terms of appearance. The remainder of the area within the blue circle is, in my view, bare earth which has likely been worn due to the passing of vehicles or machinery.
46. Both the oral and documentary evidence indicates that this remained the same with the area grassing over until 2018-2019 when Mr Brooks subsequently topped the hard core previously laid with planings/type 1 MOT. Whilst the area previously laid in 2014 was covered by this new hard surfacing, it is apparent that a greater area had now been covered with it extending immediately to the east of the building. The Council do not dispute that new hard surfacing was laid in 2018-2019.

¹¹ Page 14 of Mr Brooks proof

47. Mr Brooks also contends that all of the new hard surfacing was carried out at the same time. The aerial photographs dated 15 April 2020 and 2022 cast some doubt over this claim, given that between these two dates there is clearly an extension of the hard surfaced area running north of the building and possibly two other areas extended further east up to the boundary wall and fence coloured red on Mr Croucher's annotated photograph.
48. However, whether or not all of the hard surfacing area was completed prior to 22 April 2020 is immaterial. By the appellant's own admission, the initial hard core laid in 2014 was, in part, to prevent the land from turning to mud. There is no evidence that this was a "finished" surface, a fact supported by subsequent aerial photographs from 2015, 2017, and 2018 where the area had grassed over. The subsequent laying of the hard surfacing in 2018/2019 was far more substantial and, to my mind, a separate operation. This hard surfacing covered a greater area, significantly changed the character and appearance of the land, and was clearly laid with the intention to make the land smoother for vehicles to access and utilise the site.
49. Again, the laying of the hard surfacing in 2018/2019 coincided with the unauthorised vehicle use commencing on the site. Even though it appears to have been carried out in phases the hard surfacing, as a whole, is inextricably linked physically and visually to the unauthorised use and clearly facilitates access and the parking and storage of vehicles. Consequently, even if the hard surfacing was substantially complete by the relevant date, as ancillary development associated with the material change of use of the land the notice can require its removal.
50. As there is no dispute that the vehicle storage, repairs, and restoration use has not been in place for a continuous period of 10 years prior to the date of the notice, it is not immune from enforcement action through the passage of time. The appeal on ground (d) therefore fails in respect of the hard surfacing.
51. I now turn to the various walls and fences erected within the appeal site. Dealing firstly with the walls coloured yellow and purple. It is common ground that the wall coloured purple had been in situ for more than 4 years prior to the date of the notice. There is a dispute between the parties though as to whether the wall coloured yellow was substantially completed by the relevant date. In any event, for the reasons explained in the ground (c) appeal above, I have already found that the provision of both walls were part and parcel of the change of use. Consequently, having regard to the judgements in *Murfitt* and *Caldwell* they are not immune from enforcement action and the notice can require their removal.
52. The appellant contends that the fence coloured green was erected prior to the relevant date, in around 2019/2020. The Council did not appear to dispute that claim. As outlined in the ground (c) appeal above the appellant stated that the fence was erected as a windbreak and to provide shelter. Mr Brooks also accepted in cross examination that there would be no need for the fence if there was no yard. The fence is plainly ancillary to the material change of use and therefore is not immune from enforcement action through the passage of time.
53. The same conclusion must also be drawn in relation to the most westerly wall coloured blue. This wall is low level and acts as a small retaining feature where there is a slight change in level in the hard surfaced area. Mr Brooks confirmed

that the wall was built with left over bricks, and that there was no other need or reason for it. It therefore follows that it also is not immune from enforcement action.

54. Finally, I turn to the wall and fence erected along the eastern boundary of the appeal site shown coloured red on Mr Croucher's plan. It is evident from the various aerial photographs that this wall was in situ prior to the 22 April 2020. The appellant's position is that the wall was built in 2019 (with the timber fence panels added later in 2020) to keep his grandchildren and dogs safe in his garden, and that the timing of the wall's erection was down to affordability.
55. Whilst I have no reason to doubt that the wall was built, at least partly, due to a desire to keep his grandchildren and dogs safe, its erection in 2019 will have been around the same time that the vehicle repairs, storage, and restoration use commenced. It is the commencement of this use that will have expedited the need for some form of boundary treatment to keep his grandchildren and dogs away from the vehicles that would now be on the site. More pertinently the erection of the wall would prevent vehicles and other paraphernalia associated with the unauthorised use from migrating closer towards the dwelling and the immediately surrounding land which would likely be utilised by its occupants.
56. Put simply, in my judgement the wall was erected to enclose the land that was being used in connection with the unauthorised use. This is further supported by the aerial photographs from 15 April 2020 and 2022. These show that at some point between those dates' further areas of land immediately adjacent to the wall which appeared grassed over were covered in hard surfacing. The wall also acts as a retaining feature and enabled the further laying of hard surfacing, whilst also enclosing the appeal site and preventing the migration of the use further east towards the dwelling. I therefore find as a matter of fact and degree that the wall is both associated with and ancillary to the material change of use of the land. Consequently, it is not immune from enforcement action and the notice can require its removal.
57. For the reasons set out above, I conclude that on the date on which the notice was issued the Council was not too late to take enforcement action in respect of the breach of planning control constituted by those matters. Accordingly, the appeal on ground (d) fails.

