



Appeal Decisions

Site visit made on 2 February 2026

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 May 2026

Appeal Refs: APP/E0535/C/23/3334979 (Appeal A) and 3334980 (Appeal B) Land behind Corkers Crisps, Willow Farm, Pymoor, Ely, Cambridgeshire CB6 2WA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Ross Taylor (Appeal A) and Mrs Gail Heather Taylor (Appeal B) against an enforcement notice issued by Cambridgeshire County Council.
- The notice was issued on 16 November 2023.
- The breach of planning control as alleged in the notice is without Planning Permission: The importation, depositing, processing and exporting of inert waste materials and the raising of the land with waste. (Material Change of Use).
- The requirements of the notice are to:
 - Step 1: Cease the importation of waste materials, deposition and storage on the land.
 - Step 2: Cease processing of inert waste materials.
 - Step 3: Remove all inert waste materials from the land.
 - Step 4: Cease any further raising of the land.
 - Step 5: Remove the portacabin.
 - Step 6: Remove screening equipment.
- The periods for compliance with the requirements are:
 - Step 1: Within 1 day.
 - Step 2: Within 1 day.
 - Step 3: Within 28 days.
 - Step 4: Within 1 day.
 - Step 5: Within 28 days.
 - Step 6: Within 28 days.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) 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)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. The appeals are allowed under ground (b) and the enforcement notice is quashed.

Ground (b)

2. In an appeal under ground (b), the burden is firmly on the appellant to show, on the balance of probabilities that, by the date of the enforcement notice, the matters stated in the notice have not occurred as a matter of fact. The main thrust of the appellants' case under ground (b) is that there has been no material change of use and that what has occurred is not development in its own right, but merely preparatory works to implement a planning application.
3. Further to this argument, the appellants put forward three aspects to their case: The first is that the alleged 'use' is permitted development pursuant to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO); the second is that a significant amount of the material

involved has arisen from the site itself; and the third is that the material is to be used in connection with the building and associated works pursuant to a planning application for the rebuilding of the Corkers Crisps premises, much of which was destroyed in a fire.

4. Whether something comprises a material change of use is usually considered under ground (c), which is that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. To ensure that there is no misunderstanding or inadvertent omission, the appellants have pleaded grounds (b) and (c) and, given the potential overlap between the arguments made therein, I shall deal with them together.
5. The appeal site comprises a substantial area, which includes hardstanding, a large green metal clad building and hardstanding. During my visit, I saw that the land is generally open, with herras fencing, vegetation and gates, used to delineate the site from the land beyond. Significant earthworks appeared to be taking place, with a substantial excavation having been made across the site, presumably to lay an underground power cable or other utility, hardcore in the process of being laid over a membrane and a modest number of stockpiles of material located around the site.
6. The appeal site has previously been used for the manufacture of crisps, amongst other things. It seems from the evidence that fire at the site on 1 June 2020 caused significant damage to a number of buildings, necessitating their removal. By the time of my visit, there remained little evidence of those buildings destroyed by the fire. A large number of HGV trailers were located around the site, some with the Buffalod logo, others unbranded, or with a different logo. Building materials, pipework and scaffolding were also located within the site, as well as a portakabin.
7. A planning application, dated 5 March 2021, was made for the redevelopment of Corkers Crisp/Taylor Farms Complex at Willow Farm, Pymoor Common, Ely, Cambridgeshire. The existing use is identified as B1 light industrial/office/storage and is stated to involve land which is known to be contaminated. It is stated that the proposal will largely be the same as currently undertaken on site to include the farming of crops, storage, cooking of crisps and packaging plus the associated supporting and ancillary buildings.
8. Although that application was made in 2021, it was not approved until 15 July 2025 and is subject to conditions, reference 21/00396/FUM. The conditions include a number of pre-commencement conditions relating to contamination, among other things. There is no evidence to show that any conditions attached to the permission have been discharged to date.
9. The Council alleges that a material change of use of the land has occurred, comprising the importation, depositing, processing and exporting of inert waste materials and the raising of the land with waste. In support of its case, the Council has provided me with a number of aerial photographs, which appear to show the site expanding to the north east, into an area that appears to have previously been agricultural land.
10. Changes to the site seem to have occurred over a number of years, with the site appearing to extend outwards between 2013 and 2019-2021. The Council suggests that these photographs show that the area of land raising and deposit of

waste material has extended eastwards from what was the Corkers Crisps site into the adjacent agricultural land.

