



Appeal Decision

Site visit made on 12 November 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 January 2025

Appeal Ref: APP/H0520/C/23/3320859

Land lying to the north of Malting Lane, Ellington, Huntingdon

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Julie Ann Feltwell (Grove Farm Ellington Limited) against an enforcement notice issued by Huntingdonshire District Council.
 - The notice was issued on 24 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, engineering operations comprising the formation of a hardstanding and operational development comprising the erection of a building.
 - The requirements of the notice are to permanently remove all buildings and associated hardstanding from the land and restore it back to its former agricultural condition.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of two months and the substitution with six months as the time for compliance.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2024) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the most relevant policies to the appeal, I have not reverted to the parties for comment.
4. This appeal relates to one of two enforcement notices issued in respect of the appeal site. I have also been appointed to determine an appeal against the other notice, which alleges a material change of use of the land from agricultural to a mixed-use site for haulage yard and storage and distribution in connection with the adjacent mixed-use site¹.
5. The appellant explains that the land adjacent to the appeal site is used by Buffaload Logistics Limited (Buffaload) for their headquarters and main

¹ Appeal Ref: APP/H0520/C/23/3320858 – The full allegation is “without planning permission, the material change of use of the land from agricultural use to use as a mixed use site. The site is now being used as a haulage yard and for storage and distribution in connection with the adjacent mixed-use site”.

storage and distribution depot. It is a family owned and run business with a fleet in excess of 240 vehicles and a storage capacity of over 22,000m².

6. The appellant's view is that the adjacent land operates under the planning permission granted in 2006 for the erection of buildings and refurbishment of buildings for B1, B2 and B8 uses² (industrial/warehousing). She states that for over a decade Buffaload had considered that the approval covered all of their activities, in particular the dominant Class B8 storage and distribution use, their ancillary B1 offices and ancillary B2 workshop uses.
7. Notwithstanding the appellant's view that the use of the adjacent site is either authorised by the 2006 planning permission or immune from enforcement action through the passage of time, it is explained that Buffaload sought to regularise the overall position in accordance with the wishes of the Council, through a new application for a "Mixed use of Use Classes E, B2, B8 and haulage yard" (the new application). It is stressed that this did not relate to any new development but was intended to remove any ambiguity about the use of the adjacent site, to make permanent a temporary permission at this appeal site and to carry out landscaping and environmental improvements, including net biodiversity gain.
8. The new application³ was refused on 19 December 2022 and is the subject of a separate appeal, which I have also been appointed to determine⁴. The merits of that decision are not matters for this appeal but the appellant's assertion that the new application represents no actual expansion of the 2006 permission is plainly incorrect as the existing operational area (reflected in the new application) extends significantly to the south into the area shown for landscaping in the approved site layout, and into this appeal site.
9. Planning permission was granted for the land subject to the enforcement notices on 16 April 2021 for the change of use of the land from agriculture to parking in connection with the adjacent haulage yard (use class sui generis). Condition 1 of the same restricts the use to a limited period of fifteen months from the date of the decision. At the end of that period, the condition requires the use to cease and any works undertaken in connection with the use be removed and the land restored to its condition before the development took place.

The Appeal on Ground (b)

10. A ground (b) appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. The onus lies with the appellant to make her case on the balance of probabilities.
11. The allegation in this case is engineering operations comprising the formation of a hardstanding, and operational development comprising the erection of a building. However, the appellant's ground (b) appeal is largely focused on the use of the site, which, as noted, is subject to a separate appeal and decision.
12. The Council's states that it received reports in December 2022 that appeared to show the formation of a concrete slab in the area, followed by reports in January 2023 of a substantial building being erected on it. The Council also

² Application Ref: 06/01759/FUL

³ Application Ref: 21/01763/FUL

⁴ Appeal Ref: APP/H0520/W/23/3320852

state that officers visited the site on 6 February 2023 and confirmed that the land remained in use by the "haulage firm" and had several trailers parked within the area, but that the building was unoccupied at the time.

13. Ellington Parish Council similarly state that it was made aware of building works being carried out in December 2022 and provide a picture from that time showing what is stated to be a recently cleared area where a hardstanding had been laid. The Parish Council provide further pictures purported to be from January, February and March 2023 showing a steel frame building at the site progressing to completion during that period.
14. The appellant does not dispute or provide evidence which contradicts that of the Council and Parish Council. It is therefore more probable than not that the formation of a hardstanding and the construction of a building occurred prior to issuing the enforcement notice.
15. The ground (b) appeal fails.

