



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/23/3320858

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, 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.
 - The requirements of the notice are to permanently cease the use of the land for storage and distribution and a haulage yard and revert it back to its lawful agricultural use.
 - The period for compliance with the requirement is one month.
 - 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 corrected and varied by:
 - The deletion of the breach of planning control alleged in section 3 and its substitution with "Without planning permission, the material change of use of the land to a mixed use as haulage yard and for storage and distribution in connection with the adjacent mixed-use site".
 - The deletion of the requirements in section 5 and their substitution with "Cease the use of the land as haulage yard and for storage and distribution."
 - The deletion of one month and the substitution with six months as the time for compliance.
2. Subject to the corrections and variations, 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 engineering operations comprising the formation of a hardstanding and operational development comprising the erection of a building¹.
5. The appellant explains that the land adjacent to the appeal site is used by Buffaload Logistics Limited (Buffaload) for their headquarters and main storage and distribution depot. It is further explained that it is a family owned and run business with a fleet in excess of 240 vehicles and with 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 beyond the scope of 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.

The Appeal on Ground (b)

9. 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.
10. The alleged breach in this case is the material change of use of the land from agricultural use to use as a mixed use site for a haulage yard and for storage and distribution in connection with the adjacent mixed-use site.
11. As the 2006 permission excludes the land subject to the enforcement notice, it cannot assist the appellant's ground (b) appeal. Nevertheless, planning permission was granted for the appeal site on 16 April 2021 for the change of

¹ Appeal Ref: APP/H0520/C/23/3320859

² Application Ref: 06/01759/FUL

³ Application Ref: 21/01763/FUL

⁴ Appeal Ref: APP/H0520/W/23/3320852

use of the land from agriculture to parking in connection with the adjacent haulage yard (use class sui generis)⁵. I appreciate that the appellant may not have applied for permission on a temporary basis and the description of development does not refer to the permission as such. However, the permission is subject to a condition restricting 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 to be removed and the land restored to its condition before the development took place.

12. In that context, the appellant argues that the allegation is without basis as there was no change from an agricultural use on the relevant date as the land was still in use pursuant to the temporary planning permission. Instead, it is argued that there has been a breach of the above condition.
13. Where in such circumstances a use of land is continued after the expiry of a temporary planning permission, I would agree that an enforcement notice should be directed against a breach of the condition that required the use to cease at a specified time. However, the temporary planning permission was for the change of use of land from agriculture to parking in connection with adjacent haulage yard, whilst what is alleged is a change of use of the land from agriculture to a mixed use – haulage yard and storage and distribution in connection with the adjacent mixed use.
14. To that end, the appellant has provided no evidence to show that the land was only being used for parking and similarly has provided no evidence to show it was not being used for mixed use purposes comprising haulage yard and storage and distribution, as alleged.
15. In terms of understanding the timeline of events, the Council state 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 state that officers visited the site on 6 February 2023 and confirmed that the land remained in use by the “haulage firm”.
16. That timeline is broadly consistent with the submission from Ellington Parish Council who were made aware of building works being carried out in December 2022. Photographs are also provided, purported to be from December 2022 and January and February 2023, which appear to show a large area of concrete slab as well as the construction of the workshop building. A further photograph, purportedly from March 2023 shows a completed building, whilst photographs from June 2023 show the siting of containers to the side of and in front of the workshop building.
17. The appellant does not dispute or provide evidence which contradicts that of the Council and Parish Council. So, from December 2022, the land was likely being used for vehicular maintenance and for parking of lorries and trailers in connection with the adjacent mixed use, thereby expanding the uses taking place on the land beyond that which was granted temporary planning permission. Moreover, the concrete slab and buildings will have changed the site’s intrinsic character and appearance and how it is perceived from outside of the site.

⁵ Application Ref: 19/02142/FUL

18. The period from December 2022 therefore marks a significant change in the character of the activities from what had gone on previously as a matter of fact and degree, thereby resulting in an intervening material change of use, on the balance of probabilities.
19. Therefore, whilst an allegation of a material change of use can be corrected to refer to a breach of condition, that would not reflect the breach which has occurred in this case. Indeed, it would result in injustice to the appellant if I were to correct the notice in that way as I would then only be considering the ground (a) case for parking, rather than the wider mixed use of the land, which was likely taking place prior to issuing the enforcement notice.
20. Nevertheless, it is unlikely that the land use reverted to agriculture before the material change of use, so that aspect did not occur. In any event, although sometimes helpful, it is not necessary to state in the allegation what the material change of use was from.
21. As per the above, the allegation should therefore be corrected to the material change of use of the land to a mixed use as haulage yard and for storage and distribution in connection with the adjacent mixed-use site.
22. Accordingly, the ground (b) appeal succeeds in part, but does not result in the notice being quashed.

