



Appeal Decision

Hearing held and site visit made on 7 May 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 July 2025

Appeal Ref: APP/Z3635/C/24/3352057

Stanwell Farm, Bedfont Road, Stanwell TW19 7LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by O'Connor Properties Limited against an enforcement notice issued by Spelthorne Borough Council.
 - The notice was issued on 7 August 2024.
The breach of planning control as alleged in the notice is:
"Without planning permission, the material change of use of the Land to use as a Builders Merchant (sui generis)
Without planning permission the erection of a warehouse building (the approximate location of which is shown [with an "X"] and hatched in black on the attached plan)
Without planning permission the erection of two structures (the approximate location of which are shown [with a "Y" and "Z"] and hatched in red and blue respectively on the attached plan)"
 - The requirements of the notice are:
 - (1) Cease the use of the land as a Builder's Merchant.
 - (2) Remove all items associated with the Builder's Merchant use including but not limited to, building materials, racking, steels, wood, bricks, breezeblocks, pallets, scaffolding, plant, vehicles, machinery, insulation, sand, cement, storage containers and plasterboard.
 - (3) Demolish the warehouse building (the location of which is shown [marked with a "X"] and hatched in black on the attached plan and remove all resulting material, debris and rubbish from the land.
 - (4) Demolish the two structures (the locations of which are shown [marked with a "Y" and "Z"] and hatched in red and blue respectively on the attached plan) and remove all resulting materials, debris and rubbish from the land.
 - The period for compliance with the requirements is six months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

The deletion of the word "insultation" and the substitution of the word "insulation" in 5. WHAT YOU ARE REQUIRED TO DO, step (2); and

The substitution of 12 months for the 6 months set out in 6. TIME FOR COMPLIANCE.

Subject to the variations, the enforcement notice is upheld.

Preliminary Matters

2. There is a typographical error in step (2) of the requirements. It was agreed that this can be corrected without causing injustice.

3. The appellant seeks to rely on three previously granted lawful development certificates (“LDCs”). It is a matter of common ground that, other than the site location plans accompanying each certificate, other plans referenced in each certificate (namely plan numbers JT2 and JT3) are not available and have been missing for some considerable time. The content of what these other plans show is therefore unknown.

Appeals on Grounds (b) and (c)

4. Appeals on these grounds are that the matter alleged has not occurred as a matter of fact, but if it has occurred, it does not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that either the use of the land as a Builder’s Merchant has not occurred or that if the use as a Builder’s Merchant has occurred, it does not amount to development requiring planning permission.
5. The appellant confirmed at the Hearing that a Builder’s Merchant use (“the BM”) is taking place on the land. However, they claim that it is ancillary to the lawful use of the land, which they say includes storage, steel fabrication and the operation of a building contractor’s business. In this regard the appellant relies on the three LDCs granted by the Council in 2004.

What use was occurring when the notice was issued

6. Mr McVeigh, representing O’Connor Properties Limited (“the appellant”) confirmed at the Hearing that he has no personal knowledge of the activities taking place on the land. However, it is his understanding that one of the directors of the BM is a building contractor. He therefore contends that building materials stored, and steel fabrication carried out on the land edged red (“the EN land”) on the plan attached to the notice (“the EN Plan”) are part and parcel of a building contractor’s business and the BM is incidental to that building contractor’s business.
7. The director of the BM referred to by the appellant is Baljinder Singh Dhillon (“BSD”), from whom an unsigned Proof of Evidence (“PoE”) forms part of the appellant’s case. BSD’s PoE sets out how Heathrow Building Merchants (“HBM”) was incorporated in August 2020 and gave their registered office as Stanwell Farm. The PoE refers to BSD carrying out building construction projects since 2005 and buying materials from HBM. It also states he became a director of HBM in May 2022.
8. BSD’s POE does not confirm that his building contracting business continued to operate after he became a director of HBM. Nor does it confirm that he continued to buy materials from HBM or that he has stored building materials or carried out steel fabrication as part of his building contracting business on the EN land. It does however state, at paragraph 11, that he is employed by the “business”, which I take to be HBM given the context.
9. I saw at the accompanied site visit that the BM is operating from the EN land. Activities associated with the BM include a trade counter, and the internal and external storage of building materials. I saw that structure “Y” is used to cut timber to the lengths requested by customers of the BM. I also saw that structure “Z” is used to house metal cutting machines as well as building materials. I was shown that welding is carried on outside structure “Z” as part of the steel fabrication process, which I was shown comprises cutting metal beams and welding end

plates on to them to meet the BM customer specifications. I saw vehicles coming and going, as well as delivery trucks being loaded. I was shown nothing at the site visit to show that a building contractor's business is operating from the site.

