



Appeal Decisions

Site visits made on 7 January 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 February 2025

Appeal A Ref: APP/J0405/C/22/3313859

Land at Chiltern View Garden Centre, Wendover Road, Stoke Mandeville, Bucks, HP22 5GX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (The Act). The appeal is made by Westside Land Ltd against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 29 November 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of Land and buildings from nursery (agriculture) to garden centre (Class E) and operational development consisting of; erection of buildings for storage, extensions to glass house, extensions to buildings, expansion of car park and marquee to extend cafe.
- The requirements of the notice are to: 1. Cease the use of the Land as a garden centre.
2. Permanently remove all items which are not required for the lawful nursery use, from the Land, including but not limited to; outbuildings, timber structures, garden furniture and imported plants.
3. Permanently remove (demolish) the marquee structure shown hatched on the attached plan ENPLAN2.
4. Permanently remove (demolish) part of the building shown cross hatched on the attached plan ENPLAN2.
5. Permanently reduce the size of the glass house to that shown on approved plan CVN.NURS/SHED LP 2500 (planning permission 14/01626/APP) attached.
6. Permanently reduce the size of the car park and ensure it is laid out in accordance with the details shown on approved plan CVN.NURS/SHED LP 2500 (planning permission 14/01626/APP) attached.
7. Permanently remove all materials and debris resulting from compliance with steps 2 - 6 from the Land.
8. Restore the Land to its use and appearance immediately prior to the breach of planning control, which consisted of open agricultural land, by levelling where required and sowing with suitable agricultural seed.
- The periods for compliance with the requirements are: Step 1: 6 months; steps 2-7: 12 months; step 8: 18 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Act. 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.

Appeal B Ref: APP/J0405/C/22/3313851

- The appeal is made under section 174 of the Act. The appeal is made by James Bone (Westside Land Ltd) against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 28 November 2022.
- The breach of planning control as alleged in the notice is the erection of a building.
- The requirements of the notice are to:
 1. Cease the use of the building shown hatched in black on the attached plan for storage.
 2. Cease the use of the land shown outlined in black on the attached plan for parking associated with the unauthorised use of the building.
 3. Permanently remove (demolish) the building, shown hatched in black on the attached plan.
 4. Permanently remove all debris and materials arising from compliance with step 2 and the demolition of the building, from the Land.
 5. Reinstate the Land to its appearance immediately prior to the breach of planning control, which consisted of open grassland.
- The periods for compliance with the requirements are:

Steps 1 and 2: Within 6 (six) months of this Notice taking effect.

Steps 3 and 4: Within 9 (nine) months of this Notice taking effect.

Step 5: Within 12 (twelve) months of this Notice taking effect.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Act. 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.
-

Decisions

APPEAL A

1. The enforcement notice is quashed.

APPEAL B

2. It is directed that the enforcement notice is corrected by:
 - Steps 1 and 2 in Section 5 of the Notice are deleted.
 - In step 4, the words 'compliance with step 2 and' are deleted to provide consistency with the removal of steps 1 and 2.
 - The word 'Permanently' in steps 3 and 4 of Section 5 of the Notice are superfluous and are deleted.
 - Following the deletion of steps 1 and 2, the subsequent steps should be re-numbered as 1, 2 and 3.
 - The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
3. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of a building on the land as shown on the revised plan attached to the notice and subject to the following condition:
 - 1) The building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for landscaping between the building and Wendover Road shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) No external lighting shall be erected on the site without the prior written approval by the Local Planning Authority.

Preliminary Matters

4. As set out above, there are two appeals. The appeals relate to two adjacent sites subject of separate enforcement notices. According to the appellant, the building subject of Appeal B was erected in association with the use subject of Appeal A. As related appeals, I consider them consecutively below.
5. The sites in Appeals A and B have been the subject of planning applications for retention of development referred to in the Notices. These have either been refused or are awaiting determination by the Council. For the avoidance of doubt, those applications and any associated decisions, although relevant, are not the subject of the appeals considered here.

