



Appeal Decision

Site visit made on 12 May 2026

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 12 June 2026

Appeal Ref: APP/D5120/C/24/3339536

1 Evry Road, Sidcup, Kent DA14 5PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Loukman Lawani against an enforcement notice issued by the Council of the London Borough of Bexley.
- The notice was issued on 24 January 2024.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of the land outlined in red on the attached plan to storage, open storage and parking of vehicles
 2. The siting of containers.
- The requirements of the notice are to:
 1. Cease the use of the Land outlined in red on the attached plan for storage, open storage and parking of vehicles.
 2. Remove all shipping containers from the Land.
 3. Remove all vehicles from the Land.
 4. Remove all builders and household items, and all other types of rubbish, including but not limited to, builders waste, metal, wood, plastics, tyres, general household goods and bicycles from the Land.
 5. Restore the land back to exposed soil by scraping back the top surface of the land to expose soil; and remove the resultant materials from the land.
- The period for compliance with the requirements is: 6 months
- The appeal is made on the grounds set out in section 174(2)(a) and (b) 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.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variation.

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. I have had regard to my powers under section 176(1)(a) of the Town and Country Planning Act 1990 (1990 Act) to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the test is whether the correction or variation would cause injustice to either party.
2. The allegation made in the Notice refers to the material change of use of the land to storage, open storage and parking of vehicles as well as operational development in the form of the siting of containers.' It was queried whether the parking of vehicles was alleged as a primary use or an incidental activity associated with the use of the land for storage and open storage. It was indicated that if it was incidental to the storage or open storage uses, it would not be necessary to cite it as a separate use in the allegation. This is because activities that are incidental or ancillary to a primary use do not constitute a separate use of the land.

3. No response was received by the appellant. The Council clarified that the parking of vehicles was alleged as another primary use on the site, which is based on their on-site observations and third party representations, and it was for the appellant to demonstrate if this was incorrect and the parking was ancillary to the use of the land. As such, to delete reference to the parking of vehicles would cause injustice to the Council's case, as it would change the nature of the breach and prevent them from remedying the breach of planning control alleged.
4. Having regard to the Council's clarification, the allegation has not been corrected by deleting reference to the parking of vehicles. However, in light of the Council's observations, it is recognised that the planning unit includes storage uses that would normally fall within B8 use class of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) and the parking of vehicles, which is generally regarded as a sui generis use. It is regarded that a single unit of occupation with two primary uses that are not incidental to one another are normally expressed as a 'mixed use.' As such, a correction would be required to the allegation and a variation to the first requirement to refer to a 'mixed use.'
5. I have considered whether correcting the allegation and varying the requirement would cause any injustice to either party. The correction clarifies that the alleged material change of use is a mixed use and does not expand on the previously described uses. The variation merely aligns with the corrected allegation and does not impose additional burdens on the appellant. Since these changes clarify the breach without fundamentally altering its nature or requirements, I believe they can be made without causing injustice to either the appellant or the Council.
6. To clarify, in paragraph 3, the wording of the allegation will, therefore, be corrected to 'without planning permission: 1. The material change of use of the land outlined in red on the attached plan to a mixed use comprising storage, open storage and parking of vehicles 2. The siting of containers.' Furthermore, it will be necessary to vary the wording of step 1 of the requirements to 'Cease the mixed use of the Land outlined in red on the attached plan for storage, open storage and parking of vehicles.'

Preliminary Matters

7. During the appeals' determination, a revised version of the National Planning Policy Framework (the Framework) was adopted in December 2024. The main parties were given an opportunity to comment on the revised Framework's relevance to the development in question, and I have taken their comments into account. Additionally, during the appeal, the government released a consultation on the Framework, proposing changes to it, accompanied by a Written Ministerial Statement. However, since these reforms are still in draft form and may change, I have given them limited weight. Therefore, it was not necessary to consult the parties on these changes, and my decision is based solely on the Framework.
8. Prior to the Notice being issued, planning permission was refused by the Council under reference 22/02354/FUL on 6th July 2023 for the 'Change of use of the land to commercial storage and the siting of 56 shipping containers.' Details of this application have been provided as part of the appeal, which I will refer to as the 2023 refusal. The appellant submitted an alternative scheme with the appeal that proposes a similar type of development to that set out in the 2023 refusal. This alternative scheme, detailed in plan drawing references A000, A002, and A003,

includes a Flood Risk Assessment. However, it differs from the 2023 refusal and the development alleged in the Notice, as it proposes a reduced number of containers (40) and features a modified layout. Notably, the alternative scheme also does not include open storage or parking of vehicles.

