



Appeal Decision

Site Visit made on 18 February 2025

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th April 2025

Appeal Ref: APP/J0405/C/24/3349237

Land to north of Fulwell Road, Westbury, Buckinghamshire, NN13 5PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Mr Richard Jeremy Haynes against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury) (the LPA).
 - The notice was issued on 28 June 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land to a mixed-use comprising of storage, a builder's yard and the stationing of two mobile homes for residential occupation, facilitated by operational development comprising of the erection of fencing, creation of hard standing, an outbuilding, construction of storage bays and engineering operations comprising of the creation of bunds.
 - The requirements of the notice are:
 1. Permanently cease the use of the Land for storage, as a builders' yard and for residential purposes.
 2. Permanently remove the mobile homes (labelled on the attached plan) from the Land, including the bases, skirts, any connections, and associated paraphernalia.
 3. Permanently remove the close-boarded fence (shown with a dotted black line and labelled on the attached plan) from the Land.
 4. Break up and permanently remove all the hardstanding (shown shaded in grey and labelled on the attached plan) from the Land.
 5. Permanently remove the concrete blocks (and any other materials) used for the creation of the bunds and waste bays on the Land.
 6. Permanently remove the soil bunds (labelled on the attached plan) which have been constructed, from the Land.
 7. Permanently remove/demolish the open-sided structure (labelled on the attached plan) from the Land.
 8. Permanently remove all items and materials brought onto the Land in connection with the unauthorised use, inclusive of, but not limited to: metal, wood, gravel, glass, plastic, vehicles, tables, chairs, wheelbarrows, machinery, boxes, fencing, corrugated iron sheets, storage containers, pallets and refuse bins, from the Land.
 9. Permanently remove any debris or materials from the Land that come as a result of complying with Steps 1, 2, 3, 4, 5, 6, 7, and 8 of this Notice.
 - The period for compliance with the requirements is: 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the word, "Permanently" from Step 1, Step 2, Step 3, Step 4, Step 5, Step 6, Step 7, Step 8 and Step 9 in section 5 of the enforcement notice;

- the deletion of the words, “builder’s yard” and their substitution with the words “groundworker’s yard” in section 3 of the notice; and,
2. And varied by:
- the insertion of the words, “a mixed use comprising of”, between the words “for” and “storage” in Step 1, Section 5 of the notice; and,
 - the deletion of the words, “builder’s yard” and their substitution with the words “groundworker’s yard” in Step 1, Section 5 of the notice.
3. 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.

The Enforcement Notice

4. The word permanently in the requirements is unnecessary having regard to S181(1) of the Act which states that compliance with an enforcement notice shall not discharge the notice. I will therefore correct the notice to delete any reference to “permanently” in the requirements.
5. In light of the appellant’s evidence, the LPA says that the alleged use would be more properly referred to by reference as a groundworker’s yard rather than a builder’s yard. Since that is the basis on which the appellant has pursued the appeal, I see no reason why any injustice to either the appellant or the LPA would arise were I to correct the allegation accordingly.

Appeal on ground (d)

6. An appeal on ground (d) is brought on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated in the notice as constituting a breach.
7. S171B of the Act sets out the relevant time limits for enforcement action. The time limits have recently been amended with transitional arrangements in place¹. In this instance, the relevant period is ten years beginning with the date of the breach. It is necessary, therefore, for the appellant to demonstrate that the material change of use of the Land to a mixed-use comprising of storage, a groundworker’s yard and the stationing of two mobile homes for residential occupation, facilitated by operational development comprising of the erection of fencing, creation of hard standing, an outbuilding, construction of storage bays and engineering operations comprising of the creation of bunds, took place on or before 28 June 2014 and the use continued thereafter for 10 years.
8. The appellant’s case is that the use of the Land as a groundworker’s yard and storage use commenced in 2010 and has been used without interruption since then. The LPA does not dispute that, indeed it accepts that the use of part of the Land as a groundworker’s yard is immune from enforcement action. Nonetheless, the appellant accepts that the siting and residential occupation of the static

¹ Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008(Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

caravans is not lawful. Indeed, the appellant accepts that the introduction of the residential use has resulted in a further material change of use from the previous use to the mixed use alleged in the notice.

9. The appellant argues that the material change of use does not extinguish the right of reversion to the previous use of the Land for storage and a groundworker's yard. However, for the appeal on ground (d) to succeed, it is necessary for the breach alleged in the notice to be immune from enforcement action. Clearly, by the appellant's own admission, the material change of use alleged in the notice did not occur until 2020 at the earliest when the first caravan was sited on the Land for residential use.
10. As a result, it cannot be demonstrated that the alleged breach of planning control took place on or before 28 June 2014 and thus, it would not have been immune from enforcement action at the time the notice was issued.
11. The appeal on ground (d) therefore fails.

