



Appeal Decision

Site visit made on 24 March 2026

by **R Curnow MA(TCP), BSC(Hons), CMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 April 2026

Appeal Ref: APP/K1128/C/24/3350137

Land at SX 786639, South side of New Lane, Staverton, Devon TQ7 3AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by KJT Holdings Ltd against an enforcement notice ('the Notice') issued by South Hams District Council ('the Council').
 - The notice was issued on 18 July 2024.
 - The breach of planning control as alleged in the notice is Without planning permission, the carrying out of the following unauthorised engineering works erection on the Land: (a) the importation of materials to the Land; and (b) making changes to the ground levels of the Land.
 - The requirements of the notice are: (i) Remove the unauthorised materials from the Land; and (ii) Return the Land to its original levels.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (f) 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 ('the Act').
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Decision

1. It is directed that the enforcement notice is corrected by omitting the word "erection" from section 3 of the Notice, 'The matters which appear to constitute the breach of planning control'.

Subject to the 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.

Procedural Matter

2. The Notice stated that the date when its terms came into effect was '16 August 2004'. That was clearly a drafting error. As the Appellant made his appeal within the statutory time frame, it caused him no injustice and has no effect on my determination of the appeal.
3. In the allegation, the word "erection" is superfluous. Although this has not been raised by any party, it should be removed and I can do so without causing injustice.

Ground (a) and the Deemed Application

4. An appeal made under Ground (a) is that the development referred to in the Notice should be granted planning permission.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area.

Reasons

6. The appeal site comprises land running roughly east to west on the south side of New Lane, a narrow road linking Staverton Station with Staverton village. Access to the land is from this road. It is a linear site that, generally speaking, widens as one moves east across the site. The land also shares a boundary with the village playing field's parking area, to the east; whilst, to the south, it bounds Staverton industrial estate. Notwithstanding the latter, and that there are dwellings on the opposite side of New Lane, the site lies within the open countryside.
7. The land within the red line on the plan attached to the Notice slopes both east to west and north to south. There is a significant difference in the levels of the appeal site and that of the industrial estate. Standing on the former, one is well above the eaves line of the large building on the estate. This means that there is no direct link between the two; to get from one to the other, one has to leave the appeal site, travel down New Lane for roughly 200m and enter the estate through its entrance from that road.
8. A significant amount of hardcore has been brought to the site. It has been tipped across the land, from near its access from New Lane towards its eastern end, westwards to roughly halfway along the site. The material is away from the site's boundaries. Due to the fall of the land, this has raised its levels by up to 0.7m according to the Appellant. The Council served a temporary stop notice regarding the importation and deposition of the material in July 2024. Since then, no further tipping or modelling of the land has been carried out.
9. There are a number of trees on the land. Towards its western end, these are present across the site, but otherwise they are largely found along or close to its boundaries. Since May 2024, the land has been subject to an Area Tree Preservation Order¹ ('TPO'). This TPO includes the whole of the appeal site, as well as additional land above the industrial estate and to the south of the playing field.
10. There is a hedge along New Road. To the west of the gate, the hedge and trees reduce views into the site from the road. However, the long, double entrance gates allow for a largely clear view of most of the tipped material. Further views of this are gained from the parking area that serves the playing field, which is on higher land to the east.
11. In what the Appellant describes as "c. 2021", sewage discharged from manholes in New Lane into the site, turning it into "an unusable bog". Further, the Appellant says, this led to many trees becoming dead, dying or dangerous and a number were removed. As their removal was prior to the making of the TPO, the evidence shows that this did not require consent from the Council.
12. The Council asserts that the 'baseline' for my appraisal of the appeal should be the condition of the land with those trees on it. The Appellant's position is that, in the circumstances, this should be the site without the trees. The position depends on whether the removal of the trees was undertaken as part of the development being enforced against.

