



Appeal Decision

Hearing held on 10 December 2024

Site visit made on 10 December 2024

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal Ref: APP/W1145/C/24/3351281

**Land at Grid Reference 235490 087605, St Giles on the Heath,
Devon PL15 9SS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Salvidge against an enforcement notice issued by Torridge District Council ('the Notice').
 - The notice was issued on 30 July 2024.
 - The breach of planning control as alleged in the notice is Without planning permission and within the last ten (10) years, operational development of the land consisting of the change of use of the land from agricultural to the mixed use of Use Class B8 (Storage and Distribution) and agricultural use.
 - The requirements of the notice are to: (i) Cease the use of the land for storage of all non-agricultural items and all non-working agricultural vehicles or parts thereof; (ii) Cease the use of the land for the sui generis use of mixed storage of scrap vehicles and other items (examples of which are indicated on Appendix B); (iii) Remove all non-working agricultural vehicles or parts thereof; (iv) Remove all rubble/scrap items, including but not limited to vehicles, insulation panels and disused wind turbine parts; and (v) Restore the land to its previous condition.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
In section 3 of the Notice, 'The matters which appear to constitute the breach of planning control' - omitting the words "...operational development of the land consisting of..."; adding the word "material" between the words "...consisting of the..." and "...change of use of the land..."; and omitting the words "...Use Class B8 (Storage and Distribution)..." and replacing these with "storage and distribution".
Also, omitting the plan that was attached to the Notice and replacing it with the Plan attached to this decision.
It is directed that the enforcement notice is varied by: In section 5 of the Notice 'What you are required to do' - omitting reference to "non-working agricultural vehicles or parts thereof" in requirement (i); omitting requirement (ii) in its entirety and replacing it with a new requirement (ii) that reads "Cease the mixed use of the land for the purposes of storage and distribution and agriculture"; and omitting requirement (iii) in its entirety.
It is further directed that the enforcement notice is varied by: extending the period for compliance to 12 months.
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.

Applications for costs

2. Each party made an application for an award of costs against the other. These claims are the subject of a separate decision letter.

Preliminary Matters

3. In the Appellant's written submissions in relation to the Ground (c) appeal, he questioned whether the Notice was issued too late, with details that suggested a case was being made under Ground (d), though this was not listed as a ground of appeal in the appeal form. Although repeating the claim that the land had been used for a commercial use for well in excess of ten years, he made it clear at the Hearing that he was not pursuing a Ground (d) case.
4. Following the closure of the Hearing, the Government published a revision to its National Planning Policy Framework ('the Framework'). I consulted the parties on this and asked for any comments they might have on this in relation to the appeal. Both parties replied by email on 13 December 2024. Their comments have been taken into account in my decision.
5. The Hearing remained open for the duration of the site visit, to allow for the clarification of points raised by parties during the sitting of the Hearing in the Barnstaple Town Council offices.

The Notice

6. The parties agreed in the Hearing that the reference to "operational development" in the allegation was incorrect; there has been no operational development. As this can be done without prejudice, I shall correct the Notice by omitting mention of this.
7. The red line on the Plan attached to the Notice enclosed two parcels of land. The Council said that the reason for this was that both parcels were shown as a single landholding on Land Registry documents. At the site visit, I saw that the land identified in the Plan comprised two physically separate areas which were occupied for different and unrelated purposes. The northernmost parcel was clearly in the mixed use alleged in the Notice whilst that to the south, which was separated by a hedge and was at a markedly lower level, was used for agriculture only. Therefore, following the approach in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, each ought to be considered as a separate planning unit. I asked the parties for their views on this at the site visit and both agreed that this was the case, and that the Notice could be corrected. I find that the Notice can be corrected without prejudice, and I shall amend the Plan to enclose the northern area of land only.
8. In the Hearing, the Council submitted an appeal decision letter¹ that it had received shortly before. Amongst the variations to that Notice, which the Inspector made there, was the inclusion of the cessation of the lawful use of that land within the requirements of the Notice. The Notice was issued for the purpose of the cessation of the breach of planning control, and this variation was done to ensure accordance between the breach and the requirements. As

¹ APP/W1145/C/24/3340351 – Land at Hamilton Close, Bideford

such, in the appeal before me, the Council wished to vary the requirements to include the cessation of the agricultural use of the land.