10. While the unsigned nature of BSD's PoE reduces the weight I shall give to its content, it offers nothing to support the appellant's contention that a building contracting business is being operated from the site. From what I saw during my site visit the scale of the BM is such that it occupies the whole appeal site. The wood cutting and steel fabrication activities are incidental activities to the BM use. I saw no other primary uses occurring within the appeal site.
11. Taking the above factors together, as a matter of fact and degree, I find it more likely than not that the EN land is a single planning unit being put to a single primary use as a Builder's Merchant. The matter alleged has therefore occurred as a matter of fact.

Whether there has been a breach of planning control

12. The purpose of an LDC is to establish the lawful use of land or the lawfulness of operational development. The three LDCs granted in relation to the appeal site therefore confirm the lawful use of the land to which they relate at the date the applications were made.
13. LDC reference 04/00877/CLD ("the 2004 LDC") relates to the land edged in red on plan JT1 attached to the 2004 LDC ("the LDC land"). This area of land is smaller than that which is the subject of the notice. The 2004 LDC confirms that, on 29 November 2004, the development described in the Schedule, namely *"the following existing uses:- (i) storage, including open storage (of specified items); (ii) site offices; (iii) parking, turning, access areas and hardstanding; (iv) maintenance and repair use, including welding, fabrication and mobile welding van services; (v) ancillary washroom."* is lawful. The land to which the 2004 LDC relates is described as the *"Yard adjoining Stanwell Farm House Bedfont Road Stanwell Surrey TW19 7LY"*.
14. The description of development set out in the 2004 LDC's schedule does not identify that a mixed use was occurring. The 2004 LDC also includes a second schedule within its reasons, which suggests that the uses confirmed as lawful took place on six different coloured areas of the LDC land. These six coloured areas were shown on the missing plan JT2. The 2004 LDC also refers to each coloured area being used in connection with several different businesses, including: a building contractors business, a contractor specialising in the investigation of ground conditions and the operation of a mobile welding business.
15. LDC reference 04/00917/CLD relates to land described as *"Yard (excluding South West Corner) adjacent to Stanwell Farm House Bedfont Road Stanwell Surrey TW19 7LY"* and confirms *"the following existing uses: (i) storage, including open storage (of specified items); (ii) site offices; (iii) parking, turning, access areas and hardstanding; (iv) ancillary washroom."* are lawful. Like the 2004 LDC, this LDC includes a second schedule that also suggests that the uses confirmed as lawful took place on five different coloured areas of the land, which were shown on missing plan JT3. Again, the LDC refers to each coloured area being used in connection with several different businesses, including: a building contractors business, a contractor specialising in the investigation of ground conditions, and a mobile welding business.