Ground (a) – the deemed planning application

Preliminary Matters and Main Issues

58. My attention has been drawn to the Council's emerging development plan "*Local Development Scheme*". It was confirmed at the Inquiry that the plan had not progressed beyond the regulation 19 stage and was therefore at an early stage of preparation. Although no specific policies were identified that may be relevant to the appeal scheme, it is likely that there are matters contained within the emerging development plan that still need resolving. It was further confirmed at the Inquiry that Brookfield Farm had been taken out of the emerging plan as an allocated site at an early stage. The emerging development plan therefore attracts limited weight.
59. At the CMC the appellant suggested that, in addition to the main issues that I had identified, the planning history of Brookfield Farm and the development

and emerging development in the vicinity of the appeal site should also be a main issue. Whilst such matters may be relevant considerations in respect of the other identified main issues, they do not form a separate principal issue.

60. The *main issues* are therefore:

- Whether the principle of development is acceptable, having regard to the relevant policies of the development plan;
- The effect of the development on the character and appearance of the area; and
- Whether the development is in a suitable location, having regard to sustainable development and travel.

Principle of development

61. There is no dispute between the parties that the appeal site is located in the countryside, outside of any settlement boundaries and development limits, and is not within any designated employment area¹².

62. Policy CC02 of the Wokingham Borough Adopted Managing Development Delivery Local Plan Document (adopted February 2014) (Local Plan) states that planning permission for proposals at the edge of settlements will only be granted where they can demonstrate that the development is within development limits. Given that the development is outside of the development limits, there is conflict with Policy CC02.

63. Policy CP9 of the Wokingham Borough Council Adopted Core Strategy Development Plan Document (adopted January 2010) (Core Strategy) guides the scale and location of development, requiring that developments reflect the existing or proposed levels of facilities and services at locations together with their accessibility. The policy identifies various locations where development proposals will be acceptable, with those locations being assessed as capable of accommodating major, modest, or limited development. The appeal site is not located within any of the specified locations, resulting in the development conflicting with Policy CP9.

64. Policy CP11 of the Core Strategy deals with proposals outside of development limits (including countryside) and consequently is the locational policy most relevant to the appeal scheme. This policy sets out that in order to protect the separate identity of settlements and maintain the quality of the environment, proposals outside development limits will not normally be permitted. There are seven exceptions listed under CP11, with exceptions 4-7 relating to residential extensions, affordable housing, replacement dwellings, and essential community facilities. These are, of course, not relevant to the development subject of this appeal.

65. In order to meet exceptions 1-3 listed under Policy CP11, developments must:

- 1) Contribute to diverse and sustainable rural enterprises within the borough, or in the case of other countryside based enterprises and activities, it contributes and/or promotes recreation in, and enjoyment of, the countryside; and

¹² Paragraph 3 of signed Statement of Common Ground

- 2) It does not lead to excessive encroachment or expansion of development away from the original buildings; and
 - 3) It is contained within suitably located buildings which are appropriate for conversion, or in the case of replacement buildings would bring about environmental improvement.
66. Vehicle storage, repair, and restoration uses are not typically considered to be rural enterprises, and they are instead more usually located in urban areas. There is also no evidence to suggest that the development contributes to any diverse and sustainable rural enterprises, nor does it contribute to or promote recreation in and the enjoyment of the countryside.
67. In terms of encroachment, it is clear from the array of historic aerial photographs that the development has led to an excessive encroachment away from original buildings. Following my findings in the ground (c) and (d) appeals that the operational development is unlawful, there can be no doubt that the development has encroached away from any "original" building and into previously open agricultural fields. Finally, given the nature of the use which includes external storage and the laying of hard surfacing, it is clear that, irrespective of their location or suitability for conversion, the development is not contained within buildings. The development therefore fails to meet any of the exceptions set out under Policy CP11.
68. The Council also referred to Policy CP15 of the Core Strategy in their reasons for issuing the notice. This policy specifically relates to identified core employment areas and other locations within settlement limits. It is therefore not relevant to the appeal proposal. Reference was also made to Policies CP1 and CP3 of the Core Strategy, and Policies CC01, CC03, and TB21 of the Local Plan. However, I do not consider these to be directly relevant to this main issue.
69. Consequently, I consider that the principle of the development is unacceptable having regard to the relevant policies in the development plan. The development is contrary to policies CP9 and CP11 of the Core Strategy and Policy CC02 of the Local Plan, the aims of which are set out above.