9. In response, the Appellant said that he was not convinced that the matter was relevant but did not object. The matter is relevant, to ensure consistency between the requirements and the allegation. Section 57(4) of the Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purposes for which it could lawfully be used, if that development had not been carried out. Therefore, varying the requirements to be consistent with the allegation will cause no injustice to the appellant because the Notice would not prevent any lawful use of the land. I shall, therefore, vary the Notice to include reference to the agricultural use of the land.
10. As what is alleged in the Notice is a single mixed use, thus it is 'sui generis' and outside of any use class. Therefore, the Notice should not refer to use classes but describe the mixed use that was taking place. I shall, therefore, further correct the allegation by removing reference to the B8 use, and just refer to storage and distribution. This would not prejudice either party.

Ground (e)

11. An appeal under Ground (e) is that copies of the Notice were not served as required by s172 of the Act.
12. No case is made that the Notice was not issued correctly and served in a timely manner. The Appellant's case relates to the letter that accompanied the Notice issued to the Appellant. Its heading referred to an "Enforcement Notice Dated: 11 May 2022" and that its list of enclosed documents referred to "2 x Enforcement Notice dated 1 May 2022". These dates did not relate to the Notice that was attached to the letter.
13. I was told by the Council at the Hearing that this was an administrative error and referred to another case. It went on to say that the Notice that was attached was, however, correct. It said, moreover, that the Notice was served in accordance with the terms of ss172 and 329 of the Act. My attention was not drawn to anything in the Act to say what the contents of the accompanying letter should include, nor am I aware of any.
14. I can see how Mr Salvidge might have been confused by the mistake in the letter, and how this would not have been helped by the Council's delay in clarifying matters. However, even were this to be held to amount to an incorrect service of the Notice, which I find it is not, section 176(5) sets out that the Secretary of State may disregard the fact that a Notice is served incorrectly if neither the Appellant nor a person required to be served with the Notice has been substantially prejudiced by the failure to serve correctly.
15. Here, I was told that there was no hindrance to the Appellant making his appeal in a timely manner, and he would not have substantially changed his case in any event. Thus, even were I to be wrong on the point that there is nothing requiring the accompanying letter to be set out in a particular manner, Mr Salvidge was not substantially prejudiced by the Council's actions.
16. For the above reasons, I dismiss the Ground (e) appeal.

Ground (c)

17. An appeal made under Ground (c) is that the breach of planning control alleged in the Notice has not occurred. This is a legal ground where the onus lies with the Appellant to make his case on the balance of probability.
18. The first aspect of the case that has been made is that the storage of refrigerated units is permitted development under the terms of Class R of Schedule 2 of Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO'). This relates to the change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use. This must entail a use within a prescribed list from the Town and Country Planning (Use Classes) Order 1987, as amended, ('UCO'). One of the cited uses is Use Class B8 'Storage and Distribution', as was alleged in the original Notice.
19. Amongst the restrictions to this permitted development right are those of R.1(a) that sets out that the buildings in question must have been in an agricultural use as part of an established agricultural unit — (i) on 3 July 2012; (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or (iii) in the case of a building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins.
20. No evidence has been provided to show that this was the case with the buildings on the site. Indeed, amongst the "Ground (d)" arguments put forward were that the Appellant said that the site was being used for B8 purposes in 2012. He further said that he bought the site in 2013 and it had been used by a hay and straw merchant for many years prior to that time.
21. In any event, the terms of Class R are that a landowner must make an application to the Council for its prior approval of the flexible use. There is no evidence of any such application having been made.
22. Therefore, the case made in respect of permitted development rights on the land fails.
23. The other aspect of the Appellant's case was that the storage of agricultural vehicles on agricultural land would be lawful. For obvious reasons, the Council did not disagree with this. The arguments, here, revolved around at what point, for example through disrepair, the agricultural machinery ceased to be used for agriculture and the use of the land involved the storage of scrap.
24. The upshot of the discussions was that both parties agreed that this was a matter of fact and degree. In response to my question as to whether the 'cannibalising' of machinery for spares would lead to a point where that machinery no longer could be described as being agricultural machinery, Mr Hicks answered "Logically, yes". However, he quite pertinently questioned where that point is. Neither party could provide a defined position on this, other than it would be a case of fact and degree; which I find to be correct.
25. The Council acknowledged that the question of 'non-working agricultural vehicles' was a "difficult one". It is commonplace for farmers to keep non-working agricultural vehicles on land. These can often be brought back into use through the use of new parts, or can be used to provide spares for other vehicles on the farm. I find that the term 'non-working' is too simplistic.

