

Appeal Decisions

Inquiry held on 16 & 17 December 2025

Site visit made on 17 December 2025

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 30 January 2026

Appeal A Ref: APP/R0660/C/25/3371008

Appeal B Ref: APP/R0660/C/25/3371007

Land at the north-west side of Rope Lane, Gresty Lane, Shavington, CW2 5DD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Mark Hinkley (A) and RG Landscape Supplies Limited (B) against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 16 July 2025.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land from agriculture, to a mixed use comprising of a landscaping merchant and the importation, processing and storage of waste material using a stone crusher and a screener and the siting of a container ancillary to the mixed use.
- The requirements of the notice are: (a) Cease the mixed-use of the land for the importation, processing and storage of waste and the operation of a landscaping merchant use; (b) Remove all plant including crushers, screeners and vehicles associated with the unauthorised mixed use of the land for the processing of waste and landscape merchant use, from the land; (c) Remove all stock, fixtures, fittings, structures including the ancillary shipping container, vehicles and aggregate bays and waste associated with the unauthorised mixed use of land for the landscaping merchant use and the importation, processing and storage of waste from the Land; (d) Remove all resultant debris and material arising from compliance with requirements b) and c) from the Land; and (e) Restore the land used for the mixed use of importation, processing and storage of waste and the landscaping merchant use to its previous use as agricultural use and as shown shaded blue on the attached Plan B.
- The periods for compliance with the requirements are: (a) 1 month, (b) 6 months, (c) 7 months, (d) 8 months, and (e) 9 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d) 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 is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. It is directed that the enforcement notice is corrected by deleting, in section 3, the words “from agriculture,” and varied by deleting requirement 5(e) and replacing it with “(e) Restore the land shown shaded blue on the attached Plan B to its condition before the breach took place.”; and by substituting the following as the periods for compliance with the requirements: (a) 6 months, (b) 7 months, (c) 8 months, (d) 9 months, and (e) 10 months.
2. Subject to the correction and variations, the appeals are 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

3. The appeal land is part of a narrow strip of land between Gresty Lane and a railway line that is embanked alongside the site. To the north of the railway is a residential part of Crewe, and to the south of Gresty Lane and the appeal site is open countryside, part of a designated Strategic Green Gap between Crewe and Shavington. A small stream, Swill Brook, separates the site from Rope Garden Nursery (RGN), also between Gresty Lane and the railway line and running west as far as the junction with Rope Lane. The land comprising both the appeal site and RGN were bought by the appellant in 2001-2, though the appeal site is a separate block of land with no planning history, described on the land registry apparently as 'waste land'. Mark Hinkley (MH) owns and has been the proprietor of RGN since 2000. RG Landscape Supplies Limited was incorporated 2021, its registered office being RGN. RG Landscape Supplies Ltd provides landscaping supplies across Cheshire, focussing mainly on the Crewe, Shavington and Nantwich areas. RGN is not trading at present.
4. The enforcement notice is generally in order. I will vary requirement e) to clarify that it only relates to the land shaded blue on Plan B and to require that the land should be restored to its condition before the breach of planning control rather than restoring it to agricultural use, which would go beyond what is necessary to remedy the breach. I shall also correct the allegation to remove reference to the foregoing use as agriculture. It is not necessary to specify the prior use, and while any land can be used for agriculture without planning permission, there is no evidence that the land had been in an agricultural use at any time.

Appeals A and B: Ground (d)

5. An appeal on ground (d) is that it is too late to take enforcement action, the appropriate period being 10 years, by reference to section 171B(3) of the 1990 Act. The main parties agree that the use enforced against is the current use of the appeal site, and that it is a breach of planning control. Accordingly, to succeed on this ground the appellants must demonstrate, on the balance of probabilities, that the mixed use commenced at least 10 years before the relevant date and continued without material interruption for 10 years during which enforcement action could have been taken at any time. The burden of proof is on the appellants.
6. MH described himself at the inquiry as a landscaper who happened to buy a nursery. In conjunction with running the nursery he also ran a landscaping and landscaping supplies business, One Call For All (OCFA). OCFA operated between January 2000 and April 2020, generating significant employment and turnover. Landscaping supplies were sold directly to domestic and trade customers from the nursery. The landscaping business also operated from RGN.
7. In 2007 MH entered into an arrangement with Cllr Silvester and his brother to lease part of a yard at nearby Shavington Farm to process waste arising from his landscaping business, primarily to recover and recycle concrete, paving slabs and similar materials by crushing to produce a sub-base material which he then either used in his landscaping projects or sold to others. The crusher used was initially hired, but MH subsequently purchased it as bankrupt stock in 2008. A telehandler was also purchased in 2008. The arrangement with Shavington Farm came to an end in 2009, apparently leaving considerable quantities of unprocessed waste

which had to be removed from the site. MH moved this waste to the western end of the appeal site, along with the crusher. In preparation for the move MH claims also to have cleared the site to create 2 parcels, the western end to accommodate the waste and the eastern end to accommodate the resultant products by laying crushed gravel to form hardstanding and constructing material bays. He maintains that the current use commenced on site in 2009 with the relocation of the waste from Shavington Farm.