16. LDC reference 04/00918/CLD relates to land described as “*South West Corner of Yard Adjacent Stanwell Farm House Bedford Road Stanwell Surrey TW19 7LY*” and confirms “*the following existing uses: (i) storage, including open storage (of specified items); (ii) maintenance and repair, including welding and fabrication of plant and mobile welding van services; (iii) parking, turning, access areas and hardstanding.*” are lawful. Like the other two LDCs, this one also includes a second schedule that suggests that the uses identified in the schedule took place on two different coloured areas of the land, as shown on missing plan JT3. The LDC refers to each coloured area being used in connection with two different businesses: a building contractor’s business and a mobile welding business.
17. In the absence of the LDC plans JT2 and JT3, the areas of the land which were being used for the specified activities in connection with multiple businesses is not known. Given the wording within each of the three LDCs however, it would not be unreasonable to conclude that: (i) smaller areas within the LDC land where being put to physically and functionally separate and distinct uses identified in the missing plans JT2 and JT3; (ii) there were several occupiers of the LDC land carrying out substantially different and unrelated uses; and (iii) the different occupiers of various coloured areas of the LDC land shared facilities such as parking and washroom facilities.
18. What cannot be reasonably concluded from the wording of the three LDCs, and in the absence of plans JT2 and JT3, is that the LDC land was a single planning unit being put to a single primary purpose. Perhaps more importantly, it cannot be reasonably concluded from the wording of the three LDCs that the LDC land was being put to a mixed use comprising of all the uses specified in each certificate.
19. Having regard to all these factors, and on the balance of probabilities, I find it more likely than not, that the LDC land was divided into several planning units, each of which were being used for a separate primary purpose.
20. The BM use occupies all the land identified in the three LDCs and more. The land title documentation and the Statutory Declaration sworn by Francis Joseph Tierney, both provided by the Council, show that parts of the EN land were formerly occupied by a derelict dwelling (Stanwell Farm House) or formed garden to the adjacent detached bungalow. In the absence of any evidence to the contrary, it would be reasonable to conclude that, at the time of the LDCs were made, these parts of the EN land had a lawful residential use.
21. The incorporation of additional residential land and its subsequent use as part of the BM use represents a material change in use of that part of the EN land. Furthermore, the amalgamation of all the coloured areas of land referred to in the LDCs into one unit of occupation also contributes to changing the extent of the planning unit. Hence a new chapter in the EN land’s planning history has occurred. As a matter of fact and degree, there has therefore been a material change of use of the land.
22. The appellant claims there is no material difference in the characteristics of the former use of the LDC land and the BM use of the EN land. This would necessitate me having to set aside that the LDCs relate to a smaller area of land than that which forms the EN land. However, for completeness, I shall consider the characteristics of the uses.

23. There is no dispute that the storage of plant in connection with a contractor specialising in the investigation of ground conditions is no longer taking place within the land edged red on the EN plan. While the specific location of where this activity was occurring within the LDC land is not known, it has been subsumed into the BM use. While there is no evidence before me relating to the characteristics of this former use, its removal from the EN land would, on the balance of probabilities, materially change the characteristics of the activities taking place.
24. Furthermore, the 2004 LDC is clear on its face that the storage of materials and building materials were associated with the operation of a building contractor's business. It would therefore be reasonable to assume that stored materials were associated with works being carried out by that building contractor, and not being stored for sale to other parties. Such materials would therefore be unlikely to be stored to the scale and quantity being carried out by the BM. It would also be reasonable to conclude that the storage of materials by the building contractor's business would not generate multiple vehicle movements throughout every working day to the level of the BM use. The characteristics of a building contractors business is therefore materially different to the characteristics of the BM.
25. It is also clear that "*welding, fabrication and mobile welding van services*" were in association with the "*maintenance and repair*" use. While this activity appears to have been a mobile service, Mr Tierney's Statutory Declaration does suggest that he would work on vehicles and plant within the LDC land. The steel or other metal fabrication being undertaken in connection with the 2004 LDC would therefore be incidental to the maintenance and repair of plant and machinery. The characteristics of such a use is materially different to the characteristics of the incidental steel fabrication and welding activities associated with the BM.
26. There is nothing in the LDCs to suggest that the multiple businesses being operated from the LDC land generated any significant vehicular activity. While elements of the BM use may be conducted by telephone and the internet, it generates a significant number of customers visiting the EN land to place orders and/or collect their purchases.
27. Taking all these factors together, I find the characteristics of the BM use is materially different to the characteristics of the activities set out in the 2004 LDC. For these reasons, the use of the land identified in the EN plan as a Builder's Merchant does constitute a material change in the use of the land for which planning permission is required. Such planning permission has not been granted. Nor has the appellant provided precise and unambiguous evidence to show, on the balance of probabilities, that such a use does not constitute a breach of planning control.

Structures "Y" and "Z"

28. While the appellant claims that structures "Y" and "Z" are not development, I saw at the site visit that they are constructed of metal framework that is bolted to the ground with external sheeting of various types. While they may well be of a simplistic construction, they are physically fastened to the ground and have a permanent appearance. I therefore find that they are buildings as defined in s336 of the 1990 Act.
29. For the reasons given above, the appeals on grounds (b) and (c) fail.

