



Appeal Decisions

Site visit made on 7 May 2025

by R Merrett BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2025

Appeal A Ref: APP/V0510/C/23/3316935

Land known as Tree Farm, Hillrow Causeway, Haddenham, Ely, Cambridgeshire CB6 3PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Kevin Johnson, CB Groundworks & Construction Limited, against an enforcement notice issued by East Cambridgeshire District Council.
- The notice was issued on 19 January 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use to a mixed use compromising B8 storage (including open storage) and builders yard.
- The requirements of the notice are to i) Cease the use of the land and buildings (not including the building referenced 1 on Appendix A which has authorised storage use) for mixed use comprising B8 storage (including open storage) and builders' yard; ii) Remove all non-agricultural materials, equipment, vehicles, plant and machinery connected with the B8 storage (including open storage) and builders' yard from the land and buildings (not including the building referenced 1 on Appendix A).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Appeal B Ref: APP/V0510/W/23/3314957

Tree Farm, Hillrow Causeway, Haddenham, Ely CB6 3PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Kevin Johnson, CB Groundworks & Construction Limited, against the decision of East Cambridgeshire District Council.
- The application Ref 21/00044/FUL, dated 12 January 2021, was refused by notice dated 4 November 2022.
- The development proposed is Change of use of (1) an existing open-sided agricultural shed from agriculture to a mixed use of agriculture and B8 storage, (2) an existing agricultural building from agriculture to a mixed use of agriculture and B8 storage, and (3) (part retrospective) an area of hardstanding from open agricultural storage to open storage of contractor's plant and machinery (sui generis).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The appeal site comprises a large land parcel, on the south side of, and accessed from, Hillrow Causeway (A1123). It sits behind residential properties immediately fronting onto the highway and has the character of extensive 'backland' development.

2. There are three buildings on the appeal site, identified within the enforcement notice as Nos. 1 to 3. Building 1 adjoins the western boundary of the site, and the northern elevation of Building 3. Building 2 is adjacent to the northern and eastern boundaries of the site.
3. It is undisputed that Building 1 was the subject of a successful planning permission for storage use in 2004. Consequently, part of the appellant's case is that this building is erroneously included within the site boundary, as identified on the notice.
4. However, the notice alleges a mixed use of land, which is not disputed in principle. In such cases it is necessary to identify all elements of the mixed use, including any elements that are lawful. Accordingly, there is no need for this building to be excluded from the boundary of the notice plan.
5. The appeal includes grounds (b), (c) and (d) which are known as legal grounds of appeal. In order to succeed on these grounds, the onus rests with the appellant to prove their case to the standard of the balance of probability.
6. I am satisfied that the development which forms the deemed planning application, pursuant to the ground (a) appeal as part of Appeal A (in accordance with the enforcement notice, which will be corrected), would potentially be equivalent to that which forms the Appeal B planning application. Accordingly, I have considered both applications within the same part of my decision below.
7. For the avoidance of doubt, I have taken the description, in relation to the Appeal B development, from the Council's decision notice. This essentially follows the description of development given on the application form, but omits reference to the areas of particular parts of the site. This ensures the proposal is consistent with the areas modelled within the appellant's transport statement.

Appeal A on ground (b)

8. The appeal is that the breach of planning control has not occurred as a matter of fact. The appellant's appeal on this ground is limited to the point that no part of the site is used as a builder's yard. They say the open area to the south of Building 2 involves storage of a specialist groundwork contractor's plant and machinery, which was included within the planning application to which Appeal B relates.
9. From my visit it was evident that open storage is presently almost entirely confined to the portion of the site between the southern elevation of Building 2 and the southern boundary of the site. The stored items there appear to comprise miscellaneous engineering related plant, machinery, equipment and materials. It seems to me that the use of this part of the site is adequately described as storage of a groundwork contractor's plant and machinery, rather than as a builder's yard. On the balance of probability, no part of the appeal site has been used as a builder's yard.
10. The ground (b) appeal therefore succeeds to this limited extent. However, I am in no doubt that the appellant has had the opportunity, through the appeal proceedings, to fully argue their case for the retention of the contractor's use, as a component of the overall use of the site identified in the planning application, the subject of Appeal B. I am therefore satisfied that the wording of the notice, insofar

as it relates to the allegation and requirements may be corrected accordingly, without resulting in any injustice to the parties.