Character and Appearance

70. The appeal site forms part of Brookfield Farm and is located within the countryside to the west of Old Wokingham Road. The site was historically in agricultural use and had consisted predominantly of grazing land. However, the appeal site is now largely covered with hard surfacing with one building and various walls and fences also on the land. To the north and west of the site are open fields, which are a common feature in the surrounding rural area that is characterised by open countryside with trees and hedgerows.
71. The site also falls within Landscape Character Area (LCA) N1 "*Holme Green Pastoral Sandy Lowland*" of the Wokingham Borough Landscape Character Assessment (March 2019) (WBLCA). The WBLCA identifies the key characteristics of the LCA to include agricultural land, which is predominately pasture, with the valued landscape attributes including the open agricultural land. The WBLCA also identifies several key issues within the LCA which includes "*commercial development pressure leading to the continued*

conversion of farm buildings from traditional uses to commercial and industrial enterprises eroding the rural character”.

72. The Council referred to appeal decisions¹³ at Sutton Court Farm (“the Sutton Court Farm decision”) which is situated a short distance to the north-west of the appeal site. The appeals which were made under section 78 of the 1990 Act related to retrospective applications for the change of use of building and land to *“a mixed use of residential and car rentals”* and *“car repairs and associated parking”*. There are therefore similarities between those uses and the use being carried out at the appeal site, something which the appellant’s planning consultant Mr Rowe accepted in cross examination.
73. The Inspector concluded in paragraph 22 of the Sutton Court Farm decision that *“at the time of my visit there were significant numbers of cars associated with the operations located across Sutton Court Farm. The vehicles were stored close together throughout the site, which gave it a rather cramped and cluttered appearance”*. I find that the same description is equally applicable to the appeal site which at the time of my visit contained several vehicles, storage containers, and other paraphernalia which gave it a cluttered and urban appearance that is at odds with the characteristics of the surrounding countryside.
74. In addition to the number of vehicles and other paraphernalia on the appeal site, the operational development across the site only serves to exacerbate its urbanised appearance. The significant expanse of hard surfacing along with the associated walls significantly erodes the rural character of the open countryside. Building 1, and in particular its eastern elevation which includes roller shutter doors, is somewhat commercial in appearance further detracting from the rural character.
75. At paragraph 24 the Inspector stated that *“The distance that the developments are located from the public highway along with the presence of vegetation along Easthampstead Road, would to some degree conceal and lessen the developments’ overall impact. Nevertheless, it remains that the proposals have an urbanising and significant harmful impact on the rural character and appearance of the site and its surroundings”*.
76. Similarly, I observed that due to the distance from the highway and the presence of trees and hedgerows, the appeal site is largely screened from view from Old Wokingham Road. Views of the appeal site though are possible across the intervening open fields from points along Easthampstead Road, albeit views are fleeting reducing its overall impact. Despite not being overly prominent in the wider area, I still find that the development has an urbanising and significant harmful impact on the rural character and appearance of the area.
77. The appellant sought to rely on the recent granting of lawful development certificates¹⁴ (LDCs) at the wider Brookfield Farm site to demonstrate that the appeal development was similar to nearby developments which formed part of the character and appearance of the area. The LDCs granted at the wider site were in relation to the *“use of the land for the storage of cars, vans, 2 axel lorries and vehicles, building materials, shipping containers, and trailers”*, *“the*

¹³ APP/X0360/W/21/3289830

¹⁴ Council Refs: 232773, 232786 & 232799

erection of 1 no building substantially completed in excess of 4 years”, and “the use of 2 no buildings as 2 separate dwellings for in excess of 4 years”.