The Appeal on Ground (a)/The Deemed Application for Planning Permission

Main Issue

16. The main issue is the effect on the character and appearance of the area.

Reasons

17. The wider Buffaload site, is irregular shaped. It is bounded to the north and west by Grove Lane, to the south by the A14 and to the east by open farmland. The village of Ellington is positioned on the opposite side of the A14 but the overall character of the area is rural, albeit bisected by a busy dual carriageway. The appeal relates to land in the north-east corner of the wider site, which has been encompassed into the operational area of the business.
18. I understand local resident's concerns regarding the loss of woodland on the appeal site land and the consequential effects on character and appearance (as well as biodiversity and flood risk). However, the evidence is that the woodland clearance took place some 12 years ago and the temporary permission granted was for a change of use from agriculture, rather than forestry. Moreover, the permission requires the land to be restored to its condition before the development took place at the end of the temporary period, and that appears to be open agricultural land. That is therefore the baseline position for the land, rather than woodland.
19. Nevertheless, taken in isolation, the formation of a hardstanding and the erection of a building clearly results in a significant urbanising and harmful effect on the intrinsic character and appearance of the land, previously comprising an open agricultural field.
20. In mitigation, the building and hardstanding are seen within the context of the adjacent mixed-use site. The operations are not therefore out of character in that regard. Indeed, the backdrop of different buildings and lorries parked on the hardstanding may be similar without the appeal development. Nevertheless, the encroachment of development into the appeal site does make the development more prominent from the generally flat open farmland

to the east where clear views of the building and the tops of the parked lorries and trailers can be seen above the fence line.

21. The building and hardstanding are also prominent from Grove Lane, significantly adding to the pre-existing urbanising presence and extent of the Buffaload operation. Clear views of the buildings and hardstanding would also be achieved from the elevated agricultural land to the rear of the site as it rises beyond Grove Lane, although some mitigation would in time arise from the intervening verge planting.
22. Without the appeal site, the eastern boundary is twice stepped, narrowing from the south to the north. The inclusion of the appeal site land within the wider site would "round-off" and remove the northern most step, so, does not appear illogical within the context of the wider site. Nevertheless, I am mindful that argument could also be used to address the step further south, with the subsequent additional encroachment.
23. Moreover, the rounding off takes development immediately adjacent to the public right of way (PROW) running along the eastern side of the site whereas previously there would have been an intervening agricultural field acting as a visual buffer. Although users would see the building and hardstanding in the context of the wider Buffaload operation, the development would further detract from the enjoyment of the PROW.
24. Given the intervening buildings and features, views of the site from the west are generally limited. The parked lorries and roadside trees also limit views of the hardstanding from the south and the A14, although the top of the building likely remains visible.
25. Nevertheless, for the reasons explained, I find that the development is harmful to the character and appearance of the area and contrary to Huntingdonshire's Local Plan to 2036 (LP) Policies LP 10, LP 11, LP 12, and LP 19, and to Grafham and Ellington Neighbourhood Plan 2020-2036 (NP) Policy GENP 5. Those policies state, amongst other things, that development must recognise the intrinsic character and beauty of the countryside.

Other Matters

26. In favour of the appeal, paragraph 85 of the Framework states that planning 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 and productivity, taking into account both local business needs and wider opportunities for development.
27. At paragraph 87 of the Framework it states that decisions should recognise and address the specific locational requirements of different sectors, including making provision for storage and distribution operations at a variety of scales and in suitably accessible locations that allow for the efficient and reliable handling of goods, especially where this is needed to support the supply chain, transport innovation and decarbonisation.
28. Whilst I have no doubt that there are benefits to encompassing the appeal site land into the wider Buffaload operation, I have little information to allow for consideration of the same against the harms identified.

