



Appeal Decisions

Site visit made on 18 March 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 06 June 2025

Appeal A Ref: APP/N1920/C/24/3345629

Land between Exan car repair workshop and railway line, Bushey Hall Road, Bushey, Hertfordshire WD23 2EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by All Storage London against an enforcement notice issued by Hertsmere Borough Council.
 - The notice was issued on 21 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the use of land for storage and distribution, including waste transfer, with associated installation of boundary fencing and partitioning walls, ports cabins and hardstanding.
 - The requirements of the notice are to:
 - i. Cease the unauthorised use of the site for storage and distribution.
 - ii. Remove all the portacabins, shipping containers, skips and other equipment and machinery associated with the unauthorised use of the site from the land.
 - iii. Remove all gates, fences and walls/hoarding erected in association with the unauthorised use of the site.
 - iv. Remove any fittings and/or fixtures including electrical installations associated with the unauthorised use from the site
 - v. Remove all materials, goods, and equipment associated with the unauthorised use from the site.
 - vi. Restore the land to its state before the unauthorised use commenced by removing the hardstanding from the land, resurface with appropriate top soils and seeding with wild grass and meadow plants.
 - vii. Remove all debris, materials, waste and equipment resulting from compliance with the other requirements of this notice from the site.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/N1920/W/24/3344685

All London Storage Ltd Land, south side Bushey Hall Road, Bushey, Hertfordshire WD23 2EB

- 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 M Melville (All London Storage Ltd) against the decision of Hertsmere Borough Council.
 - The application Ref is 23/1507/FUL.
 - The development proposed: Change of Use of the vacant land between Exan Car Repair Workshop and Railway Line Track for the purposes of open storage (B8 Use Class); hard and soft landscaping including tree and hedgerow removal; boundary treatment; land level changes; associated structures and fencing/walls; portacabins and fixed structures; new front gate and floodlighting. (Retrospective).
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:

Deleting requirement vi. "Restore the land to its state before the unauthorised use commenced by removing the hardstanding from the land, resurface with appropriate topsoils and seeding with wild grass and meadow plants."

Substituting it with "vi. Restore the land to its state before the unauthorised use commenced by removing the hardstanding from the land and resurface the site with appropriate topsoil."

And

Deleting "The period for compliance with the requirements is six (6) months" in part 6 of the notice and substituting it with: "The period for compliance with requirement i. is six (6) months and with requirements ii to vii. is eight (8) months."

2. Subject to these 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.

Appeal B

3. The appeal is dismissed

Preliminary Matters

4. Although some of the reasons listed in the refusal of the planning application are not reiterated in the reasons for issuing the enforcement notice, the appeals relate to the same development. For conciseness, I shall deal with them together in one decision covering all the matters raised as main issues.

Appeal A on ground (a) and the Deemed Planning Application and Appeal B

Main Issue

5. These are the effect of the development on: i.) the character and appearance of the site and the street scene; ii.) living conditions of neighbouring occupiers; iii.) highway safety; iv.) trees and landscaping; v.) ecology; vi.) the risk of localised flooding; and vii.) land and ground water contamination.

Reasons

Character and Appearance

6. The appeal site measures some 0.62ha and is situated between the railway line which is on a higher level, and a car wash/commercial garage. Opposite there are shops and residential roads fan off the main road, Bushey Hall Road, which is a busy thoroughfare through the town. Adjacent to the mid to rear section of the site is Lambert Court which is a residential development of flats in three storey blocks. A slim landscaping bund of mature trees separates the flats from the appeal site.
7. It is claimed by the appellant that the site was formerly occupied by Network Rail for open storage of materials for maintenance purposes and had an existing

access onto the highway. While there is no evidence regarding the extent of the purported use, images captured by Google Maps and supplied by an interested party show the front section of the site to be in a naturally landscaped state with pedestrian access to the road frontage in May 2018. The image captured in September 2020 shows that the site has been cleared of all vegetation. The mature hedge to the site's frontage has also been removed and replaced with metal palisade fencing. The site appears to remain vacant during 2021 and 2022 and the images show some vegetation growing back.