Because a piece of agricultural machinery is not working or is incapable of work at a particular point in time does not render it a piece of scrap that is being stored on the land. It is far more nuanced.

26. I have little doubt that amongst the items that have been cleared from the land, of which I was told there were quite a number, there were items that were originally agricultural but had ceased to be so due to their condition and utility. However, I shall correct and vary the Notice by removing reference to 'non-working agricultural vehicles or parts thereof' as, for the reasons above, this lacks clarity and, in many instances, would not be a breach of planning control. This would not preclude the Council being able to enforce against the storage of vehicles that were originally agricultural but had become scrap, on a fact and degree basis, under the remaining terms of the Notice.
27. For the above reasons, to a limited degree, the Ground (c) case succeeds, and I shall correct and vary the Notice.

Ground (a)

28. An appeal made under Ground (a) is that planning permission ought to be granted for the development that is alleged in the Notice.

Main Issues

29. In a Pre-Hearing Note, I suggested that there should be a single main issue. However, following discussions at the Hearing venue and on site, I found that there should be two main issues. The parties agreed with this revised position. The two main issues are:
1. Whether the location of the development accords with national and local policy; and
 2. The effect of the development on the character and appearance of the area.

Ground (a) Reasons

Location of the development

30. In addition to the agricultural enterprise, the Appellant runs two businesses from the land. They both supply refrigerated storage units to events, though each serves a different customer base. The appeal site is used as a base for the storage and distribution of the units. The businesses are administered from commercial land that the Appellant owns at Dutson Road, Launceston, some 8 kms away. In addition to the Appellant, the businesses employ two drivers on a part-time basis that is largely limited to the summer months, and a person to do the accounts.
31. I was told that the reason for running the business from this location is that it is difficult to find a site with sufficient space. The Appellant told me that the Dutson Road site was too constrained, the use would adversely affect other users at that site, and it had a difficult access. These points were not countered by the Council. I passed the Dutson Road site but did not enter it. I could, however, appreciate the space and access issues referred to.
32. The Appellant told me that the North Devon and Torridge Local Plan 2011-2031, adopted October 2018, ('NDTLP') only formally allocates 4ha of land for employment or economic development on land at Great Torrington, and only part of this remains. This was not countered by the Council. The Appellant

went on to say that this, allied to recent changes to the Framework, have rendered the plan out-of-date. This, he said, results in a presumption in favour of the development.

33. There have been some changes to the guidance on 'Building a strong, competitive economy' in chapter 6 of the Framework. These changes reflect the Government's desire to support economic growth, to which it attributes significant weight. Amongst other things, the Appellant points to its specific comments on storage and distribution enterprises, the need for Councils to have a policy approach that is flexible to react to changing circumstances, its support for sustainable growth of all businesses in rural areas, and farm diversification.
34. The NDTLP dates from 2018 and although its terms pre-date the Framework this does not automatically mean that it should be considered to be out-of-date.
35. Notwithstanding the small area of allocated employment land, the NDTLP provide a flexible approach to supporting its provision across the District. The Plan's approach is primarily set out in its Policies DM12, ST06, ST07 and ST11. These policies should not be read in isolation, but as part of a suite of policies offering a comprehensive strategy for the District.
36. Policy DM12 and its supporting text fall under the heading 'Enabling a Vibrant Economy' and its terms provide support for Policies ST06 and ST07 in respect of employment development. Although I was not provided with a copy of Policy ST06, I was told that this related to development in the District's larger settlements, and this was where most development would occur. Policy ST07 sets out the 'Spatial Development Strategy' for the Council's rural area. It takes a hierarchical approach from rural 'Local Centres' through smaller settlements to the open countryside. The latter is where the appeal site lies. Here, it states "development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location".
37. I was not provided with evidence to show that the use of the appeal site by the refrigerated business uses was supported by the suite of policies I refer to. They provide a flexible approach to enabling the development of land to accommodate employment uses. No social need case was made; however, in economic terms, the lack of alternative sites was cited. However, when I asked whether he had actively looked at other sites in the area, including in neighbouring local authorities that lie close-by, the Appellant said "No".
38. NDTLP Policy DM14 provides policy guidance for the rural economy. Amongst its terms, it supports the change of use and conversion of permanent rural buildings. Notwithstanding that this requires a site or building adjoining or well-related to a settlement, the Council said in the Hearing that it would not object to the buildings' use by the refrigerated unit businesses. It would not, however, support their use of the site outside of them, due to the ill-effects on the area's character and appearance. This, the Appellant told me, would not provide sufficient space. Although, I understand how the mixed use requires a sizeable area for storage purposes, this does not equate to a necessity for a rural location, as required by Policy ST07. No substantive evidence was provided in this regard.