The Appeal on Ground (a)/the Deemed Planning Application

Main Issue

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

Reasons

24. 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.
25. I appreciate that the use is "already there" but that does not mean there is no consequential impact, as to do so ignores the fact that the temporary planning permission required the land to be restored to its condition before the development took place. Consequently, the lawful baseline position against which the development should be considered is an open agricultural field. The use of the site instead for haulage and storage and distribution therefore clearly results in a significant urbanising and harmful effect on the intrinsic character and appearance of the land.
26. In mitigation, the use of the land is clearly seen within the context of the adjacent mixed-use site. The use is 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 buildings (which facilitate the mixed use) and the tops of the parked lorries and trailers can be seen above the fence line.

27. The development is also prominent from Grove Lane as it runs close to and along the northern edge of the site, significantly adding to the pre-existing urbanising presence and extent of the Buffaload operation. Clear views of this would also be achieved from the elevated agricultural land to the rear of the site beyond Grove Lane, although some mitigation would in time arise from the intervening verge planting.
28. 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 'rounds-off' and removes the northernmost step, so does not appear illogical. Nevertheless, I am mindful that that argument could also be used to address the step further south, with the subsequent additional encroachment.
29. 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. Whilst users would see the land in the context of the wider Buffaload operation, the development would further detract from the enjoyment of the PROW.
30. Although the appeal site land can be seen in conjunction with the church spire in Ellington, unacceptable harm is avoided due to the separation and intervening features, including the adjacent Buffaload operations.
31. Moreover, 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 site from the south and the A14.
32. Nevertheless, for the reasons explained I find that the development is harmful to the character and appearance of the area, 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

33. 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.
34. At paragraph 87 the Framework 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.
35. 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.
36. Paragraph 88 of the Framework also states that planning decisions should enable the sustainable growth and expansion of all types of businesses in rural

areas, both through conversion of existing buildings and well-designed, beautiful new buildings.

37. Moreover, LP Policy 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.
38. NP Policy GENP 5 similarly states that the expansion of an existing business outside 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.
39. 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.
40. 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. Moreover, 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.
41. 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.
42. It is not therefore shown that the development could be made acceptable by way of conditions.
43. I understand local resident's concerns regarding the loss of woodland on the appeal site and the consequential effects on character and appearance, biodiversity and flood risk. However, the evidence shows that the 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 temporary permission requires the land to be restored to its condition before the development took place and the evidence points to that being open agricultural land. That is therefore the baseline position, rather than woodland.

44. 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 Buffaload operational area, which includes this appeal site, as part of the separate appeal against the refusal of the new application.
45. I also 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)

46. For the reasons given above, I conclude that the mixed use of the appeal site 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)

47. 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.
48. In this case, the corrected allegation is the material change of use of the land to a mixed use as haulage yard and for storage and distribution in connection with the adjacent mixed-use site. The requirements are to permanently cease the use of the land for storage and distribution and a haulage yard and revert it back to its lawful agricultural use. The purpose of the notice is therefore to remedy the breach of planning control.
49. To achieve that end, it is sufficient for the enforcement notice to require the unauthorised use to cease. Moreover, even if the material change of use had been from agriculture, an enforcement notice cannot require the reversion to a former use. I shall therefore correct the requirements accordingly.
50. The ground (f) appeal succeeds to that extent.

The Appeal on Ground (g)

51. The ground (g) appeal is that the one month given to cease the use of the land is too short.
52. 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, and because there is no evidence of any problems being caused there is no urgency, and a period of six months would be more reasonable.
53. Although it is not explained what external advice would be required for reorganising the adjacent land, I saw that the appeal site was being used as part and parcel of the adjacent mixed use Buffaload operations. At the time of my site visit there were numerous lorries parked on the land and the buildings were being used for vehicular maintenance. I also saw that land was being used for the siting of containers.

54. Accordingly, a period of one month to cease the use of the land is therefore wholly insufficient having regard to the significant degree of disruption that would likely arise. 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.
55. The appeal on ground (g) succeeds.

Richard S Jones

INSPECTOR