Appeal A on ground (c)

11. The ground (c) appeal is that the alleged matters do not constitute a breach of planning control. This element of the appeal concerns Building 1, inasmuch as it was previously approved and used for storage purposes. There is no dispute between the parties in this regard, and I have already dealt with this point within the procedural matters at the beginning of the decision.
12. The appellant says that Building 3, which it is undisputed was constructed sometime between 2008 and 2012, has been used continuously for purposes ancillary to the authorised use of Building 1, to which it is adjoined. Thus, in the absence of any relevant restrictive condition concerning storage, it is argued that the use of Building 3 forms part of an authorised storage use, rather than a separate unauthorised primary use in its own right. It is argued, therefore, that the use there does not constitute a material change of use.
13. However, the nature of the storage use of the buildings over time is somewhat vague and lacking in detail. Furthermore, the landowner of the site has confirmed, by way of response to a planning contravention notice served by the Council¹, that from March 2021 Building 3 was used by a bus preservation group for the storage of buses. There is no suggestion that this would have been ancillary to any storage use taking place in Building 1, rather than an independent primary storage use in its own right. The landowner confirms that prior to that use, Building 3 was used to store farm machinery. It is unclear whether this was in association with an agricultural use in this location, as opposed to a general storage use (Class B8 of the UCO)².
14. In addition, the Council, in its statement of case, has referred to most of Building 1 being used by a company storing event marquee equipment, in November 2022. This is not disputed by the appellant. In response to a planning contravention notice served by the Council, a representative of the marquee company confirmed, however, that it did not rent space within the building identified as Building 3³.
15. The appellant's agent has referred to Building 3 being used, prior to the bus storage, for the storage of sanitiser products during the Covid 19 pandemic. However, there is no suggestion as to how this was ancillary to the storage use of Building 1.
16. Drawing the above considerations together, I am unable to conclude from the evidence that any storage use of Building 3 is and has been entirely ancillary to that of Building 1, or part and parcel of the primary lawful use taking place there.
17. It is further argued that the use of Building 3 for storage purposes would be permitted development under the provisions of Schedule 2 Part 3 Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This permits the change of use of an agricultural building to a flexible commercial use, which includes Class B8, storage and distribution.

¹ See Planning Contravention Notice response dated 1 December 2022 from N. Badcock.

² the Town and Country Planning (Use Classes) Order 1987. Class B8 is concerned with use for storage or as a distribution centre.

³ See Planning Contravention Notice response dated 5 December 2022 from Roder UK Ltd.

However, the permitted development right is subject to various provisos⁴ and also requires that where such provisos are met, the change of use must be preceded by the submission of certain information to the Council or an appropriate prior approval procedure⁵. Even if the provisos as set out in paragraph R.1. are met, there is no suggestion that the relevant requirements have been adhered to, in accordance with paragraph R.3.

18. Drawing the above considerations together, the appellant has failed to demonstrate, on the balance of probability, that the alleged storage use, insofar as it relates to Building 3, did not constitute a breach of planning control. The ground (c) appeal therefore fails.

Appeal A on ground (d)

19. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground, in accordance with s171B(3) of the 1990 Act, it would be necessary for the appellant to demonstrate that the use of the appeal premises for the alleged mixed use had occurred for a period of ten years or more prior to the date the notice was issued, that being 19 January 2023, so as to be immune from enforcement. It is necessary to demonstrate that the use has been continuous over this period, with the exception of any non-material breaks.
20. The appellant's case in relation to this appeal ground is limited to Building 3. They say that since this building was constructed, at latest by 2012, it has been used continuously for storage purposes ancillary to Building 1. As set out above, I acknowledge it is undisputed the building was used in the past for the storage of buses. However, I have not been provided with any information / evidence to persuade me that any use of the building for storage purposes, within Class B8 of the UCO, in accordance with the description of the alleged breach, has been continuous for the requisite period. The ground (d) appeal fails.

Appeal A on ground (a) and Appeal B

Main Issues

21. This element of the appeal is that planning permission should be granted. The main issues are whether the appeal site is in a suitable location in terms of the effect of the development on i) the living conditions of nearby residents, having particular regard to noise and disturbance and ii) highway and pedestrian safety.

Reasons

Policy Context

22. Policies GROWTH 2, EMP 2, EMP 3, and EMP 4 of the East Cambridgeshire Local Plan 2015 (LP) collectively set out the Council's development strategy. This seeks to focus a majority of development within the District's market towns; permits the extension of existing businesses in the countryside where, amongst other things, this will not detract from residential amenity, due to any intensification of use; permits new business development on small sites in the countryside where suitable sites within settlements are lacking and where harm to residential amenity

⁴ As set out at paragraph R.1.