Appeal on ground (a)

12. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the alleged breach.

Main Issues

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

Reasons

14. The Land is located on the north side of a rural lane with dense hedgerows to its southern boundary. I was able to see from my site visit that it is largely open to views to the north, north-west and north-east, across the fields which separate it from the nearby village of Westbury and the A422 Brackley Road. The surrounding landscape is characterised by gently sloping agricultural fields punctuated by the village of Westbury with open views and small pockets of woodland.
15. The Land also lies east of the boundary of the Westbury Conservation Area (the CA). The CA is characterised by a significant degree of uniformity and compactness in the grouping of houses built in stone with thatched or tiled roofs. The buildings are punctuated by pockets of greenery, and the pattern of development derives an ability to appreciate the open landscape setting of the CA.
16. The development comprises the use of the land for storage, as a groundworker's yard and for residential with the siting of two caravans. The use will give rise to activities such as the coming and going of groundwork vehicles and workers, as well as significant quantities of materials, plant and machinery being stored. Such features appear somewhat at odds to the prevailing, open character of the landscape. Furthermore, to facilitate the use, a significant area of hardstanding has been laid on the Land. This stark expanse of hard surface appears at odds to green undulations of the landscape.
17. Likewise, the outbuilding is a large, timber frame structure. Whilst I note it is open sided, it does not appear akin to the rural setting or vernacular agricultural buildings found in the area due to its functional association with the use.

18. Furthermore, the storage bays, fencing and bunding have introduced development of considerable scale which appears more akin to an industrial estate and is an obtrusive addition to the landscape. As a result, the development as a whole will introduce an incongruous element of built form, at odds to the open, rural character of the surrounding landscape.
19. Moreover, as well as the caravans itself, the development will introduce residential paraphernalia such as sheds, outdoor tables and seating and clothes drying equipment. The residential use of the Land will have the effect of extending the envelope of the village beyond its existing confines, out into the surrounding countryside.
20. Furthermore, the development will intrude on the sense of space and openness surrounding Westbury, harmfully affecting the setting of the CA. To that end, the development will fail to preserve or enhance the setting of the CA.
21. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. Consequently, it will conflict with Policies S1 and S3 of the Vale of Aylesbury Local Plan 2013-2033 (2021) (the LP) which state that development must comply with the principles of sustainable development and that new development in the countryside should avoided, especially where it would compromise the character of the countryside between settlements.
22. It will also conflict with LP Policy NE4 which states that development should respect local character and distinctiveness in terms of settlement form and ensure that development is not visually prominent in the landscape.
23. The development will not comply with LP Policy D4 as cited by the appellant which permits small-scale housing only where, amongst other things, it is located within the existing developed footprint of the village or is substantially enclosed by existing built development, and, it would not have any significant adverse impact on the historic environment.
24. Likewise, it will conflict with LP Policy S7 also cited by the appellant which, whilst encouraging the reuse of brownfield land, does so only subject to site specific considerations such as impact on local character.
25. Finally, it will fail to accord with the National Planning Policy Framework insofar as it requires the conservation of heritage assets and the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
26. I agree with the parties that LP Policy D11 is not relevant to the matters before me. Likewise, Policy E9 cited in the enforcement notice relates to agricultural buildings and is not relevant.

Other Matters

27. In the reasons given for issuing the enforcement notice, it states that the development gives rise to an intensification of the access and transport and parking impacts upon the quality of the environment, contrary to LP Policy T5. However, it is not particularly clear what the actual harm is the LPA alleges nor the conflict with Policy T5. LP Policy T5 sets out that development will only be permitted if the necessary mitigation is provided against any unacceptable

transport impacts. The notice does not set out any unacceptable transport impacts, rather, that the intensification of the access and transport and parking impacts upon the quality of the environment rather than transport. As it is, the LPA has not made any submission on this issue in its written evidence.

