



Appeal Decision

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2025

Appeal Ref: APP/A0665/C/24/3344910

Bentleys Farm, Bentleys Farm Lane, Whitley, Cheshire, WA4 4QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr P Barber against an enforcement notice issued by Cheshire West and Chester Council.
 - The enforcement notice was issued on 18 April 2024.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 20/01706/FUL granted on 24 May 2022.
 - The development to which the permission relates is: Retention of existing and ongoing manure mixing operation.
 - The condition in question is no 9 which states that: The number of Heavy Goods Vehicle (HGV) movements to and from the site in connection with the use hereby approved shall not exceed a total of 10 movements per day in and out and such vehicular movements shall only take place on the permitted days and within the permitted time of operation. There shall be no more than a total of 100 HGV movements in and out of the site in connection with the use hereby permitted in any one calendar month.
 - The notice alleges that the condition has not been complied with in that: The Council considers that the condition limits the total number of HGV movements to 10 per day based on a maximum of 5 daily deliveries/collections. The number of HGV movements to and from the site in connection with the approved use are exceeding those numbers set out under condition 9.
 - The requirements of the notice are to: Cease the number of Heavy Goods Vehicle (HGV) movements to and from the site in connection with the use approved under planning permission 20/01706/FUL to no more than 10 movements per day (a maximum of 5 daily deliveries/collections) and no more than 100 movements in any calendar month, between the hours of 08:00 and 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays and at no time on Sundays and Bank Holidays.
 - The period for compliance with the requirements is: one calendar month.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice be corrected by deleting the words “paragraph (a) of section 171A (1)” in paragraph 1 and replacing them with “paragraph (b) of section 171A (1)”.
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

3. The appellant has appealed under ground (c) only, where the question is whether or not as a matter of fact and law, the matters alleged in the notice constitute a breach of planning control. The appellant refers to considerable local support for the development together with complaints from a single household. There is also reference to the impact on amenity, the safe operation of the highway, and the benefits arising from the development. However, as there is no ground (a) appeal and deemed planning application before me, I am not considering the planning merits of the development.

4. No site visit was necessary as the appeal can be determined based on the submitted evidence and relevant case law. There were no objections from the parties to this approach.

Matters relating to the notice

5. The notice states that the breach of planning control falls within paragraph (a) of s171A (1) of the Act. However, paragraph (a) refers to carrying out development without the required planning permission. In this case, the notice alleges a breach of a condition attached to a planning permission and it should therefore have referred to paragraph (b) of s171A (1). I have wide-ranging powers under s176(1)(a) of the Act to correct a notice, provided that doing so does not cause injustice. The notice clearly describes the nature of the alleged breach of condition and the steps required to remedy it, and the appellant responds on the basis of an alleged breach of condition. Therefore, correcting the notice to refer to paragraph (b) of s171A (1) will not cause injustice to the parties.

The appeal on ground (c)

6. The site has a long history of planning applications. The most recent planning permission ref. 20/01706/FUL, was for the retention of an existing and ongoing manege mixing operation, alongside continued agricultural use of the site. The mixing operation comprises equestrian manege surface materials which are delivered to the site for mixing and later collected and removed from the site. The planning permission was subject to several conditions, including condition 9 which requires that HGV movements to and from the site shall not exceed a total of 10 movements per day in and out on the permitted days and within the permitted time of operation, and no more than a total of 100 HGV movements in one calendar month.
7. The notice alleges that the number of HGV movements to and from the site is exceeding 10 per day in breach of condition 9. The Council has not alleged that the limit of 100 HGV movements per calendar month has been exceeded.
8. To determine whether the matters alleged in the notice constitute a breach of the condition, it is necessary to establish what is meant by the term “movements” in the context of this condition. Caselaw¹ has established that a condition is only void for uncertainty if it can be given no meaning or no sensible ascertainable meaning, and not merely because it is ambiguous or leads to absurd results. The Courts have set down that a condition should be construed in the context of the planning permission as a whole, with a common sense meaning when taken in conjunction with the reason for its imposition and not interpreted too narrowly or strictly. However, it should also be construed objectively and not by what the parties may have intended.
9. The Council considers that the condition limits the total number of HGV movements to 10 per day in and out encompassing a maximum of 5 vehicles in and 5 out. The appellant’s interpretation is that a movement consists of a vehicle entering and then leaving the site in a “circular manner”, which would mean that a maximum of 10 HGVs could enter and 10 could leave the site in a day. That is based on the premise that for an HGV to deliver to or collect from the site it must enter and leave it. It is