39. In the Hearing, I was told that the accounting figures that accompanied the Appellant's Statement of Case ('SoC') show that the businesses "would not pay the rent or capital costs of another site". To my mind, that does not chime with the claim made in the SoC that analysis of the accounts would lead the reader to determine that they are "clearly indicative of a strong business". In any event, as the Appellant has not explored alternative sites, he could not be sure that a move to another site would be uneconomic. Therefore, it has not been demonstrated that upholding the Notice would lead to the business ceasing, as claimed in the Hearing.
40. Policy DM15 of the NDTLP relates to Farm Diversification. Its supporting text explains that amongst the principal aims of the policy is the promotion of development that meets the changing requirements of the agricultural economy. The policy requires the enterprise to reinforce the viability of the existing farm business.
41. I was not given any accounts for the farm business, nor any business plan relating to it. The Appellant's SoC states that, in contrast to what he said of the refrigerated unit businesses, "it is not a particularly profitable business". The SoC also shows the unpredictable nature of the Appellant's agricultural business. From the evidence before me, I find that the refrigerated unit businesses actually have primacy over the agricultural use rather than supporting its viability. This is not a scheme that garners support from NDTLP Policy DM15.
42. In making my finding on this issue, I have to take into account the social and economic benefits of the storage and distribution businesses. They have a limited number of employees. Two of these drive for the business on a part-time basis during the summer. The Appellant and the person doing the businesses' accounting also undertook other work. To my mind, although they are profitable businesses, the benefits are very limited. Given the lack of effort that has been made to find an alternative location that would accord with the Council's policy approach, I do not find that these outweigh the harm that would arise from undermining the Council's policy approach to economic development in the countryside.
43. For the reasoning given above, I find, therefore, that the location of the development does not accord with the terms of NDTLP Policies DM12, ST07, ST11, DM14 or DM15, nor those of the revised Framework, with which I find the policies accord.

Character and Appearance

44. The parties' Statement of Common Ground referred to the North Devon and Torridge Landscape Character Assessment, 2023 ('LCA'). Although I was not provided with a copy of this document, it describes the area in which the appeal site lies as 'Inland Elevated Undulating Land' and sets out five 'valued landscape attributes' that define the area.
45. I find that these attributes reflect the area in the vicinity of the appeal site. It is an undulating plateau that is highly rural with agriculture, which is mainly pastoral, being the predominant land use. It is carried out in a patchwork of fields that are bounded by well-defined hedgerows.