8. The land is currently used as an open-air storage facility which has required the erection of boundary treatment to secure the site, portacabins and associated paraphernalia including lighting. The site is devoid of vegetation and the ground is covered with loose stone to provide a hard surface. Internally the site has been physically subdivided into units which are rented to individuals/commercial operators through the appellant. Some of the storage areas include portacabins for office accommodation or storage and there are several shipping containers with some stacked on top of others. One of the sub-divided plots is occupied by a scaffolding business which has erected partially covered storage towers of significant height.
9. While I have no reason to dispute that the site was substantially cleared of vegetation prior to the appellant's interest in the land, the appellant's occupation of the land has resulted in a change to what had previously been a substantial green buffer between the railway line and the existing built form to an area dominated by hard surfacing, structures and solid makeshift fencing. The industrial scale of the development is clearly visible from the road frontage, and there will be wider views from residential properties within Lawton Court. The development within the site is visually harmful to the wider character and appearance of the area which is largely defined by a mix of residential and commercial properties of a suburban nature.
10. By reason of its scale, layout, material, structures and use, the open storage of the land is a dominant incongruous form of development which is at odds with its surroundings. It causes substantial harm to the character and appearance of the street scene and the wider area. As such, the development fails to comply with the National Planning Policy Framework (the 'Framework'), National Planning Practice Guidance (the 'NPPG'), Policies SP1, SP2, CS12 and CS22 of the Core Strategy (2013) (the 'CS'), Policies SADM3, SADM11, SADM12, SADM30 and SADM40 of the Site Allocations Development Management Policies Plan (2016) (the 'SADMPP'), Part D of the Planning, Design Guide (draft 2016) and Landscape, Trees and Biodiversity SPD (2010). These, among other matters, require all development to be of high quality design and appropriate in scale, appearance and function to the local context and settlement hierarchy, taking advantage of opportunity to improve the character and visual quality of an area, making a positive contribution to the built and natural environment.

Living Conditions

11. The storage use of the site will generate vehicular movements to and from the land and noise will undoubtedly arise from loading and unloading. Due to the nature of some of the items stored at the site, such as scaffolding and building materials, noise could be at a level that would cause disturbance to nearby occupiers of both residential and commercial properties. Neighbours have submitted that the use of the site does cause nuisance due to noise from machinery that has been used on

the site, and vehicle movements. It is also suggested that increased traffic generated by the site has negatively impacted the local road network and this has a harmful effect on those that live and work in the area.

12. The appellant suggests that vehicular movements are limited to between 12 and 14 each day, although there is no information regarding what type of vehicles these are and when these movement generally occur. Judging by the contents of the storage units, it is probable that much of the traffic will be large vans and lorries. They also state that the site operates within the hours of 06:00 to 19:00 Monday to Friday and 07:00 and 13:00 on Saturdays. The Council refer to the appellants' website that says access to the site is 24/7. The exact hours of operation are unclear but noting the representations received and visits undertaken by the Council during different parts of the day, it is considered likely that the site is operating outside of the stated hours.
13. I accept that the site is located within a mixed commercial/residential area and that the railway line runs alongside the site. However, in the absence of an acoustic report or traffic survey data I cannot be sure that the intensity of activities generated by the use of the site for open-air storage purposes is not detrimental to the living conditions of neighbouring occupiers in terms of noise and disturbance.
14. As such, the development fails to comply with the relevant provisions of the Framework and the NPPG, Policies SP1, SP2, CS12 and CS22 of the CS, Policies SADM3, SADM12, SADM30 and SADM40 of the SADMPP and Part D of the Planning, Design Guide (draft 2016). These seek, among other things, to ensure that development has limited impact on the amenity of neighbours and its surroundings in terms of outlook, light, nuisance and pollution.

Highway Safety

15. Access to the site is onto Bushey Hall Road where traffic lights control the flow of traffic through the narrow, single lane road under the railway bridge. During my visit I noted that at times vehicles, when stopped at the traffic lights, obscured the access to the site and this prevents those who use the site from either entering or leaving the site. This could, particularly at busy times, lead to traffic backing up through the traffic lights causing disruption to road users. It is natural to assume that there are going to be large vehicles operating from the site and it seems to me that the access arrangements, whereby only one vehicle can enter or exit the site at a time, could potentially result in traffic movements to and from the site interfering with the flow of traffic through this pinch point at the bridge, thereby compromising the safety of highway users.
16. Furthermore, the entrance is gated and there is insufficient space to fully accommodate a vehicle clear of the highway while operating the gates. Although it is stated that they remain open during the site's hours of operation, I am unsure whether that is only during the daytime hours stated by the appellant or if outside these hours they would need to be opened for individual access to the site which is stated as being accessible on a 24/7 basis.
17. In the absence of a transport assessment to demonstrate how the site operates, I cannot be sure that the activity and operation of the site, alongside the current access arrangements, would not result in disruption to the flow of traffic which could cause substantial harm to the detriment of highway and pedestrian safety.