11. Within the photographs buildings which were destroyed in the fire and which have since been removed are evident, suggesting that works within the site were carried out prior to the fire, alongside the use of the site for the manufacture of crisps. What appears to be a lagoon in the north east of the site is visible in the aerial photograph dated 2017-19 but is not on the aerial photograph dated 2019-21. What could be HGV trailers are visible in a number of the photographs.
12. A Planning Contravention Notice (PCN) was issued by the Council in 2023. Within their response, the appellant for Appeal A identified that three companies are based at the site: Corkers Crisps Limited, BL & GH Taylor Farms and Buffalood Logistics Limited. It was also stated that FDS (Cambridge) Ltd has an operator's license at the site, in anticipation of the work to be carried out to re develop the Corkers site following the grant of planning permission 21/00396/FUM.
13. I have been provided with a series of photographs of the appeal site, dated 24 July 2023, which appear to show, amongst other things, a substantial green building with what appears to be loading bays for multiple HGVs. Various vehicles are visible in the photographs, including vehicles with the name 'Buffalood' on the trailers. It appears from the evidence and from my inspection of the site, that the appeal site includes the land upon which the building and vehicles are/were located.

The Planning Unit

14. When considering whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. The planning unit is usually the unit of occupation, 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. Three broad categories of distinction have been suggested when considering the planning unit:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
15. I raised with the parties matters concerning the notice, including the planning unit. The appellants suggest that the land within the red line is **not** a single planning unit (my emphasis). They state that the land identified in the enforcement notice includes activities carried out by Corkers Crisps Ltd and Buffalood Logistics Ltd, which has had a Goods Vehicles Operator's Licence at the site since at least 2011, and for the purposes of agriculture and that the extent of these uses means that it could not reasonably be said to be a single planning unit in mixed use.

16. The Council states that it is willing to concede that the site may have been in mixed use with the elements of the waste activities described in the Notice alongside an ancillary sui generis haulage yard and that it did not seek to address the use of the site as a haulage yard because at the time the enforcement notice was served, it was not considered to be the primary use of the site. The Council suggests whether the haulage use is lawful is a district planning matter and not the subject of this appeal.
17. However, where a site is in a mixed use, it is not open to the local planning authority to decouple elements of it, the use is a single mixed use which comprises its component activities, whether they include district matters or not. For something to be regarded as ancillary to a particular primary use, there should be some sort of functional relationship between the primary use and the ancillary activity taking place.
18. Even if the use of the site by Buffaload was small compared to other activities at the site, this would not mean that it was ancillary (or incidental) to other activities at the site. Photographs, dated 24 July 2023, show various HGVs located within the site, including HGVs with Buffaload on the side. There is no obvious physical delineation within the site and, from the evidence it seems, Buffaload HGVs have been located in various parts of the site, with no physical delineation between other activities. There is no suggestion that these HGVs have been used to import or export inert waste materials and so, this, in my view, is indicative of a mixed use.
19. From the evidence, it seems that the appellants own farmland surrounding the appeal site and has previously taken crops from the land and processed them at the appeal site. The Council confirms that the building relating to Corkers Crisps (located in the middle of the site) does not appear to have been affected by the material change of use set out in the Notice. The appellants state that the building is and has been used throughout for agricultural storage by the family's farm.
20. During my visit, I saw that building is largely empty, with no obvious agricultural activity taking place. Photographs and evidence provided by the Council indicate that the storage and processing of material has taken place in the open air, rather than inside the building, and so it seems unlikely that the building has been used for the activities stated in the notice as constituting the breach, or for the manufacture of crisps following the fire. Nevertheless, as set out above, the materiality of change should be considered in terms of the whole site.
21. Given the lack of physical separation between the different activities, from the evidence before me, in my judgement, it seems likely that the appeal site comprises part of a single planning unit which is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another. Since the notice does not allege a mixed use, this supports the appellants' case that the matters alleged have not occurred.

Importation, depositing, processing and exporting of inert waste

22. In support of the Council's case under ground (b), the Council has provided me with various evidence, including photographs and site visit notes, which purport to show that inert waste has been managed within the site. The Council has provided me with a note of a site visit dated 20 May 2020, for example, within which the officer identifies a bund and states it is their assessment that the bund has been

made from material that has brought on to the site. It is not clear from the notes how the officer came to that conclusion.

