



Appeal Decision

Site visit made on 20 May 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2025

Appeal Ref: APP/X1545/C/23/3322117

Land rear of Red Lyons Farm, Burnham Road, Latchingdon, Essex CM3 6EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr James Sinclair on behalf of Red Lyons Business Park Ltd.
 - The enforcement notice was issued on 17 April 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission:
 - a) the unauthorised change of use of 'The Land' from a B8 scaffolding storage use to a Sui Generis HGV vehicle Driver Training Centre, with associated parking area;
 - b) the erection of an unauthorised internal close boarded, timber boundary treatment and metal double gates; and
 - c) the unauthorised positioning of commercial containers.
 - The requirements of the notice are to:
 - a. Cease the use of 'The Land' for unauthorised SUI Generis HGV Driver Training Centre, with associated parking area use, including any associated B8 storage and/or E g) i) office use which is related to the Sui Generis use;
 - b. Remove from 'The Land' (with the hatched area on the attached Plan) the unauthorised timber fencing and metal double gates;
 - c. Remove from 'The Land' the unauthorised containers (located within the hatched area on the attached Plan); and
 - d. The removal of all vehicles, equipment, materials, paraphernalia, and waste associated with the completed compliance with requirements a to c as detailed above.
 - The period for compliance is three (3) calendar months from the date this notice takes effect.
 - The appeal is proceeding on grounds (a), (c), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Formal decision

1. It is directed that the enforcement notice be corrected by changing the wording of requirements b and c to refer to the 'area coloured red' instead of the 'hatched area' cited. Subject to this correction 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).

Preliminary Matters

2. The appeal site forms part of an existing, non-designated, employment site known as Red Lyons Business Centre. The actual piece of land within, the subject of the enforcement notice is set well into the site beyond the buildings known as units 1-4.

3. At my site visit I noted that this area of the Business Park now lies empty as the HGV training business has vacated the land. The fencing and gates remain, though, and form a compound within which motor vehicles are now stored. Irrespective of this, as the appeal has not been withdrawn it still falls to be determined.

Background

4. The piece of land at issue, known as unit 15, was previously occupied by a scaffolding business, for storage purposes. This use had first gained planning permission ref 14/00417 in 2015, but the business ceased operating in May/June 2022. It is understood that prior to this a number of metal containers were brought onto the site, and also a section of 2.5m timber fencing along with metal double gates were installed. The above all required the benefit of planning permission yet none was sought.
5. A site inspection by Council officials in February 2023 revealed that the land was now being used as a HGV training centre, and three HGVs were present on the site. The containers remained on the land, as did the said fencing and gates. In the circumstances the Council saw fit to issue an enforcement notice requiring that the training centre cease operating, and the containers, fencing and gates also be removed from the land.

Matters concerning the enforcement notice

6. Taken together, the enforcement notice's requirements b and c refers to the removal of the fencing, double gates and containers within the hatched area on the notice's attached plan. In fact, there is no area of land hatched on the plan attachment, as described. Instead, the said area is coloured red. Accordingly, I shall correct the notice to reflect this.

The appeal on ground (c)

7. An appeal made under ground (c) claims that those matters alleged have occurred but they do not actually constitute a breach of planning control. Accordingly, in this particular instance, the appellant contends that no planning permission is required for the use's continuation and also the retention of the operational development installed.
8. The actual lawful use of the land is therefore of particular importance here. The said 2015 planning permission for the scaffolding storage use meant that the land acquired a class B8 (storage and distribution) lawful use. In contrast the HGV driver training centre, which would involve specialised facilities, vehicles and an instructive element, does not align with typical commercial or industrial activities.
9. Accordingly, with reference to the Town and Country Planning Use Classes Order 1987 (as amended in 2020) the training centre cannot be considered as a standard business use and is not categorised, accordingly. Instead, it must be termed a sui generis use for which express planning permission is required.
10. On this basis, although the business park may have a range of employment or business uses within – the appellant alludes to a general class E use – the individual nature of the use targeted by the enforcement notice is not covered by any such umbrella. As regards the storage containers, timber fencing and metal gates – the latter are both in excess of 2m in height - all these, similarly,

require planning permission as they do not fall within the parameters of permitted development.

11. Although the appellant indicates that the fencing and gates must be considered as ancillary development for security purposes I have not been provided with direct evidence to show that these elements former part of any earlier planning permission and, in the absence of any ground (d) appeal claiming immunity from planning control, I must conclude that the said operational development is unauthorised.
12. The appeal under ground (c), therefore, fails.