28. Nevertheless, given my findings in respect of the effect of the development on the character and appearance of the area, a finding of a lack of harm in respect of the transport impacts would not lead me to any different overall conclusion, since such a lack of harm would fall neutrally in the balance.
29. The appellant's case on the ground (a) appeal is made on the premise that the ground (d) appeal succeeds in respect of the groundworker's yard. Clearly, that has not occurred. I have considered whether, since the parties agree the use of the Land as a groundworker's yard is immune from enforcement action, whether planning permission can be granted for it.
30. However, it is only open to me to decouple elements of the mixed use for the purposes of granting planning permission where it can clearly be demonstrated that the carrying out of a component use across the entirety of the planning unit would amount to part of the matters.
31. To my mind, ceasing the residential use and granting permission for the storage and groundworker's yard across the Land would introduce elements of that use where presently, the residential use exists. In addition, without the residential use on the Land, there is the potential for changes in the level of activity on the site which could give rise to different planning impacts than those before me here. To that end, the mixed use of the Land for storage and a groundworker's yard is a different development to that alleged. For those reasons, I am not able to consider granting planning permission for the use of the Land for storage and groundworker's yard.
32. I note that the caravans are occupied by groundworker's employed in the business on site and that a condition could be imposed which restricts occupancy accordingly. However, the appellant has not demonstrated that there is an essential need for the workers to live at or near their place of work in the countryside. Any benefits arising from the caravan's being considered as "live-work" units would not outweigh the harm I have identified to the character and appearance of the area.
33. I note the LPA is currently unable to demonstrate a five-year supply of housing land. To that end, the development would have benefits in providing homes to help meet that shortfall. However, the benefit is only of moderate weight since it would provide just two homes and to that end, the benefit does not significantly and demonstrably outweigh the harm.
34. I note the site's suitability for the appellant's groundworker business and the benefits that has for the financial viability of it. However, it has not been demonstrated that the business could not remain viable operating from an alternative site. As such, I afford those benefits limited weight.

Conclusion

35. For the reasons given above, I conclude that the appeal on ground (a) should not succeed.

Appeal on ground (f)

36. An appeal on ground (f) is brought on the basis that that the requirements of the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
37. The notice, as corrected, seeks to cease the use of the Land for storage, a groundworker's yard and residential. It also seeks to remove the mobile homes, the operational development and other works which have facilitated the mixed use. To that end, I am satisfied the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place.
38. The appellant argues that the notice is excessive in requiring the cessation of the use of the Land as a groundworker's yard and the associated removal of bunds, fencing, hardstanding, containers, materials and equipment associated with the use. This is because the appellant says the use is lawful.
39. I agree that the requirements, by decoupling the mixed use and requiring each individual component to cease, would have the effect of requiring the appellant to cease a use which they say is lawful. In effect, it would restrict the right to revert to the last lawful use. Nonetheless, whilst the parties agree the groundworker's use is immune from enforcement action, it has not been established either through this appeal or a lawful development certificate under S191 of the Act that it is indeed lawful. To simply delete the requirement to cease the groundworker's yard use, and associated building operations or works, would result in an unconditional planning permission being granted for that use under S173(11) of the Act.
40. To that end, it seems to me the appropriate course of action is to vary the notice so that it requires the mixed use to cease, rather than each separate component. This would remedy the breach of planning control whilst also ensuring the appellant is not prevented from reverting to the last lawful use and that the LPA is not prejudiced by the granting of an unconditional planning permission.
41. In terms of what building operations and works have been done to facilitate the mixed use and what pre-existed to facilitate the last lawful use, case law has established that the appellant is best placed to know the condition of the Land before the breach took place. Thus, those requirements as drafted remain necessary to remedy the breach of planning control as they require the removal of all building operations and works which have facilitated the mixed use.
42. I will therefore vary the notice to ensure it requires the cessation of the Land for the mixed use of storage, groundworker's yard and residential.
43. Otherwise, the appeal on ground (f) fails.

Appeal on ground (g)

44. An appeal on ground (g) is brought on the basis that the compliance period specified in the notice falls short of what should reasonably be allowed.
45. The notice provides for a period of 9 months for compliance. The appellant argues that a period of 15 months would be more appropriate because they will need to find a suitable, alternative site to relocate the groundworker's business.

46. However, there is little substantive evidence before me that such a site could not be found and relocated to within 9 months. It seems to me that 9 months is a suitable length of time for the business to find and relocate to an alternative site. Indeed, if the parties agree and it is established subsequent to this decision that the last lawful use of the Land is as a groundworker's yard, then the appellant may not need to relocate at all. Moreover, 9 months seems to me to be a suitable period for residents within the caravans to find alternative accommodation and relocate.
47. The appeal on ground (g) therefore fails.

Human Rights

48. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the use of the Land for residential purposes would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
49. The consequence of dismissing the appeal would be that the occupants of the caravans would lose their home. However, the notice provides a 9 month compliance period which would allow them time to find an alternative home. Furthermore, there is no indication that those persons would necessarily be made homeless beyond that date.
50. As such, the planning harm I have identified in terms of the character and appearance of the area is of such weight that upholding the notice would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Overall Conclusions

51. 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).

J Whitfield

INSPECTOR