¹ 'Land at New Lane, Staverton' Tree Preservation Order:1101

13. From the evidence, I find that, whilst opening up the land for the laying of the larger area of hardstanding, their removal was not part of the development. However, this is not determinative in my decision.
14. The case is made by the Appellant that the appeal site and the industrial estate form a single planning unit, using the principles established in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. Thus, he makes the case that the use of the land for storage purposes ancillary to the industrial estate is lawful. This, he says, provides further justification for the retention of the hard surface. He further says that the surface allows for that use to be carried out, especially on the land that was flooded.
15. In essence, *Burdle* sets out that, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes, the planning unit is usually the unit of occupation.
16. Although conterminous and in the same ownership, the land is physically distinct and separate by reasons of: the significant difference in land levels; and the lack of an 'internal' means of communication between the two. Given this, as a matter of fact and degree, it has not been demonstrated that the appeal site and the industrial estate form a single planning unit. From the evidence before me, including what I saw at my site visit, they are two separate units.
17. That finding impacts on the claim that the land can be lawfully used as a storage area for the estate. Not being in the same planning unit, its use for storage cannot be ancillary to the industrial estate and does not qualify for the support that I am told that Policy TTV26 of the Plymouth and South West Devon Joint Local Plan 2014-2034, adopted March 2019 ('JLP') would otherwise give.
18. That storage use might otherwise be shown to be lawful by way of its duration or through a planning permission. The Appellant says that he has used the land for the storage of equipment from the industrial estate since 2016. It could not, therefore, have become lawful by the date of the issuing of the Notice, as this would have required 10 years of continuous use. There is nothing in the evidence to show that planning permission has been granted for that use of the land. Thus, on the basis of the evidence before me, I find that there is no lawful use of the land for the purposes of storage in association with the industrial estate.
19. The evidence shows that there was an area of hardstanding on the land prior to the development occurring. I saw part of this at the eastern end of the site. Its precise extent is unclear. However, to my mind, a series of photographs of the site, both aerial and taken from New Road, submitted by the Council show that there has been a significant increase in the extent of hardstanding. From those photographs, I find that the earlier hardstanding did not dominate the land; however, that which has been formed does. Its extent, allied to the increase in height of the land, and its resultant levelled, engineered appearance has a significantly adverse effect on the character and appearance of the area. It has had an urbanising effect that is at odds with its rural setting. It does not respect that setting.
20. The Appellant's original intention was to "redistribute the fill material across the Appeal Site", and this is still the case. This, and his suggestion that "the Inspector

will see on the site visit, there are several areas within the Appeal Site where the fill could be redistributed”, suggests expanding the area covered by hardstanding.

21. There are areas on the site to which the material might be spread, allowing for the creation of a level surface uniform with an area near to the entrance gate. However, in the circumstances, it is for the Appellant to identify where the material might be positioned. Furthermore, as the land is now subject to a TPO, he would need to demonstrate that such redistribution would not cause harm to those protected trees. The absence of a scheme addressing those points cannot be addressed by simply saying that the redistribution would be carried out in a way which would not affect the protected trees on the Appeal Site.
22. I find that the expansion of the area covered by imported material, although this might be at a lower level, would exacerbate the visual harm of the development.
23. Although the removal of the trees from the site would likely have affected its character and appearance, save for the deposited material, I find that it still makes a positive contribution to the area. Those trees remaining provide a verdant frame to New Lane and a buffer to the industrial estate. The removal of the material would allow for natural growth to occur that would enhance its appearance and contribution to the local landscape.
24. As the development fails to conserve and enhance the character, scenic and visual qualities of the area, it is contrary to the terms of Policy DEV23 of the JLP.
25. The Appellant submitted a unilateral undertaking, under s106 of the Act, in which he covenants to plant, and maintain, 50 native trees on the land to which the Notice relates. That offer is, however, subject to the appeal being allowed.
26. The weight I afford to this undertaking is tempered by the proviso in his offer that the trees would be planted “in locations which the Owner shall identify in its absolute discretion”. In those circumstances, and without a plan showing where these trees were proposed to be planted, I cannot be sure that they would mitigate the harm that I have identified, above.
27. Therefore, I afford some limited weight to the undertaking. However, this is not sufficient to outweigh the harm to the character and appearance of the area that I have identified.
28. For the above reasons, the Ground (a) appeal is dismissed.

Ground (f)

29. An appeal under Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
30. Thus, the start point is to determine the purpose of the Notice. As it requires the removal of the imported material and the return of the land to its former levels, its purpose is clearly to remedy the breach.
31. I have addressed the Appellant’s points regarding the spreading of the material to create a level surface in Ground (a), above.

32. I find that the Council's reference to original land levels, in its requirement (ii) is appropriate. The landowner would best know what these are but, in any event, the nature and appearance of the imported material is quite different to that on which it has been deposited. That is the case both in respect of the original hardstanding that I saw towards the eastern end of the site and, especially, of the underlying land that had not been previously surfaced. Identifying the original land levels would not be difficult.
33. Although the removal of the material would require the use of machinery that would generate carbon emissions, I find that the very limited harm that would arise would be outweighed by the resultant benefits to the character and appearance of the area. Similarly, I do not find that the expense, nor the labour-intensive nature of the work to provide sufficient justification for the material's retention.
34. The Appellant's proposal does not provide a lesser step that would achieve the purpose of the Notice, nor can I see one. For the reasons that I give, the Ground (f) case fails.

Conclusion

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

R Curnow

INSPECTOR