23. Site visit photos, dated 9 November 2021, show what appear to be various stockpiles of material, including stockpiles which appear relatively homogenous and which may or may not be derived from waste. Piles of rubble, which are typical of inert waste, are also visible within the photographs. It is not clear where the material is derived from, nor is it clear whether the material was exported off site or used within it. Some of the photographs show crushers and/or screeners, which, while commonly used in the management of waste, could also be used to process material arising from within the site. Photographs provided by an interested party show stockpiles and machinery within the site.
24. Representations made by interested parties refer to HGV movements which have taken place in the area, including vehicles which have been seen accessing the site. A witness statement, dated 19 March 2024, explains how the individual followed an FDS truck on 5 April 2023 to the appeal site and saw it (and others) being loaded up from a pile which was partly covered in grass. While this appears to support the allegation of exporting, remediating the site is also likely to have necessitated material being removed from the site. In my view, the statement and representations do little to assist in understanding how the site has actually been used.
25. Within a file note, dated 27 March 2023, the officer describes observing an HGV enter the site and deposit what appeared to be inert construction waste onto a pre-existing pile on the site. The driver is detailed as advising that they were soils from Ely Hospital and that they had an agreement to bring soils to the site for recycling. The officer concludes that the piles of soils and waste on site were the same as those noted previously, some with vegetation on and therefore, even if they were considered reasonably necessary for the purposes of agriculture, they had not been incorporated into the land forthwith and so could not be classed as permitted development.
26. While this may mean that the activities were not granted permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) (though I make no definitive finding in this regard), it does not mean that they comprise a waste activity. Furthermore, this would support the appellants' suggestion that the land is in use for the purposes of agriculture.
27. Although there is evidence that material has been imported to the site, the appellants do not dispute that material has been imported. What they dispute is that material comprised inert waste. I note the Council's concerns regarding what it considers to be contradictory evidence regarding the importation of waste, however, whether something is a waste or not is not a straightforward matter. What a lay person understands to be waste, may not meet the legal definition of waste and vice versa.
28. Waste is defined as 'any substance or object which the holder discards or intends or is required to discard'. 'Inert waste' is waste that does not undergo any significant physical, biological or chemical changes likely to cause risks to health or to the environment or to affect water quality. Material arising from within the site, for example, which is then used within the site, is unlikely to fall within the definition of waste, since the holder has not discarded it, nor did they intend to (nor

were they required to) discard it. Conversely, material which has been recycled elsewhere and which an individual intends to bring in to use in construction may still meet the definition of waste.

29. The appellants point to the significant period between the planning application for the redevelopment of the site being submitted and finally determined, and asserts that, if it were not for that project, there would be no stockpiles. It may well be that activities at the site did include the importation, depositing, processing and exporting of inert waste materials. However, from the evidence, it seems unlikely this was a primary use of the site. It seems more likely that much of the activity has been carried out in association with the remediation and redevelopment of the site.
30. The Council raise concern that the nature of the activity at the site has changed since the appeal was lodged and the processing of waste at the site appears to have reduced. An appeal under ground (b) cannot succeed simply on the basis that the alleged activities have ceased, because section 174(2)(b) is worded in the past tense and so the question is whether the breach had occurred by the date of issue of the enforcement notice as a matter of fact. Nevertheless, in my view, the condition of the site at my site visit is relevant to my consideration of the appeal under ground (b) because it is indicative of the appellants' reasons for carrying out the works.
31. As set out above, I saw that much of the site beyond the building has now been levelled, with hardcore being laid over a membrane. An excavation had been made across the site, presumably to lay an underground power cable or other utility and modest stockpiles of material remain within the site. This, in my view, is consistent with the appellants' case that the works have been carried out for the purposes of redeveloping and remediating the site.
32. I note that concern has been raised as to the length of time it has taken for the planning application to be determined and whether the appellants are serious about reopening the factory, given their interest in exploring other development opportunities for the site. Whilst planning permission may not have been secured for such works by the date the enforcement notice was issued, this does not mean that those works resulted in a material change in the use of the land. To my mind, it would be wrong to consider certain actions or activities in isolation but rather they should be considered in the round.
33. Planning permission has since been granted for the redevelopment of the site, subject to a number of pre-commencement conditions. While there is no evidence to show that those conditions have been discharged, it seems likely, from the evidence provided, that works carried out at the site, including changes to land levels, have been carried out for the purposes of remediating the site and redeveloping it. While those works are likely to have been operational development and may well have required planning permission, this is not the activity that the Notice alleges has taken place in breach of planning control.