¹ Fawcett Properties Ltd v Buckinghamshire Country Council [1961] AC 636, [1960] 3 All ER 503, Trump International Golf Club Scotland Limited v The Scottish Ministers [2015] UKSC 74, and Lambeth LBC v SSHCLG [2019] 1 WLR 4317

argued that the reference in the condition to “10 movements per day in and out” implies that a single movement consists of an “in” together with an “out”.

10. The wording of the condition refers to the total number of movements per day in and out. The words “in” and “out” indicate two separate movements. An HGV delivering materials to the site is not one continuous act because it must enter the site and then park up and wait while the materials are being deposited. This represents a distinct movement, while the act of an HGV manoeuvring within and then leaving the site once the materials have been unloaded, is a separate movement. An HGV entering the site to collect the finished product and leaving when this has been loaded similarly represents two movements. A neighbouring occupier on the lane would also experience this as two separate movements, once when an HGV drives past on the way to the site, and then again when the HGV has delivered or collected the materials.
11. Therefore, taking the natural and ordinary meaning of the words of the condition, viewed in their particular context and in the light of common sense, I conclude that an HGV entering the site is one movement and it leaving the site is another movement. In the case of condition 9 this means that 5 HGVs may enter the site and 5 may leave per day, in connection with the manège mixing operation. This finding is supported by the reasons for the imposition of the condition. The Transport Statement submitted in support of application 20/01706/FUL and previous planning applications before that, recommended a condition “to restrict the number of daily HGV material collections/deliveries (combined) to 5; a total of 10 ‘in’ and ‘out’ movements”, in order to control the daily impact of HGV movements. Moreover, both the Transport Statement and supporting Design and Access Statement state that “the maximum number of deliveries/collections in any one day is 5.”
12. I note the appellant’s contention that it is not logical to consider movements in a single “linear” manner given that an HGV would not enter the site if there was a risk of it being trapped and unable to exit because it would break the condition wording if it left the same day. However, this issue should not arise provided deliveries and collections are carefully coordinated and monitored to ensure that the number of movements do not exceed the numbers set out in the condition.
13. Whilst it would have been helpful had condition 9 specified the number of in and out movements and the overall total, I find it sufficiently precise having regard to the facts of the case, and it therefore satisfies the tests for conditions set out in the National Planning Policy Framework. The appellant has provided a copy of a Local Government Ombudsman Report in connection with a complaint elsewhere which found maladministration due to the lack of a definition in the condition of what was meant by the term vehicle movement. The wording of that condition differs substantially from the one that is in dispute in this appeal. It is not, therefore, directly comparable to it, and for the reasons set out above the wording in this case is sufficiently clear and precise.
14. In determining whether there has been a breach, I have relied on the parties’ figures for HGV movements to and from the site. These indicate several occasions when the number of HGVs movements exceeded 10 a day. The Council refers to many such instances in 2023 including 10 occasions when it was identified there were between 12 and 20 HGV movements in a day, and 5 occasions of between 20 and 30 movements a day, between February and September 2023, and further breaches later that year. The appellant has not disputed these figures. While HGV movements

may generally be relatively low and within the parameters set by condition 9, the evidence is sufficiently clear to conclude that a breach of the condition has occurred.

15. I conclude that the matters alleged in the notice constitute a breach of condition 9. Therefore, the appeal on ground (c) must fail.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed and, subject to a correction, I shall uphold the enforcement notice.

M Ollerenshaw

INSPECTOR