APPEAL A - The Notice

6. Irrespective of the grounds of appeal that have been advanced, I have a duty to ensure that the Notice is in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Act to correct any defect, error or misdescription in the enforcement notice, or to vary its terms. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellants or the Council. If the Notice cannot be corrected, I must quash the Notice.
7. Section 173(1)(a) of the Act sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute a breach of planning control. Section 173 (2) says that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. Section 173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, either the remedy of the breach of planning control or the injury to amenity caused by it.
8. The Notice alleges a material change of use alongside operational development consisting of various buildings, extensions, a car park extension and a marquee. In consideration of an alleged material change of use of land, Bridge J in *Burdle*¹ highlighted 3 broad categories of distinction in considering the relevant planning unit (PU). These are:
 - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
 - 2) a single PU that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and

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

- 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
9. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
 10. The Notice was originally served alongside another enforcement notice². That enforcement notice alleged a material change of use of part of the nursery to a leisure use. Such a use could not be described as incidental to either a nursery or garden centre use of the site. As a single planning unit in mixed use, a single Notice should have alleged a mixed use, stating all of the uses taking place.
 11. Notwithstanding, as planning permission (23/03257/APP) has since been granted for the leisure use such that no specific additional requirements in relation to that use of the Land would be needed, there would be no injustice to the main parties in the appeal if I were to amend the allegation in the Notice to include it.
 12. However, at the time of my site visit the Land was also being used for the stationing of caravans. The positions of a static caravan and a nearby utility unit are shown in location on the enforcement notice plans. As a use separate and distinct from either the leisure or alleged retail use of the Land, reference to that use is an omission from the mixed-use allegation in the Notice. It is established in caselaw³ that in the circumstances of a single planning unit in mixed use, it is not open to the Council to decouple the uses taking place within it.
 13. The inclusion of a further additional use into the mixed-use could necessitate attendant changes to the requirements of the Notice. The additional use element may well have triggered different or additional grounds of appeal, or might involve other parties. Accordingly, I find that defect in the Notice cannot be corrected without injustice.
 14. Furthermore, the Notice was accompanied by three plans. Two plans entitled 'LOCATION PLAN: ENPLAN2' and plan ref. CVN.NURS/SHED.LP.2500, the latter showing the extent of authorised development after pp14/01626/APP was granted. However, each shows a different site area.
 15. The ENPLAN2 plans exclude a parking area used in association with the site lying to the south-east of the shared access road. In defining the Land subject of the requirements of the Notice, they fail to encompass the entirety of the planning unit. Such an omission would amount to an underenforcement. The Council's evidence does not purport to underenforce, but correction of the Notice to include the omitted area would leave the appellant worse off such that injustice would arise.
 16. The two ENPLAN2 plans show 4 unauthorised additions to the glasshouses and/or staff/utility/storage building. The Notice description of the operational development refers to buildings (plural) for storage purposes. However, the Notice fails to identify those structures. It is unclear where they are, or whether they are distinct from those described as extensions to buildings (plural), or extensions to the glasshouse.

² ref. 22/00183/ENFNOT

³ *R (oao East Sussex CC) v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin)