9. Despite the differences, I am satisfied that the alternative scheme can be considered part of the matters alleged. It involves the use of the site for storage and the siting of containers, along with additional works such as placing wooden platforms under the containers, laying grass grids, landscaping, and flood mitigation. The minor works proposed, while resulting in new development, could typically be permitted through conditions, provided they are deemed appropriate.
10. I sought the parties' views on my consideration of this alternative scheme. The appellant did not respond, and the Council had no objection but indicated that the alternative scheme did not overcome the reasons for taking action. When evaluating the ground (a) appeal, I will focus on the storage use, the siting of 40 containers in an alternative layout, and the associated works proposed. This assessment will exclude the remaining containers, as well as open storage and parking of vehicles.
11. The ground (b) appeal made by the appellant references that the top surface of the site is not covered with hardcore or any concrete material. This aspect addresses step 5 of the requirements to return the land to exposed soil. Since the allegation does not mention the laying of concrete or hardcore materials, this matter would be more appropriately considered under a ground (f) appeal.
12. I have sought the parties' views on whether this should be treated as a ground (f) appeal, and if they could provide any further observations on the matter. The Council responded, indicating no objection to me treating this part as a ground (f) appeal. No response was received from the appellant. I will take into consideration the observations provided when evaluating the appellant's appeal on these matters as a hidden ground (f) appeal.

The Appeal on Ground (b)

13. An appeal on ground (b) is that the matters alleged in the Notice, which appear to the Council to constitute the breach of planning control, have not occurred as a matter of fact. To succeed on this ground, the appellant must demonstrate that, on the balance of probabilities, the matters stated in the Notice have not occurred.
14. It is claimed that they are not using the containers strictly for industrial purposes. They are using them as it allows them freedom to avoid the need for a substructure and still create a safe environment for a variety of activities, including site canteens and recreation spaces. Moreover, it is claimed that some of the activities listed on the Notice are unfounded, as these activities have never taken place on the site. It is said they do not need any kind of car parking space, as delivery vehicles enter the site at a frequency of about 4 vehicles per week.
15. From what I saw, a track road to the side of 1 Evry Road provides access to an irregularly shaped piece of land to the rear. The land includes industrial-sized containers arranged in rows on the eastern side and towards the rear, with some circulation space to the north of the site and in between. In addition to the containers, there was external storage of items, including but not limited to white goods such as washing machines, fridges, freezers, dishwashers, as well as

miscellaneous items such as sofas, bed bases, scaffolding and fencing. I was also able to see a porta-cabin, a mobile caravan, and approximately 6 vehicles, including 4 cars and 2 vans.

16. At the time of my visit, and based on my observations, the mixed use for storage, open storage and parking of vehicles, as well as the siting of containers, was occurring on the land. Aside from the statement made on the Appeal Form, the appellant has not provided any evidence to demonstrate that the containers were not on the land at the time the Notice was issued, or that the land was not being used for storage and open storage. Furthermore, despite claiming activities associated with the parking of vehicles are not taking place and the vehicles on site are for delivery, limited evidence has been provided by the appellant to substantiate this claim.
17. When appealing on these grounds, the onus of proof rests with the appellant. The information in the appeal submissions on this aspect is limited, imprecise and ambiguous and fails to discharge the required burden of proof. Based on the evidence before me, and my observations on site, the breach as alleged has occurred as a matter of fact.
18. The appeal on ground (b), therefore, fails.

The Appeal on Ground (a) and the Deemed Planning Application

19. The Council's second reason for issuing the Notice was with respect to the lack of information on flood risk and drainage to demonstrate the development has not increased the risk to flooding and there has been a consideration of sustainable drainage systems as part of the scheme.
20. In support of their appeal, the appellant submitted a Flood Risk Assessment (FRA) referenced FRA-2024-000014 and dated 23 February 2024. Having reviewed the information and consulted the Council's Flood Risk Officer, the Council confirm they no longer object to the development on flood risk, and although no drainage strategy was included, they are satisfied that this matter could be dealt with by way of a suitable worded condition requiring the submission of a drainage strategy. Based on the evidence before me, I find no reason to conclude otherwise.
21. Therefore, in light of the above, the **main issues** in this appeal are:
 - The effect of the development on ecology and biodiversity, including the ecological integrity of the River Cray Metropolitan Site of Importance for Nature Conservation and River Cray Strategic Green Wildlife Corridor.
 - The effect of the development on the character and appearance of the area, including the preservation or enhancement of Foots Cray Conservation Area (Conservation Area) and its setting.