Section 57(4) of the 1990 Act

30. The courts have held that a lawful use that is merely dormant or inactive could still be considered as “existing”, so long as it has not been extinguished in one of the following three ways: (i) evidence of abandonment; (ii) formation of a new planning unit; or (iii) by being superseded by a material change of use.
31. The appellant contends that there is no evidence to suggest the 2004 LDC use has been abandoned. However, none of the businesses identified in the 2004 LDC remain active on the appeal site. The Council also argues that the land has been put to several other, unlawful, uses before being used by the BM. The aerial photographs provided show, at the very least, that there have been various activities taking place on several different areas of land since the LDCs were granted. One such unlawful use being airport car parking, which was also enforced against.
32. S57(4) of the 1990 Act states *“Where an enforcement notice has been issued in respect of any development of the land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.”* Even if I were to accept that the 2004 LDC use was the preceding lawful use before the airport carparking was enforced against, s57(4) only permits a return to the 2004 LDC use and not some other alternative use, such as the BM use.
33. There is no evidence before me to show that the 2004 LDC use of the LDC land was reinstated before the BM use commenced. As such, s57(4) would not provide for the 2004 LDC use to be reinstated, as the appellant has not shown with precision and unambiguity that it was the preceding use before the breach of planning control occurred.

Appeal on ground (d)

34. The appellant’s argument on this ground is that the 2004 LDC established the lawful use of the land, and that lawful use has not been lost. At the Hearing, the appellant conceded that, if I were to find that the use as a Builder’s Merchant was the primary use of the EN land, then their case on ground (d) would fail.
35. I have found the Builder’s Merchant use is the primary use of the land. The appellant’s evidence confirms this use began in August 2020. As the material date is 7 August 2014, there is no doubt that the material change of use to a Builder’s Merchant has not continued without significant interruption for 10 years or more. The appeal on ground (d) therefore fails.

Appeal on ground (f)

36. The appellant’s case on this ground is that step (2) would require the removal of building materials stored on the appeal site in connection with the building contracting business taking place on the land. While I have been directed to *Mansi*¹ and *Sharma*², as I have already found that a building contracting business is not operating from the appeal site, the appellant’s case fails on this point and there is no need for me to consider it further.

¹ *Mansi v Elstree RDC* [1964] 16 P & CR 154

² *Sharma v SSCLG & Others* [2018] EWHC 2365 (Admin)

37. The warehouse building hatched black on the EN Plan is an extension of the original building that occupies the land. The appellant argues that the original building could be extended under permitted development rights (Class A, Part 7 of Schedule 2 of the GPDO 2015³), however they recognise that these rights do not permit the whole of the warehouse building as erected.
38. I have not been provided with any details of how the warehouse building could be reduced or adapted to meet the permitted development right limitations and conditions. However, even if a scheme had been provided to show how the warehouse building could be reduced or adapted, permitted development rights cannot be applied retrospectively due to Article 3(5) of the GPDO 2015. The appellant's claim does not therefore represent a true fallback position and there is no ground (a) appeal before me. Step 2 of the requirements of the notice does not therefore exceed what is necessary to remedy the breach of planning control.
39. For these reasons, the appeal on ground (f) fails.

Appeal on ground (g)

40. An appeal on this ground is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. The notice specifies 6 months, which the appellant considers insufficient to successfully relocate the Builder's Merchant. They claim a period of at least 12 months is necessary and 24 months would be more realistic.
41. The Council argue that if the tenant experiences problems relocating within the specified 6 months period, they have the power to extend it. Further, they claim a general extension of the period for the appellant, who is the landlord, is unnecessary as it prolongs the harm and creates inappropriate financial profit for them.
42. HBM have operated from the appeal site for over 4 years and I have some sympathy with the tenant's circumstances. While a ground (a) appeal was not made, there was a clear expectation that the appeal may have succeeded on legal grounds, which explains why alternative premises have not been sought in advance of the outcome of the appeal.
43. Extending the compliance period to 24 months would be tantamount to granting a temporary planning permission, which would be inappropriate. An extension of the period to 12 months would however be a reasonable compromise.
44. This extended period could be used to find alternative premises for the tenant and/or for an application to regularise the use to be pursued, given the changes to the National Planning Policy Framework.

Overall Conclusion

45. The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out above in the Decision.

M Madge

INSPECTOR

³ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

APPEARANCES

FOR THE APPEALLANT:

Melissa Murphy KC Landmark Chambers

John McVeigh Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Roderick Morton Ivy League

Neill Whittaker Ivy League

Richard Jones Team Leader Enforcement, Spelthorne Borough Council

DOCUMENTS

HD1 Hearing Notification Letter dated 10 March 2025 & mailing list