8. In 2011 a planning application¹, described as retrospective, was made in respect of the western portion of the appeal site for “Import onto Site, Storage of and Re-use and Export of Topsoil Required for the Process Involved Within the Garden Centre and Landscaping Business”. The application, which was subsequently refused, followed advice from a Council Officer that the operations on the land required planning permission. A soil trommel was purchased in June 2013 to enable soil recovery, and another planning application, also retrospective, was made in 2014² for the use of the appeal site for “Import onto site, storage of and re-use and export of top soil”. This application followed a letter from the Council’s Enforcement Officer. Referring to what he referred to as “*the soil storage and screen compound on Gresty Lane*”, he claimed that “*part of the land in question has been raised by the importation of soil and the remainder is being used as a vehicle compound, storage of waste material and for the screening of waste material*”. This application was withdrawn, but an application³ for a Certificate of Lawful Use or Development (LDC) was made in July 2020 for “storage of landscape materials and soil” on the western portion of the site. This application was refused because the Council considered that the supporting evidence was imprecise and ambiguous.
9. Nonetheless, by the time of the LDC application I am satisfied, on the basis of the documentary, photographic and witness evidence provided over the course of the appeal that the storage and processing of landscaping waste had been carried out on the site, along with the storage of waste recycling products, from about 2009. That operation may have waxed and waned in intensity over the years, but I consider it more likely than not that it could reasonably be considered to have been continuous, notwithstanding that the noise complaint history of the site is more recent.
10. However, the waste related use is only one component of the mixed use enforced against, which must be assessed as a single use. In other words it must be shown that the land, which is agreed to be a single planning unit, was used as a landscaping merchant and for the importation, processing and storage of waste material continuously for 10 years before the notice was issued. Each of the component uses is a separate primary use, which includes activities incidental or ancillary to that use.
11. Essential elements of a landscaping merchant use include the acquisition, storage, sale and supply of landscaping products. There is evidence that such a use operated from Rope Garden Nursery in the past, and that some of the products sold from there were stored, temporarily at least, on the appeal site, albeit I consider it more likely than not that the storage of hardcore or sub-base products arising from the waste processing use of the appeal site from 2009 on should be

¹ Council Ref. 11/2904W

² Council Ref. 14/4280W

³ Council Ref. 20/2890N

considered to have been ancillary to that use. That material was apparently used either in the One Call For All landscaping business or sold on to other users. Similarly, topsoil arising from the trommel operation being stored on the site from 2013 on would also have been ancillary to the waste processing operation. There is evidence of topsoil sales, but that appears to have been from RGN. Other activities which have taken place on the appeal site included the parking of vehicles associated with the off-site landscaping operations.

12. In 2020 the eastern portion of the appeal site was redeveloped by the laying of concrete hardstanding and the construction of additional materials bays, along with the stationing of a container used as a site office. In September 2021 RG Landscape Supplies Ltd was incorporated. Although described as a rebranding exercise rather than signalling any change in the business conducted, it appears that the new company was associated more with Jake Hinkley's vision of developing the landscape supplies and waste processing into a separate business operating from the appeal site rather than as a continuation of the businesses operating from Rope Garden Nursery. At about this time MH was seeking to retire from his landscaping business, and Rope Garden Nursery was apparently put up for sale in 2022, though it has not in fact been sold.
13. Up until the formation of the current landscape merchants' yard at the eastern end of the appeal site in 2020, there is a dearth of documentary evidence supporting the assertion that a landscape merchants business was operating from there before that. There are no invoices showing sales of products from there, and product delivery notes are all directed to RGN. Further, aerial imagery from June 2018 does not show anything on the site that could be understood or identified as a landscape merchants use.
14. While I acknowledge that the appellant may consider that whatever use he was making of the appeal site included use as a landscaping merchants, professional planning advice he received about regularising his activities there, either by planning application or LDC application, made no mention of a landscaping merchants use. The 2020 LDC application was only for the use of the land for storage of landscape materials and soil recycling, and council officers who investigated the site in connection with the waste use did not identify a landscaping merchants use until after the establishment of the yard as it currently is in 2020. That strongly indicates that it would not have been possible to take enforcement action against the currently accepted mixed use prior to 2020. As such I do not consider, on the balance of probabilities, that there is sufficient evidence to indicate that the mixed use enforced against had been sustained for a continuous 10 year period before the notice was issued. The appeal on ground (d) cannot therefore succeed.