Reasons

Biodiversity and Ecology

22. The appeal site is currently being used for storage, open storage and parking of vehicles, as alleged. The planning history submitted with the submissions also suggests it was a garden before being temporarily permitted to be used as an area for the storage of vehicles before the unauthorised use commenced. The site also

adjoins the River Cray Metropolitan Site of Importance for Nature Conservation (SINC) and River Cray Valley Green Wildlife Corridor.

23. Policy SP9 of the Bexley Local Plan 2023 (Local Plan) is a strategic policy that seeks to protect and enhance ecological networks and avoid developments with significant adverse impacts on protected species and habitats. Policies SP8, DP18, DP20, DP21 of the Local Plan require development to avoid harm to designated ecological sites, including SINC, assess the impacts on biodiversity and provide mitigation and enhancements where appropriate. Policy G6 of the London Plan 2021 (London Plan) states development proposals should manage impacts on biodiversity, and this should be informed by the best available ecological information and addressed from the start of the development process.
24. As a retrospective application, the appeal scheme is exempt from the statutory biodiversity net gain requirements set out in Schedule 7A of the 1990 Act. Accordingly, the appeal scheme would not be subject to the mandatory 10% Biodiversity Net Gain (BNG) requirement. Nevertheless, there remains a requirement in Policy DP20 of the Local Plan and Policy G6 of the London Plan to aim to deliver BNG, and state that development will only be permitted where it can be demonstrated that completion of the development will result in measurable long-term net gain for biodiversity, as demonstrated through the application of an acceptable measurement, and/or impact assessments.
25. Planning Practice Guidance¹ also states that an ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate. Having regard to the PPG advice and guidance, together with the local policy context, where there is a reasonable likelihood of protected species and habitats being present, it is essential that their presence, and the extent to which they would be affected by the development, is established before planning permission is granted.
26. As the site adjoins a river and a wildlife corridor, which is a sensitive ecological receptor with metropolitan importance, there is a reasonable likelihood of protected habitats and species being present on the land. Furthermore, given the nature of the development, there is potential for habitat loss, reduced connectivity, noise and disturbance and pollution risks from the development. Without an ecological survey or any detailed surface water drainage proposals, I have insufficient information to determine if the development and the activities from the use would not have an adverse impact on the ecology and biodiversity at the site, the adjoining SINC and wildlife corridor. As such, I cannot conclude whether the development is compliant with the criteria outlined in the relevant policies set out above.
27. I acknowledge that in the alternative scheme, landscaping is proposed; an 8 metre buffer is shown between the river and containers, and the FRA indicates that there is good potential for a sustainable surface water drainage scheme to be implemented. However, the absence of an ecological baseline survey, landscaping strategy, drainage strategy, together with any biodiversity mitigation and enhancement measures to be implemented means the effectiveness of the landscaping, sustainable drainage scheme and landscaping buffer cannot be assessed. In its current form, the proposal fails to demonstrate that it would

¹ Paragraph: 019 Reference ID: 8-019-20240214

conserve or enhance the ecological value of the site as well as the designated SINCC and wildlife corridor.

28. I also had regard to a retrospective condition requiring an ecological survey. Although ecological surveys can be carried out under conditions attached to a planning permission, this should only be in exceptional circumstances. However, there is no evidence before me to suggest that there are exceptional circumstances in this case. In the absence of a baseline ecological assessment, it is not possible to grant permission as I have no way of assessing the effect of the development on the protected species and their habitats, or whether appropriate mitigation and enhancements are possible to offset that harm before allowing the development.
29. Therefore, the development has an adverse impact on ecology and biodiversity, as I have insufficient information to determine if the development, directly or indirectly, adversely affects the ecological integrity of the site, the River Cray Metropolitan SINCC and River Cray Strategic Green Wildlife Corridor. The development is contrary to Policies SP8, SP9, DP18, DP20, DP21 of the Bexley Local Plan and Policy G6 of the London Plan 2021. The development also fails to comply with paragraph 193 of the Framework, which states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Character and Appearance