⁵ As set out at paragraph R.3.

and significant traffic increase is avoided; and permits the re-use of existing buildings in the countryside where, amongst other things, there would be no significant adverse impact due to traffic.

23. Policy ENV 2 seeks to ensure, amongst other things, no significantly detrimental effect on the residential amenity of nearby occupiers. Policy ENV 9 states that proposals will be refused where there would be unacceptable impacts due to pollution on general amenity.
24. Policy HAD1 of the Haddenham and Aldreth Neighbourhood Plan 2022 (NP) states that land outside the development envelope is defined as countryside. Here development will normally only be allowed for agriculture, horticulture, forestry, outdoor recreation and other uses that can demonstrate a need for a countryside location.
25. The National Planning Policy Framework (the Framework), in supporting a prosperous rural economy, advocates the sustainable growth and expansion of all types of businesses in rural areas. The Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe.

Living Conditions

26. The appeal site is in an open countryside location, outside the development envelope for Haddenham, characterised by sporadic residential and business developments, dispersed along a rural distributor road. It is undisputed that Tree Farm was formerly an agricultural farmyard, and included the land and buildings situated between the site and Hillrow Causeway. There are a pair of semi-detached residential properties, one of which immediately adjoins the short access road leading from Hillrow Causeway to the extensive main body of the appeal site.
27. Associated with and adjacent to one of these properties, the appellant's transport statement confirms there is a haulage yard, which is subject to an existing operator's licence and has parking for at least two articulated vehicles. There is also a workshop building on the opposite side of the access road to the residential properties.
28. Notwithstanding the haulage operation, I am in no doubt that because of the very close proximity of the semi-detached dwellings to the appeal site access road, residents there would be very aware of the noise and lighting associated with vehicles, particularly heavy goods vehicles, leaving and entering the appeal site.
29. In support of the planning application the appellant has submitted a transport statement. This refers to the 'existing use' of the appeal site, which would be subject to the change of use, and which therefore forms a baseline against which the proposed development should be assessed. It states that over the course of a typical farming year there are approximately 50 - 60 lorries entering the farm, with other lorries delivering fertilizer and seed.
30. The statement models typical traffic generation rates, based on the nature and scale of the proposed use. It forecasts there could be some 206 daily vehicular trips, of which around half would be attributed to commercial goods vehicles (OGVs), which would include large lorries.

31. I have taken into consideration the agricultural use of the site would likely have resulted in seasonal concentrations of vehicle movements, without any restriction on operational hours; the existing authorised, lawful storage use on part of the appeal site (Building 1), again without any control over hours of operation; and the existing haulage use adjacent to the site entrance. However, notwithstanding this, I consider the net increase in traffic associated with the proposed storage use development would be very substantial indeed, such that it would result in a significant change to the character of operations on the site.
32. Even if a planning condition was imposed to restrict the hours of operation of the site (including Building 1), along with further conditions to control parking, loading and turning, and having had regard to the views of consultees, I am in no doubt that the increased levels of traffic would result in significant additional noise and disturbance being experienced by residents. This would be highly oppressive and harmful to their living conditions. This position is supported by letters of opposition to the development received from nearby residents. The development is not conducive to supporting healthy communities that are not adversely affected by pollution and does not therefore constitute the sustainable development envisaged by the Framework, when considered in the round.
33. The transport statement goes on to document the predicted traffic flows received from the proposed first site occupier. These are considerably lower than the maximum levels predicted by the modelling. However, even if this was an accurate assessment, it does not overcome the probability that traffic volume on the site could still rise to the forecast levels in future, as the occupation of the site changes or increases.
34. Drawing the above considerations together, the development would therefore be in conflict with the aforementioned policies in the Council's development plan.

Highway and Pedestrian Safety

35. The Council raises the concern it has not been demonstrated the amount of extra traffic attending the site, in connection with the proposed development, can be safely and conveniently accommodated. In particular, concern is raised regarding conflicts between larger vehicles, manoeuvring to enter and leave the site, and the implications of larger vehicles temporarily parked on the adjacent highway, waiting to enter the site.
36. The transport statement proposes modifications to the kerb radii at the site entrance, in order to facilitate large vehicles being able to manoeuvre in and out of the site, without the need to cross into the opposing carriageway. The accompanying technical note expressly acknowledges this to be a substantial improvement over the current situation.
37. I concur that such modifications would have the potential to result in highway safety improvements. I also consider that cases of lorries having to wait on the highway to allow for emerging traffic that had advanced too far to be able itself to give way, would likely be relatively infrequent.
38. However, whilst the evidence presented in the transport statement and technical note suggests that amendments to the kerb radii are physically achievable without encroaching on land belonging to nearby residential properties, it is not clear whether other land would be affected that would require the prior agreement of

third parties. Accordingly, the lawfulness of the proposed junction improvements is therefore uncertain.

39. I concur that junction visibility in relation to traffic emerging from the site is very good in both directions. I also acknowledge that the existing lawful use of the site means that large agricultural and industrial vehicles may continue to encroach on the opposing carriageway whilst manoeuvring to enter or exit the site; and that there have been no documented accidents associated with the junction over several years. Also, when considering the nature of the proposed use, I am not persuaded the absence of designated pedestrian routes into the site would be significant.
40. However, drawing the above considerations together, I consider the substantial increase in traffic forecast would significantly exacerbate the risk to highway safety / vehicle collisions, in the context of uncertainty over whether this impact may be satisfactorily mitigated through modifications to the kerb radii. I am therefore unable to conclude that the development would not result in unacceptable harm to highway safety, and as such that it would comply with Policies GROWTH 2, EMP 2, EMP 3, EMP 4 and COM 7 of the LP, with HAD 13 of the NP and with the Framework insofar as they seek to secure this objective.

Other Matters

41. During my visit I noted what appear to be other storage / haulage related businesses located along Hillrow Causeway; also that large lorry movements are common place along this road. However, I am not aware of the lawfulness, or otherwise, of other businesses in the locality, and in any event this does not mean the grant of planning permission should be made more likely in this case, given that each development should be considered on its own individual merits.

Conclusion

42. Whilst I acknowledge the proposal may result in local employment opportunities, I have not identified any material considerations that indicate a decision should be taken otherwise than in accordance with the development plan. For the reasons set out above I find conflict with the development plan and therefore planning permission should not be granted in relation to either appeal.
43. For the avoidance of doubt, even if I had found the development to be acceptable on highway safety grounds, this would not have been sufficient to make the development acceptable overall, as it would still remain in conflict with the development plan on residential amenity grounds, and therefore unacceptable.

Appeal A on ground (f)

44. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and include remedying the breach of planning control. The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
45. The appellant's ground (f) appeal is that the requirements are excessive because it would be sufficient to require only that the use ceases.

46. With regard to the unauthorised development, the objectives of the notice are to discontinue the use of the land and restore the land to its previous condition. It follows that the purpose of the notice, in this regard, is to remedy the breach of planning control. To require that much does not, therefore, exceed what is necessary, even if, as suggested by the appellant, simply leaving the various items on site would result in amenity improvements and a lack of harm. Unauthorised storage would still be taking place and therefore the breach would not be remedied. The ground (f) appeal therefore fails.

Appeal A on ground (g)

47. The appeal is that the period for compliance falls short of what should be allowed. This is based on an extensive search failing to identify any suitable alternative sites; also a lack of evidence, according to the appellant, that the current operation of the site is causing any problems, such that compliance is not urgent. A compliance period of 12 months is therefore sought.
48. I acknowledge the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, whilst maintaining public confidence in the planning system.
49. I am also mindful of strong objections to the development from local residents, and that I have found significant harm. I acknowledge that finding and securing an alternative site is not a straight forward procedure. However, I conclude, taking into account the Council's reasons for issuing the notice and the aforementioned considerations, that the time available to seek an alternative site would be reasonable and would not result in a disproportionate burden. Accordingly, the ground (g) appeal fails.

Overall Conclusion

Appeal A

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

Appeal B

51. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

52. It is directed that the enforcement notice is corrected by:

The deletion of the wording describing the breach of planning control, within Section 3, in its entirety and its substitution with the following wording instead:

“ Without planning permission, the material change of use to a mixed use compromising B8 storage (including open storage) and open storage of contractor's plant and machinery”; and

The deletion of the wording describing the requirements, within Section 5, in its entirety and its substitution with the following wording instead:

“i Cease the unauthorised mixed use of the land and buildings by ceasing the B8 storage (including open storage) use and the open storage of contractor’s plant and machinery use (but excluding the authorised storage use in relation to the building denoted ‘1’ on Appendix A).

ii Remove all non-agricultural materials, equipment, vehicles, plant and machinery connected with the B8 storage (including open storage) use and the open storage of contractor’s plant and machinery use from the land and buildings (but excluding that connected with the authorised storage use in relation to the building denoted ‘1’ on Appendix A).”

53. Subject to the corrections 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.

Appeal B

54. The appeal is dismissed.

R Merrett

INSPECTOR