29. Paragraph 88 of the Framework also states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings.
30. Moreover, LP Policy LP 19 supports the expansion of businesses in the countryside, subject to criteria which includes that the scale, character and siting of the proposal will not have a detrimental impact on its immediate surroundings and the wider landscape.
31. NP Policy GENP 5 similarly states that the expansion of an existing business outside the built-up areas will only be supported where it can be demonstrated that there are operational requirements for a countryside location and the scale, character and siting of the proposed use will not have a detrimental impact on the countryside.
32. I note the appellant's argument that it is well established that temporary planning permissions are, by their nature, a "trial run" to see if there is any resultant harm. In that context, the associated officer report for the temporary planning permission states that the Council considered that a solution could be found to the lack of screening of the site such that refusal of the application would not be appropriate or justified taking into account all material planning considerations. Instead, it was considered that a temporary permission would allow the applicant time to work with the Council to develop a range of solutions for the site, particularly in terms of landscaping and biodiversity.
33. Whilst the appellant states that the Council failed to engage with the proposals for landscaping and net biodiversity gain, no such proposals or information have been provided in support of this appeal, such as a landscaping scheme, which shows that the harm arising to the character and appearance to the area could be acceptably mitigated so as to achieve support from LP Policy LP 19 and NP Policy GENP 5.
34. Moreover, I am mindful that the Council's comments were made in relation to the parking of vehicles, which would, in principle, be easier to screen than a larger building. Furthermore, given the constraints arising from the extent of hardstanding within the site and the limited opportunities for planting, I do not have sufficient confidence that the harms are capable of being addressed by way of a condition requiring a landscaping scheme to be agreed.
35. That is similarly the case for biodiversity. In that regard, LP Policy LP 30 requires proposals to ensure no net loss in biodiversity and to provide a net gain where possible. NP Policy GENP 10 also requires development to provide a biodiversity net gain. Whilst avoidance is now unlikely, given that the matters have occurred, without an ecological appraisal, I am unaware of the scope for mitigation and enhancement.
36. It is not therefore shown that the development could be made acceptable by way of conditions.
37. I note the concerns raised by local residents on matters which include flood risk, highway safety and living conditions. However, such concerns do not form part of the reasons for issuing the enforcement notice. Nevertheless, I have considered those issues insofar as they relate to the whole of the

Buffalod operational area, which includes this appeal site, as part of the separate appeal against the refusal of the new application.

38. I understand that local residents are concerned with the appellant's purported disregard for the planning system. Nevertheless, the enforcement procedure is intended to be remedial rather than punitive.

Conclusion on Ground (a)

39. For the reasons given above, I conclude that the breach of planning control is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (f)

40. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
41. In this case, the breach relates to engineering operations comprising the formation of a hardstanding and the erection of a building. The requirements are to permanently remove all buildings and associated hardstanding from the land and restore it back to its former agricultural condition. The purpose of the notice is therefore to remedy the breach of planning control.
42. The appellant argues that there is no benchmark or record for the site's former agricultural use, as the immediate former use was a lawful one under the temporary permission. However, the temporary planning permission was for a change of use from agriculture. Upon expiration of the planning permission the lawful use of the land would likely have been for agricultural purposes, rather than for the parking of vehicles.
43. The appellant further argues that if the notice is upheld, it should suffice to cease the use. However, this notice is concerned with operational development rather than use.
44. I find that the requirements tally with the breach and are not excessive for the purposes of remedying the same.
45. The appeal on ground (f) fails.

The Appeal on Ground (g)

46. The ground (g) appeal is that the two months given to comply with the requirements is too short.
47. It is argued that there are significant health and safety issues related to reorganising the adjacent site to allow for safe manoeuvring areas, which would include the need to take external advice. It is also argued that because there is no evidence of any problems being caused there is no urgency, and a period of six months would be more reasonable.
48. Although it is not explained what external advice would be required for reorganising the adjacent land, I saw that there were numerous lorries parked

on the hardstanding and the buildings were being used for vehicular maintenance.

49. Therefore, even putting to one side the logistical difficulties of removing all buildings and the hardstanding from the land, and restoring it back to its former agricultural condition, a period of two months is wholly insufficient having regard to the likely significant degree of disruption that would likely arise.
50. I consider a period of six months would strike a reasonable and proportionate balance between any difficulties and disruption the appellant may encounter and the public interest in this case. It would also allow the appellant sufficient time to prepare and submit a planning application, should they wish to do so, which attempts to overcome the policy conflicts identified, particularly with regards to character and appearance, and to also identify biodiversity mitigation and enhancement. Whether such matters are acceptable, will be a matter for the Council.
51. The appeal on ground (g) succeeds.

Richard S Jones

INSPECTOR