78. I accept that the developments that benefit from the LDCs now form part of the “baseline” when assessing the character and appearance of the surrounding area. Nevertheless, given their location to the west of the appeal site further away from Wokingham Road and due to the lawful vehicle related use being largely screened by a landscaping bund, I do not consider that they inherently change the overall character and appearance of the area.
79. Mr Rowe stated in his evidence that in his view there was a “real synergy” between the uses and buildings subject of the LDCs and the development enforced against. I disagree. Whilst there are of course similarities between elements of the respective developments, despite their relative proximity there is a clear visual and spatial disconnect between them with the sites separated by open agricultural land. Consequently, the existence of the LDCs does not justify the significant harm caused to the character and appearance of the area by the appeal development or negate the conflict with the development plan.
80. Accordingly, the development is contrary to Policies CP1, CP3, CP9, and CP11 of the Core Strategy, Policies CC03 and TB21 of the Local Plan, the aims of chapter 15 of the National Planning Policy Framework (the Framework), and guidance contained within the Wokingham Borough Council Borough Design Guide Supplementary Planning Document (June 2012). Together these seek, amongst other things, to ensure that developments maintain a high-quality environment, retain, or enhance the condition, character and features that contribute to the landscape, and do not have an adverse effect on the character of adjacent countryside.
81. Policies CC01 and CC02 of the Local Plan are also referred to in the reasons for issuing the notice, however they are not directly applicable to this main issue.

Suitable Location

82. Policy CP1 of the Core Strategy states that development within the Borough should enhance the overall sustainability of the area through minimising its impact on the environment. It sets out a list of circumstances where planning permission will be granted, including for development proposals that *“demonstrate how they support opportunities for reducing the need to travel, particularly by private car in line with CP6”*.
83. Policy CP6 of the Core Strategy reinforces this aim stating that planning permission will be granted for schemes that, amongst other things, *“provide for sustainable forms of transport”, and “are located where there are or will be at the time of development choices in the mode of transport available which minimises the distance people need to travel”*. Policy CP3 also requires development proposals to, amongst other things, provide an accessible scheme. Finally, Policy CC01 of the Local Plan reflects the presumption in favour of sustainable development as set out in the Framework.
84. As already set out above, the appeal site is located in the countryside, outside of the defined development limits, and is contrary to the locational requirements of Policy CP9 of the Core Strategy and Policy CC02 of the Local Plan. By the very nature of its location the site is not easily accessible and is

isolated from any settlements that would provide access to services and facilities.

85. The immediately surrounding roads are unlit rural roads with no footpaths or cycle lanes available. Additionally, from my own observations and from the information available to me, there are no bus stops or other modes of public transport within a reasonable distance of the appeal site. I therefore consider that visitors or customers attending the appeal site would be heavily reliant on travel by private car, given that there is a genuine lack of alternative modes of transport available.
86. Regardless of the lack of any genuine alternatives to the private car, the very nature of the vehicle storage, repairs, and restoration use means that visitors and customers to the appeal site are inevitably going to travel there by car or have the vehicle transported there by road. In the case of customers leaving their vehicle at the site to be repaired or restored, this will generate additional trips to the site and potentially the use of a second car to enable them to return and collect their vehicle. I accept that an agricultural use of the land would also generate vehicle trips, however there is no evidence before me to suggest that it would be at the same level as the vehicle storage, repair, and restoration use.
87. The appellant contends that the appeal site is in a suitable location due to its proximity to Old Wokingham Road and the similar developments on the wider Brookfield Farm site that benefit from the LDCs. These matters though do not negate the conflict with development plan policies or provide any justification for the harm caused. It was also said that the location of the appeal site adjacent to Mr Brooks' home results in him being able to walk to work and thus not being reliant on the private car or other modes of transport. Whilst this is undoubtedly the case, it does not overcome the nature of the unauthorised use that inevitably generates significant vehicle movements to and from the site.
88. For the reasons given above, the development is not in a suitable location, having regard to sustainable development and travel. The development is contrary to policies CP1, CP3, and CP6 of the Core Strategy and Policies CC01 and CC02 of the Local Plan. Additionally, the development is also contrary to the aims of chapter 9 of the Framework which seeks to promote development that limits the need to travel and provide safe and suitable access to the site for all users.