Appeal A - ground (a) and the deemed planning application

15. This ground is that planning permission should be granted for the development the subject of the enforcement notice. The main issues are:
 - Whether the location of the site within a designated Green Gap and in the open countryside is suitable for the development;
 - The effect of the development on the character and appearance of the area; and

- The effect of the development on the living conditions of nearby residential properties in terms of noise and dust.

Location

16. For development plan purposes the site is located in the open countryside on land that is designated as a Strategic Green Gap. Within the open countryside, Policy PG6 of the Local Plan Strategy (LPS) aims to restrict development in the open countryside to uses appropriate to a rural area, with certain specified exceptions. It stresses the importance of retaining gaps between settlements and attention to design and landscape character. Policy RUR10 of the Site Allocations and Development Policies Document (SADPD) provides that employment development may be appropriate to a rural area where its scale is appropriate to the location, the nature of the business means that a countryside location is essential, and the development provides local employment opportunities that support the vitality of rural settlements.
17. It is acknowledged by the appellants that the nature of the business does not mean that a countryside location is essential, but they nonetheless point to a degree of support from Policy RUR10 insofar as it may provide local employment opportunities that support the vitality of rural settlements. However, while the businesses associated with RGN, specifically the off-site landscaping business, may have been a significant employer, there is little to suggest that without the addition of an off-site landscaping business to the mixed use enforced against there is likely to be a significant level of employment generated, and there is no specific evidence to suggest that any employment opportunities would be likely to support the vitality of rural settlements.
18. I am also of the view that the scale of the development is not appropriate to its location and setting. The narrowness of the site means that the waste operation is operating in a very constrained area immediately next to the public highway. Vehicle movement within the site is likely to be difficult at times and to require the use of the public highway in some circumstances to get from one part of the site to another. The dimensions of the site are not suited to the waste use in particular, which appears discordant and incongruous immediately alongside the rural lane. I find accordingly that, so far as the location is concerned, the development does not accord with SADPD Policy RUR10 and LPS Policy PG6.
19. The purposes of Strategic Green Gaps (SGG) are set out in LPS Policy PG5, including retaining the existing settlement pattern by maintaining the openness of land. Within Strategic Green Gaps Policy PG6 applies, with additional restrictions on development that would erode physical gaps between settlements, adversely affect visual character or significantly affect the undeveloped character of the Green Gap. It states, however, that exceptions would be considered where it can be demonstrated that no suitable alternative location is available.
20. The appellants argue that the site is visually more associated with the urban built form to the north of the railway than to the SGG, and has established boundary treatment along Gresty Lane, such that its perceived impact on openness would be minimal. However, the SGG between Crewe and Shavington includes the railway and embankment alongside the appeal site, so in spatial terms it is not an edge of the gap. The lane itself beyond the garden centre has a rural character in any case and in that context the appeal site clearly forms a part of the open

countryside separating the settlements. Rather than performing a role in contributing to the purposes of the SGG, the development results in the erosion of the physical gap between the settlements and significantly affects the undeveloped character of the gap. Although the Council determined that an extension of the car park in the adjoining garden centre would not result in the physical erosion of the gap, that land would have contributed far less to the purposes of the SGG, being within a developed site and before the lane's rural character becomes established.

21. The development conflicts with LPS Policy PG5. However the policy allows that exceptions to the policy will be considered where it can be demonstrated that no suitable alternative location is available. To that end the appellants carried out an alternative sites search through a local land agent and found no suitable alternative. However, I consider that the site search parameters were too narrow, essentially seeking almost the same circumstances that pertain to the appeal site. To be suitable, an alternative site had, among other things, to be available for a set price ceiling on a freehold basis, not be within half a mile of a competitor, and to be on a main road with main road frontage. It is not clear whether relaxation of any of these criteria would have changed the search outcome, but as it stands I am not persuaded that a vigorous search for an alternative site has been demonstrated.

Character and appearance

22. The railway embankment forms a strong visual boundary to the north of the lane, and the generally undeveloped strip between the embankment and the road, allied with the open farmland to the south, gives Gresty Lane a distinct rural character to the east of the nursery entrance. The use of the site serves to diminish the attractive rural character and appearance of the lane and its environs by introducing unsightly waste piles and the urbanising appearance of the landscape merchants yard. As such it fails to make a positive contribution to its surroundings, contrary to the aim of LPS Policies SE1, SD2 and GEN1.