18. As such, the development fails to comply with the relevant provisions of the Framework and the NPPG, Policies SP1, SP2, CS18, CS22, CS24, CS25 and CS26 of the Core Strategy (2013), Policies SADM30, SADM38 and SADM40 of the SADMPP, Part D of the Planning, Design Guide (draft 2016), Parking Standards SPD (2014) and Draft Sustainable Transport and Parking Standards SPD (2022). These aim to ensure that new development provides suitable safe access and does not create an unacceptable level of risk to occupiers of a site, the local community and the wider environment.

Trees and landscaping

19. The site has been cleared of vegetation prior to occupation by the appellant. While the site may have once been a verdant area of relief in this built-up environment, it is now barren with the exception of a bund with some scrub vegetation to the southernmost part of the site. There is, however, a band of mature landscaping around the site outside of the open storage areas and due to its proximity, it is possible that root systems may be affected by the development that has occurred. This could be through compaction of the ground by plant and machinery, contamination due to spillage or leakage of chemicals or fuel and direct damage to the trees themselves.
20. In the absence of an Arboricultural Impact Assessment, I am not able to determine whether the development would be harmful to the existing trees and landscaping and if so, whether there would be measures that could be put in place to mitigate any harm caused. I am not satisfied dealing with this by condition, as suggested by the appellant, because it might not be reasonable or make the development acceptable in planning terms.
21. In these circumstances, there is conflict with the relevant provisions of the Framework, the NPPG, Policies SP1, SP2, CS12 and CS22 the Core Strategy (2013), Policies SADM10, SADM12, and SADM30 of the Site Allocations Development Management Policies Plan (2016), Part D of the Planning, Design Guide (draft 2016), Landscape, Trees and Biodiversity SPD (2010) and Draft Biodiversity Net Gain SPD (2022) which, among other things, seek appropriate landscaping schemes and to contribute towards the amenity or environment of the area in which they are located.

Ecology

22. The presence of protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
23. It is likely that the loss of biodiversity will have occurred when the site was originally cleared some years ago, however, as Google images show, areas of land had begun to recover. The occupation of the land for the current use has brought about built form where there was previously none and has incorporated extensive surface works. This may well have affected species and habitats. Without an ecological assessment of the land, it is not clear whether this would have been a material consideration as to the appropriateness of the development

and whether with a mitigation and management plan any impact could be adequately addressed.

24. It has not been demonstrated that the development would not result in the loss or deterioration of irreplaceable habitats. The development therefore fails to comply with the relevant provisions of the Framework, Policies SP1, SP2, CS12 and CS22 of the CS, Policies SADM10, SADM12, and SADM30 of the SADMPP, Part D of the Planning, Design Guide (draft 2016), Landscape, Trees and Biodiversity SPD (2010) and Draft Biodiversity Net Gain SPD (2022). These, among other matters, seek to conserve and enhance the natural environment, avoiding or minimising impacts on biodiversity and geodiversity and provide opportunities for habitat creation and enhancement.

Risk of localised flooding

25. The site lies within a designated flood zone 3 (fluvial, surface water and reservoir) and as such has a high probability of flooding. The clearing of vegetation and formation of hard standing along with the siting of fixed structures is considered to significantly increase the risk of flooding in the local area.
26. There is potential for the development to increase flood risk further downstream due to flood displacement from development within the flood plain. The risk is potentially significant due to the alterations to the land level changes which are likely to impact geographical flood extents. In the absence of a site specific Flood Risk Assessment, measures to mitigate the potential harm caused by the works may be beyond onsite remedy.
27. The development is thus considered to conflict with the relevant provisions of the Framework and the NPPG, Policies SP1, SP2, CS12, CS16 and CS22 the CS, Policies SADM13, SADM14, SADM15, and SADM17 of the SADMPP and Part D of the Planning, Design Guide (draft 2016). These aim, among other things, to avoid development in the floodplain and close to river corridors unless the requirements of the sequential and exceptions tests have been met and flood prevention/mitigation measures are in place.