Raising of the land with waste

34. The tipping of waste materials is generally held to constitute a material change in the use of land rather than operational development, unless the tipping has some purpose other than waste disposal. The appellants raise concern as to whether 'raising of the land with waste' should have been a separate allegation related to operational development, or whether it is related to the material change of use

allegation and suggests that there has been no raising of the land, that the site was already higher than the surrounding land and that the levels remain the same now as before the fire.

35. The aerial photographs provided by the Council appear to show that changes to the site have occurred over a number of years, between 2013 and 2019-2021. However, it is not clear from the four corners of the Notice what 'raising of the land' the Council is alleging, because it is not identified on the plan. The enforcement notice makes reference to the infilling of a lagoon, however, from the aerial photographs this appears to have been done prior to the fire.
36. The Planning Practice Guidance is clear: An enforcement notice should enable every person who receives a copy to know exactly what, in the local planning authority's view, constitutes the breach of planning control and what steps the local planning authority require to be taken, or what activities are required to cease the remedy the breach. Given the penalties associated with non-compliance with an enforcement notice, it is essential that a notice is clear and that a recipient knows what they have done wrong and what they must do to remedy it. Enforcement notices should therefore be drafted with care.
37. During my visit, I saw that land levels within the site are not even. The surviving building, which existed prior to the fire has a number of points of exit. Entrances to this building are generally laid with concrete, which provides an indication of the land levels prior to any alleged works/material change of use. I recognise that my site visit was carried out some time after the enforcement notice was issued and that changes have occurred at the site since the notice was issued. Nevertheless, from the evidence, it seems likely that the land levels within the site have been modified over the years, well before the fire occurred in 2020.
38. A Council note of a site visit, dated 14 July 2020 discusses the importation of material from Station Road Cambridge by FDS, which was being used to fill holes, level the land and raise it up to the same level as the road and other existing parts of the site. It seems officers at the time advised that land raising needs permission, even though in this area a large percentage of development may need land raising in preparation for development, so that it begins at the correct level. A photograph included in the note shows a number of buildings which appear fire damaged, which is consistent with the appellants' suggestion that site clearance works were required at the site. Reference is also made to bunds and ditches being created to contain polluted water, as well as reference to the fire still burning.
39. As set out above, planning permission was granted on 15 July 2025 for the redevelopment of Corkers Crisps, subject to conditions, reference 21/00396/FUM. The conditions include a number of pre-commencement conditions relating to contamination, among other things. There is no evidence to show that these conditions have been discharged and that the permission has been lawfully implemented.
40. Photographs included within the Design and Access Statement submitted in support of the application show a number of fire damaged buildings, including buildings constructed of metal and brick. Those buildings had been cleared by the time of my visit. The appellant for Appeal A states in response to a PCN that the land was originally lowered for the removal of contamination and has now been reinstated to its original level.

41. Even if some of the changes in the levels were created using waste material, it seems unlikely to me that this would have been a material change in the use of land. While it is clear that significant earthworks have been carried out at the site, from the evidence before me, I consider it likely that these works have been carried out as part of the redevelopment and remediation of the site. Works to prepare the land or carry out the redevelopment of the site would likely have been development for which planning permission was required, and would therefore have constituted a breach of planning control.
42. However, such works, would not, in my view, have fairly been described as ‘use of the land for the importation, depositing, processing and exporting of inert waste materials and the raising of the land with waste’. Furthermore, the notice fails to identify the use of site by Buffalood, or the agricultural use of the wider planning unit. While it seems likely that development has occurred within the site, the allegation in my view is wrong and does not reflect the works that have been carried out, or the uses which have occurred at the site.
43. I have wide powers of correction, subject to it not causing injustice to the appellants or the local planning authority. However, I do not consider it would be possible to correct the notice without causing injustice to the appellants. The arguments that are likely to be made in terms of engineering operations would be different to those in respect of a material change of use and the arguments that may be made in terms of a mixed use are likely to be different to those in respect of a material change of use to the importation, depositing, processing and exporting of inert waste materials and the raising of the land with waste. Consequently, in my view, the appeals should succeed under ground (b).

Conclusion

44. For the reasons given above, I conclude that the appeals should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (c), (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR