



Appeal Decisions

Site visit made on 3 June 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th June 2025

Appeal A Ref: APP/B3030/C/24/3346396

Downside Workshop and Store, Great North Road, Bathley, NEWARK, NG23 6HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Sherwood Storage Ltd against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 24 May 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of land to B8 storage with the associated siting of storage containers.'
- The requirements of the notice are to: A. Remove all storage containers and equipment associated with the B8 use from the land. B. Cease using the land for B8 storage.
- The periods for compliance with the requirements are: 4 and 5 months respectively.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.

Appeal B Ref: APP/B3030/W/24/3343103

Offices and workshop, Downside Cottage North Road, North Muskham, NEWARK, NG23 6HP

- 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 Sherwood Storage Ltd against the decision of Newark & Sherwood District Council.
- The application Ref is 23/01618/FUL.
- The development proposed is Change of classification from Sui Generis to B8 to allow the operation of a [Sic] storage business.

Decisions

APPEAL A

1. It is directed that the enforcement notice is varied by: the deletion of the word 'Four' and its substitution with the word 'Five' in Paragraph 6.A of the Notice – Time for Compliance.
2. Subject to the variation, 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.

Application for costs

4. An application for costs was made by Sherwood Storage Ltd against Newark & Sherwood District Council. That application is the subject of a separate Decision.

Preliminary Matters

5. As set out above there are two appeals. Despite the differences in the addresses used, the main site areas subject of the appeals appear to coincide. However, the original location plan submitted with the planning application also includes a landscaping strip alongside the access lane leading from the B6352.
6. Furthermore, although there is also some minor variation in the descriptions used, (including an agreed amendment to that used for the planning application¹), the development subject of each appeal is the same. The reasons given for serving the enforcement notice substantially reflect those in the Decision Notice on the refusal of planning permission. Accordingly, to avoid repetition, I have dealt with the s78 appeal and the deemed application for planning permission in the s174 ground (a) appeal concurrently, unless otherwise stated.
7. Since the determination of the application and service of the Notice, the appellant has provided additional information in relation to highway safety. The Council have subsequently confirmed that it no longer seeks to contest that issue in the appeals.

Appeal A - Ground (c)

8. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control. The appellant contends that the Land benefitted from planning permission for a taxi business. He states that, between the parking of taxis on the land and the current storage use, no *material* change in the character of the use of the site had occurred when the Notice was served.
9. Setting aside that the description of development in application Ref.11/01713/FUL (the 2011 permission) fails to acknowledge a residential use on the original application site; there is no dispute between the main parties that there is a degree of inconsistency in that planning permission. The appellant asserts that the starting point is that the land benefits from the 2011 permission. He refers to several instances where, in consideration of the site, the Council have referred to the entirety of the land for use in conjunction with the taxi business.
10. Condition 6 of the 2011 permission specifies the relevant plans. It includes reference to site layout plan SK(08)01 and the proposed building detail plan SK(08)02. It also refers to a revised site location plan received by the Council on 6 February 2012. The latter was a plan requested by the Council showing a reduced red-edge area during its determination of the application.
11. It seems to me that the revised plan conflicts with the detail shown on approved plan SK(08)01. This is not disputed by the main parties. The location plan excludes much of the area of the (then) proposed operational development of the additional building and a gravel apron to its south. That misinterpretation appears to have occurred several times thereafter.
12. A planning permission should stand by itself, and the meaning should be clear to any reader within the four corners of the document. If any ambiguity arises then caselaw² has established that a pragmatic approach must be applied to the interpretation of it.

¹ 'Change of use from Sui Generis to B8 to allow the operation of a storage business including shipping containers'

² See *Wood v SSCLG & the Broads Authority* [2015] EWHC 2369 (Admin).

13. The Council's intent to reduce the extent of encroachment from the land shown on the original location plan was not clear in the Decision Notice and associated plans. However, it was made clear in the officer report for that application. As a relevant document, it stated that 'the reduction in the size of the change of use will limit the encroachment of such land into the open countryside, and limit it to that which is required for the larger building and its access drive'.
14. Relying on that supporting public documentation to provide clarification of the extent of the planning permission (per *University of Leicester v SSCLG & Oadby & Wigston BC* [2016] EWHC 476 (Admin)), and having cognisance to each squared-off southwestern site boundary in the respective location plans, it is reasonable to interpret the extent of the site benefitting from the permission to be that as shown on the original site plan save for a shortened southwestern boundary. Based on the evidence, the extent would include the building and apron shown on plan SK(08)01, and the immediate planting alongside the gravel apron as required under Condition 03 and shown on approved landscaping plan 08(11).
15. If one reasonably relies on the 7.5m measurement of the width of the concrete apron, as annotated on the (later) approved landscape plan 08(11), then the distance of the development limit from the centre of the southern elevation of the building is probably about 10m. The plan attached at Appendix 1 highlights this estimation³.
16. While I note that the approved landscaping plan 08(11) includes other landscaping elements beyond that area, those planting proposals appear to extend beyond land shown on the area of the original plan or the land that was shown to be within the applicant's ownership. This, and the fact that the approved layout does not provide for vehicular access through the adjacent fringe landscaping southwest of the apron, and identifies the land beyond as a meadow, supports my view that it was not land intended to be subject of the change of use then proposed.
17. Notwithstanding, even if I were to take the original site plan as the relevant area benefitting from the 11/01713/FUL change of use, the Land subject of the Notice extends further, both to the south and east. It includes land between the access track and a former eastern hedge line shown on plan SK(08)01. It also extends some distance southwest when a visual comparison is made between the fixed position of the intersection of the western road bridge parapet and the rail corridor, (see Appendix 2). A site plan to a recent application for the residential conversion of the adjacent building is not relevant to that comparison.
18. Having regard to that interpretation of the 2011 permission, and despite the various descriptions of the uses of land to the south of the building at various times, the evidence indicates that the lawful uses of the area subject of the Notice were probably a mix of land used for a taxi business, ley agricultural land, and a strip of vegetation to the west of the access track.
19. The introduction of shipping containers therefore extends considerably further than the area interpreted as benefitting from the 2011 permission. The presence of aligned storage containers, arranged perpendicular to three of the site boundaries at the time of my site visit, is visually distinct from cars, MPVs, or similar vehicles typically used for taxi services on the approved concrete apron. The scale,

³ This is a determination based on the evidence before me and for the purpose of the appeals subject of this Decision Letter only.

standardised utilitarian metal construction and placement of containers is visually distinct from both parked vehicles and formerly vegetated land.

20. Furthermore, where the storage use draws members of the public transporting items to and from the containers permanently retained on the site, albeit likely on an infrequent basis, such activity is probably materially different to use of the site and buildings either by regular staff and/or drivers variably arranging journeys, collecting/delivering vehicles, or waiting in vehicles throughout an extended working day. The storage use would certainly be distinct from on-site maintenance of those vehicles, or the use of land left to vegetation growth.
21. As a matter of fact and degree, I find a significant difference in the character of the storage activity compared to what had gone on previously has occurred and that a material change of use as alleged in the Notice has taken place. As development described in s55(1) of the Act and without the benefit of any demonstrated planning permission, I conclude that the appeal on ground (c) must fail.

Appeal A – Ground (a) and the Deemed Application for Planning Permission, and Appeal B – the Appeal Against a Refusal of Planning Permission

Main Issues

22. The main issues are:

Whether or not the site provides a suitable location for a storage facility with particular regard to the effect of the development on:

- the character and appearance of the locality;
- flood risk;
- the Council's spatial strategy for the distribution of economic development.

Reasons

Character and appearance

23. The site lies a short distance from where the B6325 bridges the east coast main railway line. It is bordered by open arable land to the west and a residential property to the north. The site envelops 2 sheet-clad buildings and is bordered by close board timber fencing with a gated vehicular access from a cul-de-sac road terminating close to the site. The wider landscape is predominantly open flat farmland with occasional linear groups of trees and clustered built development. The land forms part of the Trent Washlands Regional Character Area, as identified in the Council's Landscape Character Assessment SPD. The landscape is classified as of moderate condition with moderate sensitivity.
24. The containers are predominantly finished in tired blue paint. In conjunction with their number, grouped siting, scale and utilitarian form, they appear incongruous in the rural landscape. While views from within the surrounding landscape are limited to the upper sections of the containers on account of the existing boundary fence, they are clearly visible from the road bridge as a commercial compound. This is distinct from the typical characteristic of predominantly agricultural rural development.

25. Compared to taxi or staff vehicles parked between the dwelling and the shed buildings, or on the limited area of the authorised apron to the south of the building with the benefit of landscaping, the greater spread, height and larger scale of the containers are inevitably more prominent features in the landscape. The site extension beyond the authorised former use, and the loss of boundary hedging and the vegetated strip alongside the access road, cannot be said to have conserved the rural character of the landscape. It will have significantly increased the site's obtrusiveness.
26. As recognised by the Council in assessment of previous development proposals, the effect is somewhat tempered by the site's location adjacent to the road and rail infrastructure. However, even if painted in a similar colour to the adjacent buildings, in contrast to those substantially more limited proposals, I find the increased area of the use and the siting of large containers across a larger area has caused a moderate adverse effect on the character and appearance of the locality and the wider rural landscape. Moreover, as the use appears to extend to the limit of the appellant's land ownership and to the adjacent roadway, opportunities for mitigation landscaping would be limited.
27. For the above reasons, the development causes moderate harm to the character and appearance of the locality. It conflicts with Core Policies 9 and 13 of the Amended Core Strategy [2019] (the ACS), and Policies DM5 and DM8 of the Newark & Sherwood Local Development Framework Allocations & Development Management Development Plan Document [2013] (the ADMDPD) as together they seek protection and enhancement of the distinctiveness of the landscape, including through complimentary design.

Flood Risk

28. The main parties agree that the site lies within Flood Zone 2 as modelled in the Environment Agency's flood risk mapping. However, there is dispute between them as to whether the development subject of the Notice and the planning application constitutes only a material change of use, or includes operational development by virtue of the installed containers. If operational development is included then the requirement for a sequential test to direct development to areas of lower flood risk, as set out in the National Planning Policy Framework (the Framework), applies.
29. In that regard, the appellant refers me to the cases of *Cardiff Rating Authority v Guest Keen* [1949]; *Measor v SSE etc and Tunbridge Wells BC* [1998]; *Elitestone Limited v Morris* [1997]; and *Massingham v SSE* [2002].
30. In the Court of Appeal, *Skerritts*⁴ held that the three-fold test in *Cardiff Rating Authority* - establishing that size, construction and permanence were relevant in consideration of the nature of a building, should apply. However, as *Measor* and *Massingham* relate to caravans, and *Elitestone*, so far as applicable, is largely consistent with *Skerritts*, they do not disapply planning judgement on the established principles in the individual case situations.
31. Containers without service connections can be brought on to the site without requirement for on-site construction and can be laid on the ground or on sleepers, such that they are unattached and capable of being moved as a single unit. However, their use for secure storage by movement of items to be stored, rather

⁴ *Skerritts of Nottingham Ltd v SSETR (& Harrow LBC (No. 2)* [2000] EWCA Civ 5569; [2000] JPL 1025

than movement of the containers themselves, requires a degree of permanence in their siting. Notwithstanding that they could be moved by crane or Hiab-type vehicles, their movement about the site would serve little purpose for the intended use.

32. The appellant asserts that different containers might be used depending on demand or be replaced when deteriorated or damaged. Additionally, the appellant contends that unused containers would be removed from the site until such a time they are required. However, aside from making little practical or commercial sense through imposing additional costs and removing the extent of readily available storage capacity offered, there is little evidence to highlight where the containers might otherwise themselves be stored to allow for that flexibility. To my mind, given their robust construction for shipping purposes, the replacement of leaking containers or removal for repair is unlikely to be a regular occurrence.
33. The appellant also highlights that the Council only sought to impose a planning fee in relation to a material change of use for both the planning and deemed applications. Be that as it may, the planning judgement must be based on the totality of the evidence. Although relevant, the fees paid are not in themselves determinative of the status of development.
34. Having regard to the established caselaw, I conclude that as weighty structures servicing the storage use, they have a significant degree of permanence. Furthermore, they cause a significant physical change to the appearance of the land such that, for all intents and purposes, they appear as permanent features much like the nearby buildings. Accordingly, in the particular circumstances of the case, I find that scale and degree of permanence in their siting, in conjunction with their layout to provide accessibility for their intended use, leads me to the conclusion that they constitute operational development.
35. In the circumstances, Core Policy 10 of the ACS, Policy DM5 of the ADMDPD and the Framework require that a sequential flood risk test be applied to development in Flood Zone 2 with a medium probability of flooding in order to demonstrate it could not be sited in an area of lower risk of flooding. In the substantial absence of such detail in the appellant's flood risk assessment it is not possible to proceed to consider the provisions of the exception test or whether any risk could be suitably mitigated.
36. The appellant asserts that the Environment Agency's Flood Risk Mapping concludes the site is at low risk from all types of flooding. Pursuant to Paragraph: 027⁵ of the Planning Practice Guidance (PPG), he highlights that a sequential test is not required for 'an area at low risk from all sources of flooding, unless the Strategic Flood Risk Assessment, or other information, indicates there may be a risk of flooding in the future'.
37. The FRA provided appears to rely primarily on the EA's mapping of existing risk. It does not appear that climate change allowances have been applied. While the appellant identifies that there is an anomaly between the Flood Zone categorisation and the risk to site flooding provided by the EA, there is little before me to demonstrate which might be more accurate.

⁵ Reference ID: 7-027-20220825

38. It is notable, however, that detailed modelled flood extent maps provided in the FRA relate only to the River Trent. They do not seem to account for non-main river watercourses located to the west. Additionally, the site and access are modelled to be at some risk from surface water and reservoir flooding. Accordingly, in the interests of minimising risk now or in the future from all sources of flooding, the sequential test should be applied to the Flood Zone 2 development.
39. For those reasons I find the development conflicts with the requirements and aims of Core Policy 10 of the ACS, Policy DM5 of the ADMDPD and the Framework as they seek to direct development away from the areas at highest risk of flooding.

Locations for development

40. In conjunction with Spatial Policy 3 of the ACS, Policy DM8 of the ADMDPD seeks to strictly control development in the open countryside. However, it supports small scale employment uses where it can demonstrate the need for a particular rural location and a contribution to providing or sustaining rural employment to meet local needs in accordance with the aims of Core Policy 6.
41. There is little before me to demonstrate that the B8 use requires a rural location, or that the unmanned operation sustains rural employment to meet local needs. While the Framework identifies that planning decisions should recognise and address the specific locational requirements of different sectors, including storage at a variety of scales and in suitably accessible locations, there is limited evidence to demonstrate that such a need exists in the locality.
42. Although the appellant highlights that research by the Self-Storage Association UK indicates an increased demand for such storage, there is limited assessment of local provision. It is not therefore possible to assess whether latent demand exists in the authority area. A comparison to international trends does not assist in demonstrating the extent to which local demand is currently unmet, or otherwise.
43. The development would partially utilise land that was previously lawfully used in conjunction with the former taxi enterprise. The Framework encourages the use of previously developed land (PDL). In addition, Core Policy 6 of the ACS supports the retention of employment sites subject to a reasonable prospect of them being required for their purpose. In the rural area, it encourages economic development providing it supports local needs and is small in scale to ensure acceptable scale and impact. The latter requirement is reiterated in Core Policy 9 in relation to the optimisation of the re-use of PDL.
44. However, the development takes in land to the south and east that was previously largely undeveloped. As identified above, that results in harm to the character and appearance of the rural area. The scale of the storage facility therefore conflicts with the scale limitation in those policies. Moreover, it would neither be the sustainable growth or expansion of an established business in a rural area.
45. In support of the alternative use of the site, the appellant refers me to changes in the Use Classes Order 1987 (as amended) which consolidated some types of uses to allow greater flexibility in changes between them. However, no substantive changes were made in relation to either taxi or B8 storage uses. It is therefore a matter of limited weight in the appeals.

46. For the reasons above, I find the development conflicts with the Council's spatial strategy for the sustainable distribution of development. It conflicts with policy DM8 of the ADMDPD as it seeks to strictly control development in the Open Countryside in the interests of preserving the countryside as a natural resource and avoiding irrevocably harmful effects to it.

Other Matters

47. In support of the development, the appellant refers me to the potential fallback of the use of the land subject of the 2011 permission as a taxi facility. It could operate at unsociable times and result in increased traffic on the lane compared to the existing storage use. Although that use was approved on a more limited part of the site and previously found to be acceptable on highway safety and residential amenity grounds, I find the likely reduced effects on highway safety and the living conditions of nearby occupiers are benefits associated with the current use of the site.

Planning Balance and Conclusion

48. The development may have reduced traffic movements and be restricted to limit use at unsociable times, however, I do not find those benefits would outweigh the totality of the harm arising from flood risk, the effect on the character and appearance of the locality, and the conflict with the Council's spatial strategy for sustainable development. The development would therefore conflict with the development plan read as a whole and there are no other considerations, including the Framework, that outweigh this conflict. The ground (a) appeal on Appeal A, and Appeal B should therefore not succeed.

Appeal A - Ground (f)

49. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
50. In this case, the notice alleges that there has been a change of use, and it requires the unauthorised use to cease. Additionally, the notice alleges the siting of storage containers and requires that they are removed. The notice does not seek to 'under-enforce'. Although the Council's statement subsequently states that the steps set out within the enforcement notice are required to remedy the injury to amenity that has been caused by the breach, they also confirm the material change of use as unacceptable and the steps are the minimum required to resolve the breach of planning control. The primary purpose of the notice must therefore be to remedy the breach.
51. The appellant highlights that the containers could be painted green to reduce the harm to visual amenity by reflecting the finish used on the adjacent buildings. Additionally, he states that a restriction on the number of containers on site, or prevention of stacking, would remedy harm to amenity. However, while this would go some way to reducing the visual harm of the development, it would not resolve the harm in relation to flood risk nor the conflict with the development plan's spatial strategy. Moreover, those steps would not remedy the breach of planning control. Accordingly, I find that the requirements in the Notice are the minimum necessary to remedy the breach. The appeal on ground (f) therefore fails.

Appeal A - Ground (g)

52. This ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed.
53. The appellant asserts that the storage facilities can be let on 6-month contracts, and that a reasonable time for private and business users, some of which have long-term storage needs, should be allowed to enable clients to find alternative provision and relocate stored items. The industry assessment identifies that the east midlands region has a high take up of storage facility space such that available capacity might be lower than elsewhere.
54. I am mindful that any harm resulting from a breach of planning control should be remedied as soon as possible. In the substantial absence of evidence to demonstrate extant contracts relating to the site use, or to demonstrate actual local restrictions to alternative availability, I find the period of five months for the use to cease reasonable.
55. However, as the requirement in step 5A of the Notice would practically reduce that period to 4 months by removal of the facilitating development, the time for compliance stated at Para. 6A in the Notice should be varied to also state 5 months. The appeal on ground (g) succeeds to that extent.

Conclusions

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

R Hitchcock

INSPECTOR

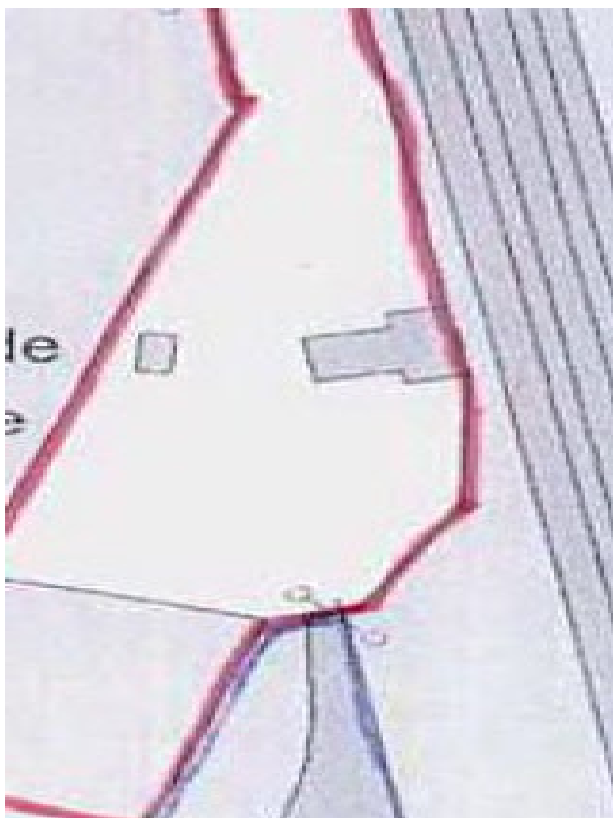
APPENDIX 1

Plan showing interpreted southwestern extent of the benefit of planning permission ref 11/01713/FUL

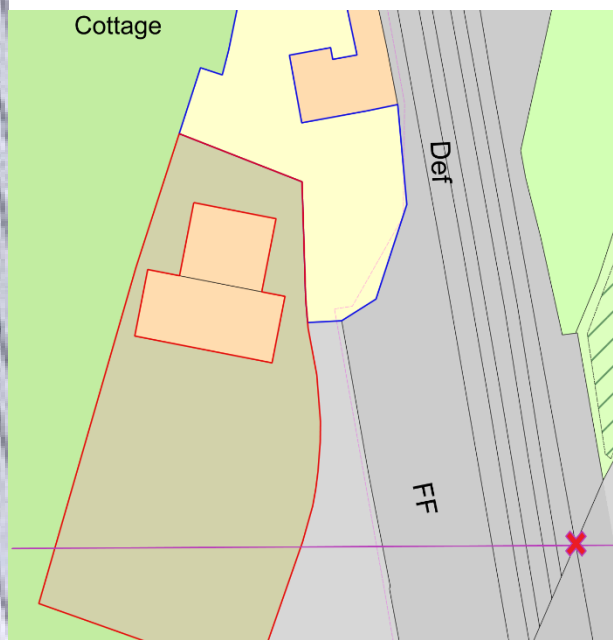


Not to scale

APPENDIX 2 - Comparison of site extents against fixed point of road/rail intersection – not to scale



Original site location plan for 11/01713/FUL prior to reduction shown in Annex 1 above



Site plan for application Ref 23/01618/FUL



Composite – estimated overlay of pp 11/01713/FUL on appellant's site aerial photo © Ordnance Survey Aerial Photos