Land and groundwater contamination

28. Groundwater is particularly sensitive in this location because the proposed development is within a Source Protection Zone (SPZ)1 and is located upon a Principal aquifer within the underlying chalk. This is a most vulnerable groundwater area and has been modelled as such based on the underlying geology and groundwater. Any contaminants entering the ground in a SPZ1 have the potential to impact on a public drinking water abstraction point and as such developments within this zone are subject to the highest scrutiny.
29. There is insufficient information to determine how the storage of potentially polluting substances (fuel, oils, plant machinery, vehicles etc) would be managed to prevent risk to groundwater. By renting sub plots to individuals or businesses, there appears to be no control of how the units would be used or by whom. The ground is covered with a loose base and there does not appear to be any impermeable surfaces or any formal drainage in place to prevent infiltration and impact on ground water. Being located within an SPZ1 for potable abstractions, groundwater is extremely sensitive particularly as it is recorded as being shallow at

less than 2m meaning there is very limited potential for preventing any leaks or spills into the ground water.

30. In the absence of a risk assessment that demonstrates that the risks posed by the development to groundwater can be satisfactorily managed, there is conflict with the relevant provisions of the Framework and the NPPG, Policies SP1, SP2, CS12, CS16 and CS17 of the CS, Policies SADM10, SADM12, SADM13, SADM14, SADM15, SADM17 and SADM20 of the SADMPP, Part D of the Planning, Design Guide (draft 2016) and Draft Carbon Offsetting SPD (2022).

Conclusion on ground (a) and the deemed planning application for Appeal A

31. For the reasons given above, I conclude that the appeal on ground (a) cannot succeed, and I refuse to grant planning permission on the deemed application.

Conclusion on Appeal B

32. The proposal conflicts with the development plan and there are no other considerations advanced to indicate that the appeal should be decided other than in accordance with it. For the reasons outlined above, I conclude that the appeal should be dismissed.

Appeal A - Ground (f)

33. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the Town and Country Planning Act 1990 as amended (1990 Act) are to remedy the breach of planning control (s173 (4) (a)) or to remedy injury to amenity s173 (4) (b). The notice requires the use to cease and for the land to be cleared of all structures in association with the unauthorised use. Thus, the purpose of the notice is to remedy the breach of planning control.
34. The appellant suggests that the requirements should be varied to remove reference to elements relating to restoring the land to its state before the unauthorised use commenced. This is because the clearance of the land occurred before their interest in the land and there is no evidence provided by the Council that the clearance of the land occurred in parallel or tandem with the laying of hardstanding. In addition, there is no datum point referenced within the enforcement notice as to what degree of resurfacing is required with topsoil following the removal of hardstanding.
35. The appellant contests that by removing the hardstanding and offering compliance with all other elements of the enforcement notice, it is very likely that the absence of built form and activity within the site that the land would return to the pre-use stage that the Council seek. However, they consider it unreasonable to require planting of meadow plants or wild grass given the LPA cannot demonstrate the planting which was in situ prior or offer evidence that the appellant undertook any removal of planting from the site.
36. The requirements of the enforcement notice are limited by sections 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no scope for an enforcement notice to require some improvements to the land. As it seems that the land was devoid of vegetation when the appellant first

occupied it, and with no evidence to the contrary, I will vary the terms of the notice to remove the requirement to re-seed the land.

37. Therefore, there is partial success for the appeal on ground (f).

Appeal A - Ground (g)

38. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The period for compliance with the notice is six months. The appellant contests that the period for compliance is wholly unreasonable in light of the business operation, works required and period of time required to action these. Eight months is requested.

39. The appellant states that the business provides secure storage provision for small size businesses and the tenants would require reasonable notice to vacate. Furthermore, they consider the removal of paraphernalia associated with the use would require the arrangement and facilitation of multiple trades who would not be available on a small timeframe.

40. While I consider that six months is a reasonable amount of time in which to serve notice on the tenants and for them to vacate the site, I accept that a further period of two months should be given to allow for the remediation works to comply with the remaining requirements in the notice. Therefore, I will vary the terms of the notice accordingly.

41. The appeal on ground (g) succeeds to that extent.

Overall conclusion on Appeal A

42. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal cannot succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S A Hanson

INSPECTOR