Living conditions

23. Since the redevelopment of the eastern portion of the site there have been frequent complaints of noise arising from the development, mainly to do with the use of the crusher and trommel. Evidently there was a sustained period of waste treatment leading up to the yard redevelopment, the crushed hardcore being used in the sub-base. The use of the crusher in particular has continued to generate complaints from the nearby houses. Dust arising from the site has also been raised as an issue by neighbours, but little evidence on this matter has been provided, hence I have concentrated on whether noise generated by the use is likely to adversely affect the living conditions of the occupiers of neighbouring properties. A noise report prepared for the appellant acknowledges that there may be an adverse effect from the use of the crusher and trommel, but it claims that it can be mitigated such that any residual adverse impact could be tolerated on the basis that the crusher would only be likely to operate for 8 days per year.
24. When the noise measurements informing the report were undertaken the crusher operation site had been moved away from being close to the nearest houses so that it is now stationed at the eastern end, while the trommel was operating from the top of a waste pile. It is proposed that the crusher would in future only operate from the eastern end. From there, with mitigation its operation would be at a level of 7dB LAeq above the background noise level at the nearest dwelling. The

mitigation proposed is to erect a 2m high acoustic fence above the material bays, some 40m in length, along with restrictions on hours of use and frequency. However, such an acoustic fence would be a visually prominent and discordant feature which would be harmful to the character and appearance of the area. Without the acoustic fence the noise level would be 17dB LAeq above background, which would be considered as a significant adverse impact.

25. The operating height of the trommel when measurements were taken was not actually measured, but the noise modelling assumed an operating height of 2.4m above ground level. At that height it would give rise to an adverse effect, 8dB LAeq above background, and just 1dB below giving rise to a significantly adverse effect. On my site visit the trommel was stated to have been in the same location that it was during the noise measurement period. The mitigation proposed is to only operate the trommel at ground level, such that the embankment would act as a sound barrier, reducing the noise level to 3dB LAeq above background, still noticeable but unlikely to have an adverse impact. However, the failure to establish the correct relative height of the trommel must cast doubt on the validity of the modelling outputs, and my impression on seeing the trommel location was that it was not as high as 2.4m above the natural ground level. Also, the trommel is mobile plant and could be positioned further to the east where the ground rises and the mitigating impact of the railway embankment would be likely to be less.
26. On balance, I consider that proposed crusher noise mitigation comprising the acoustic fence would not be acceptable given the visual harm, and that the mitigation would in any case only be partial, the crusher still generating noise that would have an adverse effect on neighbours living conditions. That it would only occur for 8 days of the year puts it at the lower end of the adverse harm spectrum, or the significant adverse harm spectrum in the absence of the acoustic fence, but when considered along with the shortcomings in the trommel noise modelling I consider, on the evidence available, and having considered the conditions proposed, that I am unable to conclude that the development would not be likely to harm the living conditions of the occupiers of nearby dwelling due to noise generation. I find therefore that it conflicts with LPS Policy HOU12, which seeks to ensure that development does not cause unacceptable harm to the amenity of nearby residential properties.

Overall

27. The appellants have pointed out that there is significant policy support for development that supports the economy and utilises vacant or derelict land, both in the development plan and in national policy. However, I have found conflict with the most directly relevant and important policies given the constraints involved, and I am satisfied that the development is contrary to the development plan read as a whole. There are not material considerations which indicate a decision otherwise than in accordance with the development plan, and the appeal on this ground cannot therefore succeed.

Appeals A and B - ground (g)

28. This ground is that the period for compliance falls short of what should reasonably be allowed. The appellants' final position on this ground is to seek compliance periods as follows: 6 months for (a), that is to cease the use; 7 months for (b), removal of the plant; 8 months for (c), removal of stock, fittings and waste etc; 9

months for (d), removal of resultant debris and materials; and 10 months for (e), restoration. It is argued that these periods would enable the appellants to process the waste accumulated on the site at present.

29. The real difference between what is sought and the notice period is the time allowed for the use to cease. One month would compromise, or make impractical, treatment of the remaining waste on the site, so that most would have to be removed as it is, either to landfill or another waste processing site. Given that the waste on the site has been tolerated for some time, that the enforcement regime is remedial rather than punitive, and having regard to the waste hierarchy, I consider that it is reasonable in all the circumstances to extend the periods for compliance as sought. While I recognise that this may result in some further noise disturbance to neighbours, most of the noise generation will be trommel operation related and less disturbing. Extending the compliance periods thus is likely to secure a far better outcome all round, and the appeal on this ground succeeds to that extent.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Amelia Critchlow	Barrister
Brian Silvester	Cllr., Leighton currently, formerly Rope
Mark Hinkley	Appellant
Jake Hinkley	Appellant
Michael Askew	Planning consultant
Melville Kenyon	Noise expert

FOR THE COUNCIL:

Daniel Henderson	Barrister
Zafer Faqir	CEBC Enforcement
Nicholas Kelly	CEBC Env. Protection

INTERESTED PERSONS

Russell Daniels	Neighbour
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DOCUMENTS

1. Neighbour noise questionnaire – Appellants
2. Opening – Appellant
3. Closing – Council
4. Closing - Appellants