17. Consistent with the detail shown on plan CVN.NURS/SHED.LP.2500, an extension to the north-western side of the authorised glasshouse, an adjoining extension to the authorised staff/utility/storage building, a toilet block, and an extension to the front elevation of the glasshouse are not identified in the Notice at all.
18. To assist in the interpretation of the Notice, the Council has proposed a substitute ENPLAN2 plan to replace those originally attached to it. However, it also omits the parking area to the south-east of the access road. In identifying 'buildings' as alleged in the Notice, it includes a structure proposed as a new café which was not shown on the original plans, and the existing lawful tea room⁴ - neither being used for storage (as the only type of building alleged in the Notice). As above, if the reference to buildings for storage lie elsewhere, it remains unclear from the plans where they are.
19. The substitute plan also includes extensions to the north-western side of the staff/utility/storage building and the authorised glasshouse. These were not previously identified. Whereas it might be considered that Step 5 of the Notice required the north-western extension to the glasshouse to be removed, that could not be said of the extension to the staff/utility/storage building. If that was intended, it was not sufficiently clear in the Notice and correction to include removal of a previously unidentified extension would leave a recipient worse off and, again, injustice would arise.
20. The proposed replacement plan omits the extension along the south-eastern side of the authorised part of the glasshouse. This was shown on the original enforcement notice plans. While I note this is the subject of a hidden ground (d) appeal, it is unclear whether or not this omission was intended. It does not assist in clarifying the extent of the alleged breach that the Council is concerned with.
21. In *Oates*⁵ it was held that the relevant parts of an enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is, and what must be done to remedy it. The Notice should be clear within its four corners. Moreover, a recipient of an enforcement notice should not need to rely upon their own knowledge of what is taking place on the land at that time.
22. The necessity to widen the allegation to include additional uses; to precisely define the extent and locations of alleged unlawful operational development; and, to correct the Notice requirements accordingly, would cause injustice to one or both of the main parties in the appeal. Although the Notice cannot be said to be hopelessly ambiguous or uncertain to be considered a nullity, I find it cannot be suitably corrected under the terms of s176 without injustice. Accordingly, the Notice is invalid.

APPEAL A Conclusion

23. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, or the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

⁴ pp 17/03933/APP Erection of tea room building ancillary to the nursery

⁵ *Oates v SSCLG* [2017] EWHC 2716 (Admin)

24. In these circumstances the appeals on the grounds set out in s174(2) (a), (d), (f) and (g), and the application for planning permission deemed to have been made under s177(5) of the Act do not fall to be considered.

APPEAL B

The Notice

25. The Notice alleges the erection of a building. Since serving the Notice, the Council has made representation stating that requirements referring to the cessation of the use of the building and Land in Section 5 of the Notice are superfluous to an allegation limited to operational development. The Council invite the removal of steps 1 and 2 of that section stating that this would assist in clarifying the nature of the alleged breach. Additionally, to that end, the Council also proposes the substitution of the plan attached to the Notice to show only the land within the footprint of the building.
26. Having regard to the breach alleged in the Notice, I agree that the steps in Section 5 of the Notice should be corrected as suggested. This is because no material change of use of the Land is alleged. Furthermore, the reduction in the site area to show only the location of the building provides clarity. Although the larger scale of the plan omits some surrounding development and the site's proximity to Wendover Road, the revised plan shows the precise boundaries of the relevant land which, read in conjunction with the address specified in the Notice, provides a clear identification of the location of the alleged breach. Such corrections would not cause injustice to the appellant as the effect of the Notice would be unchanged.
27. The word 'Permanently' in steps 3 and 4 of Section 5 of the Notice are superfluous and are deleted. In addition, the words 'compliance with step 2 and' are deleted from step 4 to provide for the removal of steps 1 and 2. For consistency, the remaining steps should be re-numbered as 1, 2 and 3.

Appeal B Ground (a) and the deemed application for planning permission

Main Issues

28. The main issues are the effect of the development on the character and appearance of the locality and the absence of associated parking provision.

Reasons

Character and appearance

29. The site lies in a rural location but on the edge of a cluster of development which includes a designated employment area, a block of residential flats, vehicle parks, waste management sites, and the horticultural nursery site subject of Appeal A. The cluster is bordered by substantially undeveloped open fields on all sides save for a railway line immediately to the west of the locally developed area. A ribbon of residential properties extends along the eastern side of Wendover Road from the Stoke Mandeville settlement area to a point just beyond the main access road leading to the site.
30. The wider area consists of generally large arable fields with hedged boundaries. However, other ribbon and clustered developments are typical within the

landscape. The low-lying vale of the Southern Vale landscape character area is acknowledged to have its overriding rural character impinged upon by major transport corridors, large villages and the Aylesbury urban edge.