46. The A388, which is fairly busy, passes immediately to the west of the site and is the main road through the area. It links the towns of Launceston and Barnstaple, and the village of St Giles in the Heath lies around 3kms to the north along this road. Minor lanes run from this road serving isolated farms and dwellings. Overall, and notwithstanding the A388, the character of the area is quiet, relaxed and tranquil and its appearance is strongly rural and agricultural. This reflects the description in the LCA.
47. There are two quite large agricultural style sheds on the appeal site. When I visited, that to the north was used for accommodating pigs, whilst that to the south was used to store a range of vehicles and equipment. Some of this was clearly agricultural. Storage of materials and equipment had been or was still being carried out across much of the remainder of the land marked on the revised plan, save for a grassed area to the north of the site's access.
48. There was, however, still a significant amount of external storage being undertaken. Primarily, this was on the south side of the southern shed, to the rear of that building and at the eastern end of the site between it and the north shed.
49. Amongst the items I saw stored were: refrigerated lorry trailer units that had been adapted to requirements of the businesses; large water tanks; vehicle tyres, including from tractors; agricultural implements; a pile of movable pig houses in a collapsed state; steelwork; piles of insulated panels; trailers for livestock; and a number of lorry backs, some of which were being used for agricultural purposes.
50. The Appellant told me that the businesses had some 60 refrigerated lorry units. Although I did not count them, it was clear that a high proportion of these were on the site when I visited. This would be expected, given the seasonal nature of the Appellant's refrigerated storage space businesses.
51. There were clear views to the site from the south; from a gateway in a pull-in at the junction of the A388 and a minor road a short distance south of the site, and away from the A388 along that minor road. Stored items, in particular the refrigerated trailer backs and piles of insulation, were prominent and these had a significantly harmful effect on the appearance of the area. I saw how the external storage on the site has particular prominence in the landscape in the winter, as the hedgerows and trees were bare. There would be fewer refrigerated lorry trailer units on the land in the summer, and there would be some mitigation from the denser growth in the hedgerows. However, external storage and, in particular, any remaining units and piles of insulated materials, would still be visible. Views into the site from the A388 were restricted to glimpses, and from there the storage of non-agricultural items was not particularly harmful.
52. The Council told the Hearing that the complaints that had been made did not relate to noise generated from the storage element of the mixed use. The Appellant, for his part, said that the storage use of the land generated less noise than its agricultural use. Be that as it may, and I have little evidence in this regard, the storage and distribution use is materially different to the lawful agricultural use of the land. It has brought a type and level of activity to the site that is unsuited to a deeply rural area, without the justification that the Council's policies require.

53. The question of whether conditions might be attached to a grant of planning permission to mitigate the harmful effects I have identified were discussed. These included conditions requiring the submission of a landscaping scheme, limiting what might be stored on site, and the possibility of making the permission personal to the Appellant. On the basis of the information that is before me, including that of my site visit, I find that conditions would not mitigate the harm.
54. My finding on this main issue is that, for the reasons given above, rather than respecting the character and appearance of the area, the mixed use causes significant harm to it. As such, it is contrary to the terms of NDTLP Policies DM04, DM14, DM08A, ST04 and ST14, as well as its Policy ST01 that requires adherence to the Plan's policies as part of its drive for sustainable development. No substantive evidence was provided to show harm to the area's biodiversity and geodiversity, so I find the development is not contrary to Policy DM08.

Ground (f)

55. In essence, the Appellant's case related to the matter of non-working agricultural vehicles. This is a matter that I have addressed in my Ground (c) findings, above, so I need not take the matter any further.

Ground (g)

56. In his SoC, the Appellant referred to the improper service of the Notice that left him only around a month to comply with its terms. He suggested a reasonable and practical period for compliance would be 6 months. In the Hearing, however, he suggested that 12 months would be required given the difficulties in finding another site in the area.
57. The Council's position changed in the Hearing, and it stated that, in the circumstances, it would not object to the period for compliance being extended to 12 months.
58. Although he told me that he had not actively looked at other sites, I have little doubt that there would be some difficulty in finding an alternative site for his business. In the circumstances, I shall allow the Ground (g) appeal and extend the period for compliance to 12 months and vary the terms of the Notice accordingly.

Conclusion

59. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Curnow

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Salvidge	Appellant
Robert Hicks	Agent
Sophie Bakewell	

FOR TORRIDGE DISTRICT COUNCIL:

Kristian Ebely
Grant McGill
Jessica Wellington

DOCUMENTS SUBMITTED AT THE HEARING

NDTLP - Policy DM12
NDTLP - Table 10.9
Appeal Decision – APP/W1145/C/24/3340351, Land at Hamilton Close, Bideford
Officer report dated 23 July 2024 – Enforcement investigation, Land at St Giles in the Heath



Plan

This is the plan referred to in my decision dated: 24 January 2025

by Roy Curnow MA BSc(Hons) DipTP MRTPI

Land at: Grid Reference 235490 087605, St Giles on the Heath, Devon PL15 9SS

Reference: APP/W1145/C/24/3351281

Scale: Not to scale