Planning Balance and Conclusion on ground (a)

89. It was queried at the Inquiry whether Policy CP11 of the Core Strategy was out of date, and the appellant's position on this point was inconsistent. Reference was made to the Sutton Court Farm decision where the appointed Inspector concluded that CP11 was out of date. The aims of CP11 are to protect the separate identity of settlements and to maintain the quality of the environment. In order to do so, subject to exceptions, development proposals in the countryside will not "*normally*" be permitted. The Policy does not therefore impose a blanket ban on developments in these locations. Despite my colleagues previous finding in respect of this matter, in my view, Policy CP11 is generally consistent with the Framework including the aims set out at paragraphs 88 and 89.

90. Whilst CP11 is an important policy in the determination of this appeal, there are other spatial strategy, environmental, and landscape policies which are just as important for the purposes of paragraph 11d of the Framework. Therefore, even if I were to conclude that Policy CP11 was out of date, the “basket” of policies as a whole for the determination of the application are not out of date. As a result, paragraph 11d is not engaged.
91. The development provides the appellant Mr Brooks with employment, and consequently there are economic benefits to the local economy through the spending of the associated income by Mr Brooks and his family in the local area. However, no evidence was produced to indicate that any other persons are directly employed at the appeal site and therefore these benefits are confined to solely the appellant. Furthermore, it has not been sufficiently demonstrated that the development could not be located within one of the defined settlements which would still achieve the same benefits. Accordingly, these benefits attract only limited weight.
92. On the basis that the operational development was lawful the appellant contended that the appeal site comprised previously developed land (PDL), and that consequently its use would be a benefit supported by the Framework. However, following my conclusions on grounds (c) and (d) the development is not lawful and as per the appellant’s case the previous use of the site and building on the land was agricultural. Given that the definition contained within the Framework expressly excludes land that is or was last occupied by agricultural buildings¹⁵, the land at the appeal site is not PDL and therefore this matter attracts no weight.
93. I have found that the principle of the development is unacceptable, having regard to the relevant policies of the development plan, harms the character and appearance of the area, and is not in a suitable location having regard to sustainable development and travel. Whilst I have had regard to the planning history of the appeal site and the wider Brookfield Farm site, and the provision of employment for the appellant and the associated economic benefits, these do not outweigh the harms I have found.
94. The development is contrary to the development plan as a whole and there are no material considerations, including the approach of the Framework, that are worthy of significant weight that would outweigh this conflict. I therefore conclude that the appeal on ground (a) should be dismissed, and planning permission be refused on the deemed application.

Ground (g)

95. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant states that six months to comply with the notice is not sufficient and suggests that a period of 12 months would be more reasonable. The appellant refers to the fact that there is nowhere else at Brookfield Farm to store the items which would need to be removed and therefore alternative accommodation would need to be sought, and that many of the vehicles on the site are damaged and cannot be driven.
96. Whilst I appreciate the reasons stated for requesting an extension of time, little evidence has been provided to demonstrate that the works could not be carried

¹⁵ Page 74 of the Framework

out within the specified six-month period. The appellant's reasons for requesting an extension focus on the removal of vehicles from the site and the need to find alternative accommodation for vehicles and items to be stored. I find no reason why it could not be arranged for those vehicles which are not roadworthy to be removed by vehicle recovery trucks, low loader trailers or similar.

97. Although I note the potential difficulties in relocating, little evidence has been provided to demonstrate that this would not be possible within six months. On that basis, the need to rectify the planning harm that arises from the unauthorised development carries greater weight and I am satisfied that six months is a reasonable timescale to carry out the requirements of the notice.

98. Therefore, the appeal on ground (g) does not succeed.

Conclusion

99. For the reasons given above I conclude that the appeal does not succeed. I have upheld the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale Counsel instructed by Phil Rowe of PROwe Planning Solutions Ltd

He called:

Stuart Brooks Appellant

Phil Rowe PROwe Planning Solutions Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Sage Counsel instructed by Wokingham Borough Council

She Called:

Mark Croucher Principal Planning Officer Team Leader

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Appellant's opening statement
2. Opening statement on behalf of Wokingham Borough Council
3. Sworn statement of Mr Stuart Brooks in relation to an application for a Lawful Development Certificate - Council Ref: 240222
4. Planning Statement in relation to an application for a Lawful Development Certificate - Council Ref: 203536
5. Closing submissions on behalf of Wokingham Borough Council
6. R (ZZZ Incorporated) v Secretary of State for Transport, Local Government and the Regions [2003] EWHC 1092 Admin
7. Bowring v Secretary of State for Communities and Local Government [2013] EWHC 1115 (Admin)
8. Devine v Secretary of State for Levelling Up, Housing and Communities [2023] EWCA Civ 601
9. Appellant's closing statement
10. Costs application on behalf of Wokingham Borough Council
11. Appellant's response to costs application