31. The building is located within a surfaced car park used for the parking of trucks and vehicles associated with waste processing facilities located on sites to the south-west. The building is metal framed with dark green external metal cladding to the walls. Roof sheeting incorporates translucent roof lights.
32. Policy S3 of the VALP seeks to protect the rural character of locations and avoid coalescence of built-up areas. Policy BE2 – requires the design of new development to respect the characteristics of the site and its surroundings, while Policy NE4 requires development to assimilate with its landscape character.
33. In the context of the encompassing developed site, the presence of the building has a limited effect on the wider rural character of the locality. The parking plot sits alongside a significant site to the south-west which includes sheds of a similar design, but larger in scale. In the main public views from Wendover Road, the building is seen against the backdrop of the larger sheds behind it. From the railway, it is screened by those and other buildings alongside the railway line or, to a lesser degree by an established hedge line to the northwest.
34. However, the 2-storey height of the building causes it to be visible above the existing hedge line. Additionally, the absence of permanent screening to the north-east means views from Wendover Road are open. Notwithstanding, the utilitarian appearance reflective of modern agricultural buildings, could be assimilated by native hedge planting to protect the rural character of the locality. Furthermore, it would cause no more coalescence than a 2-storey office building previously approved by the Council in the same location (ref. 16/04039/APP).
35. For the above reasons, I find that the development aligns with Policies S3, BE2 and NE4 of the VALP as they seek development to respect the character and appearance of the locality and wider landscape.

Parking

36. The corrected Notice does not specify or allege any use of the building. Although it was in use for the retail display of garden furniture and sundries at the time of my site visit, there is little evidence that any planning permission for that, or other, use of the land exists. The plot was excluded from the immediately surrounding development approved under planning permission ref. 21/00777/APP for parking limited to use by a skip hire business. Accordingly, on the evidence, the building either has a nil use status or, if s57(4) can still be applied, the Council's report suggests that a horticultural (agricultural) use preceding the erection of the building would apply in default.
37. There is dispute between the main parties as to the correct parking standards that might be applied. However, it is not possible to apply parking standards to a building with nil use. If an agricultural use applies, then the building is unlikely to function in isolation. In practice, it would be reliant on land elsewhere, if not the adjacent glasshouse site. The planning history for that site shows that parking for the horticultural use of the combined sites was previously approved. This is identified on plan CVN.NURS/SHED LP 2500 attached to Notice A.

38. In contrast to the Council's conclusion within the Notice, the appellant highlights that additional parking provision could be secured by condition on land owned by the appellant. However, given the above, and that there is little to demonstrate any harm to highway safety or capacity as a result of the development, then such a requirement would not pass the test of reasonableness as set out in Paragraph 57 of the Framework. Any alternative use of the building and associated parking requirement is a matter beyond the scope of this appeal.
39. In the absence of identified adverse effects on safety, or any other functional or appearance concerns arising from parking issues, and that parking provision for the likely default use of the Land was previously approved, I find the imposition of the parking standards set out in Policies T6 and T8 to be unjustified in the particular case circumstances.

Other Matters

40. I note the appellant's frustration with the level of communication from the Council in the run up to the appeal, however, this is not a relevant consideration.

Conditions

41. I have considered the suggested conditions from the Council and had regard to Paragraphs 56 and 57 of the Framework and the Planning Practice Guidance in terms of the use of planning conditions. A condition requiring the submission and implementation of landscaping is necessary in the interests of assimilating the development into its wider rural setting. Because this would lie on other land owned by the appellant beyond the site identified in the Notice, a sanction is necessary to be enforceable.
42. A restriction to external lighting is reasonable in the rural location. The removal of permitted development rights is unnecessary for a site limited to the area covered by the existing building.

APPEAL B Conclusion on Ground (a)

43. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
44. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

R Hitchcock

INSPECTOR

by R Hitchcock BSc(Hons) DipCD MRTPI

Reference: APP/J0405/C/22/3313851

Scale: not to scale