The appeal on ground (a) – the deemed planning application (DPA)

13. Policy E1 'Employment' of the Maldon District Local Development Plan (LDP), adopted in 2017, says that the Council will encourage employment generating developments to support its long term growth vision. The designated employment areas – of which Red Lyons Business Park (RLBP) is not one – are set aside and protected for business uses. If not available then other sites within the District will be considered.
14. In terms of the Council's spatial policy the RLBP lies outside of the District's development boundaries.
15. The explanatory text to policy E1 refers to the council's economic evidence base which identified a need to provide some 11.4 hectares of further employment land to safeguard existing employment and enable future employment growth to be realised. Although to this end the text refers to certain additional allocations it is not clear how much of this need might have been satisfied over the past eight years. In the circumstances I cannot say for certain whether restrictions on development beyond the settlement boundaries might be relaxed as part of the Council's emerging Local Plan Review.
16. Whilst other units in the RLBP are apparently established the difference between these and the development targeted is that no planning permission was granted for the use, and it cannot rely on the generality of the neighbouring business uses to confirm its acceptability.
17. For proposals such as this there is a need, amongst other things, to assess the merits and/ or impacts of the development and also consider whether the site would have a greater benefit to the local community if an alternative use was permitted.
18. Underlying the appellant's case is the assertion that the Council has not provided proper justification for taking enforcement action in this location. However, the appellant has not provided any details of the use's operations which would allow for the development to be fully assessed and, in the absence of such, the Council has based the decision to take enforcement action on the empirical evidence gained from site visits carried out.
19. In this regard, although acknowledging that some benefits may arise from the use to accord with the Council's economic objectives I share the Council's concerns as to harm to local amenity, the environmental impacts of such, and also the effect on highway safety.

20. Accordingly and fundamentally, the Council takes the view that this non-designated business park, which accommodates a mixture of class E and B8 uses, is not suitable for the development due to its considered consequences.

Main Issues

21. With reference to the various factors above the main issues in this appeal are therefore:

- 1) the effect of the development on the living conditions of neighbouring occupiers, with particular regard to any visual detriment arising and potential for noise and disturbance; and
- 2) whether the development would give rise to conditions prejudicial to highway safety.

Reasons

Living conditions

22. The nearest residential properties are Red Lyons Farm, a two-storey dwelling which sits back from Burnham Road and has a clear view into the RLBP from beyond its western boundary, although the area that the HGV training centre occupied lies to the western side of the RLBP. Also, Red Lyons Lodge, a bungalow which lies to the east of the business park, is itself positioned some distance from the site, which lies behind Unit 4, although the property's rear garden boundary is within near proximity to the various units along the RLBP's eastern section.
23. Given the general operations of the various businesses and the site's location within I am not necessarily convinced that the use, if low-key, could not satisfactorily integrate within the confines of the wider RLBP, although this is significantly offset by the fact that no details as to the training centre's modus operandi of the training centre, both in terms of the number of heavy vehicles kept at the site, the number of vehicular movements into and out of the RLBP in terms of frequency and duration, the number of persons expected to visit the training centre daily, the number of staff employed, and also its hours of operation.
24. In the absence of such details an attempt to impose conditions on any grant of planning permission could easily amount to a restraint of trade. Ideally, therefore, a comprehensive management plan for the business should have been submitted to enable the impact of the use to be properly assessed. As no such details have been forthcoming I must conclude that the propensity for harm involving noise and disturbance, if not visual impact, is likely. Accordingly, I find particular conflict with the aims and requirements of LDP policies D1, D2 and T2.

Highway safety

25. Notwithstanding possible ingress and egress problems from the movement of HGVs arriving and leaving the site onto the classified Burnham Road, given there is nothing to demonstrate otherwise, I am also mindful as to the potential for vehicular and pedestrian conflict within the site itself. On this main issue I likewise find conflict with LDP policies S1, D1, D2 and T2.

Conclusion on the DPA

26. Given that the appellant considers that the fencing and gates were ancillary to the use of the land, and the storage containers were apparently brought onto the land prior to the use commencing – it appears that the containers have now been removed from the compound – I see no justification for granting planning permission for these three elements. Moreover, in finding likely resultant harm on both main issues, for the above reasons, I must conclude that the development is unacceptable, inappropriately sited and contrary to the development plan as a whole.
27. Accordingly, the appeal is dismissed, and planning permission is refused on the DPA.

The appeal on ground (f)

28. An appeal on ground (f) is that that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
29. The starting point in such an appeal is identifying the purpose of the enforcement notice which, in this particular instance, is to remedy the breach of planning control. The next step is to consider whether there is any obvious alternative or lesser step which would achieve the purposes of the enforcement notice with less cost and disruption. The requirements of the notice should therefore be proportionate in that sense.
30. The security issue is no longer relevant given the site has been vacated, and in the event that a new business was to occupy this part of the RLBP, it would be expected that this would require its own particular security measures rather than utilising the high fencing and gates. In the circumstances I see no obvious alternative to the enforcement notice's stipulated requirements although, primarily, it was clearly issued to require cessation of the HGV driver training centre operation.
31. There is no justification otherwise and, accordingly, the ground (f) appeal does not succeed.

The appeal on ground (g)

32. An appeal under ground (g) is that the specified time period for compliance – in this instance it was set at three months from the date the notice was to take effect – is unreasonably short. Nonetheless, given that the use has ceased and there are now no employment implications arising I see no reason why the enforcement notice's remaining requirements cannot be complied with in the period stipulated.
33. The appeal on ground (g), therefore, similarly fails.

Timothy C King

INSPECTOR