Amended Plans

This is the plan referred to in my decision dated: 9 December 2024

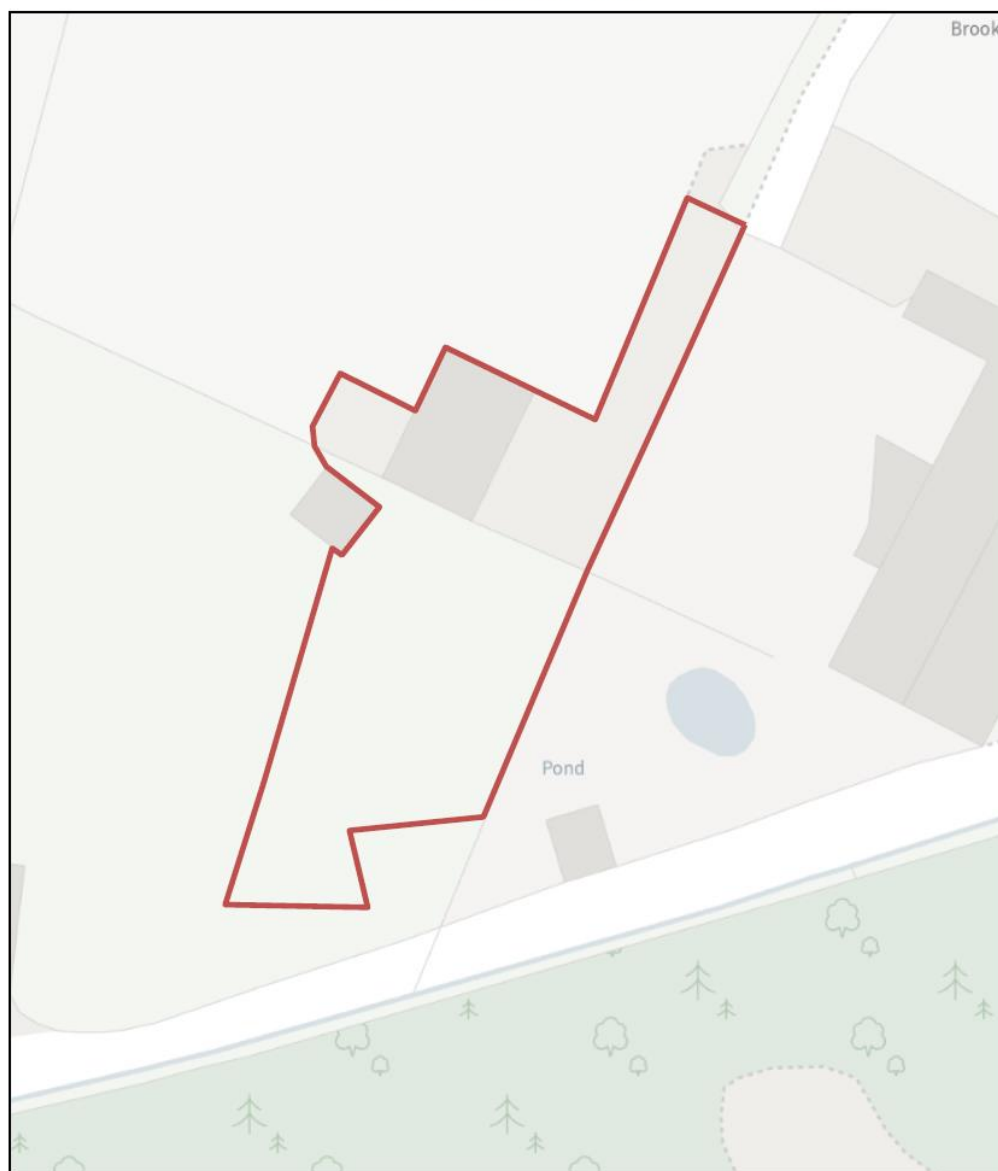
by **David Jones BSc (Hons) MPlan MRTPI**

**Land at: Brookfield Farm, Old Wokingham Road, Crowthorne, Wokingham
RG40 3BU**

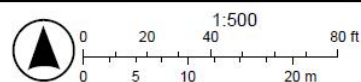
Reference: APP/X0360/C/24/3344473

Scale: Not to scale

The Land - Plan 1



08/11/2024, 08:26:52



The Land - Plan 2



08/11/2024, 08:44:46