30. The Foots Cray Conservation Area Appraisal and Management Plan 2008 (Appraisal) highlights that the special architectural and historic significance of the Foots Cray Conservation Area comes from its unique blend of residential and commercial character, particularly along Rectory Lane and Foots Cray High Street. The residential and retail core of the area features varied architectural and historic elements, complemented by a verdant village character, enhanced by the presence of greenery and trees, especially along Rectory Lane and adjacent to the River Cray.
31. Although the access point of the site is within the Conservation Area, the majority of the appeal site is located within the Foots Cray Business Area. The site borders the southern end of the Conservation Area and the River Cray on one side, placing it in a transitional zone between the Conservation Area and the designated employment land. Despite the rows of containers and open storage of items within the site, trees and greenery are still notable along the eastern boundary adjacent to the River Cray. While individually the trees may not be remarkable, collectively, they contribute positively to the character and appearance of the site and provide a verdant backdrop that enhances the setting of the Conservation Area.
32. Policy HC1 of the London Plan, along with Policies DC14 and SP6 of the Bexley Local Plan, mandates that development proposals which may directly or indirectly affect a heritage asset or its setting must consider the significance of that heritage asset. Additionally, these proposals must demonstrate how they plan to conserve or enhance the asset's significance. Furthermore, Policy DP14 requires that proposals located within Conservation Areas take into account the area appraisal. This approach aligns closely with the approach outlined in the Framework.
33. The site is located on the southern edge of the Conservation Area, which is visually separate from the residential and commercial core of the Conservation Area. The

containers are arranged in rows, and are not stacked, making them mostly hidden from views outside the site. There is a slight visual impact due to the contrast between the greenery of the adjoining Conservation Area and the industrial look of the containers, as well as the open storage and parking of vehicles. This contrast can be seen from certain spots on Evry Road near the entrance, and within the site, detracting from the verdant quality of the Conservation Area and its setting.

34. However, this visual impact is mitigated by the set back from Evry Road, intervening buildings and walls and the proposed landscaping, which will help to enhance the character and appearance of the site and the setting of the Conservation Area. It is also worth noting that the alternative scheme does not propose stacking of the containers or include open storage or parking of vehicles activities. Taking this into account, the impact on the significance of the Conservation Area and its setting is considered a minor visual impact, resulting in less than substantial harm.
35. Paragraph 208 of the Framework is applicable in these instances and indicates that less than substantial harm to heritage assets should be weighed against the public benefits of the proposal.
36. The development would result in an employment use on an allocated employment site in a transitional location between the two areas. The proposed scheme submitted as part of the appeal, which would not permit open storage and proposes a landscaping buffer along the edge of the River Cray would improve the overall appearance of the site. There would also be economic benefits from the use of the land for this purpose, in terms of storage services to the local community, additional expenditure in the local economy and the creation of jobs. These public benefits can be afforded moderate weight in this instance. I consider that the public benefits would be sufficient to outweigh the 'less than substantial' harm that I have identified to the Conservation Area and its setting.
37. Accordingly, the development would not have an adverse impact on the character and appearance of the area, preserving the significance of the Conservation Area and its setting. Therefore, the development would comply with the objectives in Policies DC14 and SP6 of the Bexley Local Plan and Policy HC1 of the London Plan as well as the advice and guidance of the Foots Cray Conservation Area Appraisal and Management Plan. In coming to this decision, I have had regard to my statutory duty and given considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the heritage asset.

Other Matters

38. I have also had regard to the third party representations, which indicate that the development is an eye sore, unsightly and impacts the values of homes and views from nearby residential balconies. However, for the reasons set out above, I do not consider it is harmful to the character and appearance of the area and preserves the significance of the Conservation Area and its setting. It is also a well-founded principle that the planning system does not exist to protect private interests such as value of land and property or private views. As such, these matters do not alter my conclusions on the main issues set out above.
39. As a matter of completeness and having regard to my statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the

proposed scheme does not impact upon the setting of the nearest Listed Buildings referred to in the Conservation Area Appraisal, namely Seven Stars Public House and Tudor Cottages. Given the distance of the appeal site from the Listed Buildings, the intervening buildings and the nature of the scheme, the development would preserve the setting of these Listed Buildings.

Planning Balance

40. The public benefits include the use of land within an allocated employment area, the provision of storage services, and the associated economic activity and job creation from the use. These benefits attract moderate weight. I have given considerable importance and weight to the desirability of preserving or enhancing the character and appearance of the Conservation Area. Notwithstanding that duty, I find that the moderate public benefits are sufficient to outweigh the harm identified, and that the proposal would, in terms of impact of the character and appearance of the area and the preservations of heritage assets, be acceptable.
41. However, the proposal fails to demonstrate that it would not result in unacceptable harm to ecology and biodiversity. In the absence of a baseline ecological survey and supporting evidence, the effect of the development on the site as well as the adjoining SINC and wildlife corridor cannot be properly assessed. The development, therefore, conflicts with Policies SP8, SP9, DP18, DP20, DP21 of the Bexley Local Plan and G6 of the London Plan, which are generally consistent with the Framework. The conflict with the development plan policies and the Framework attracts significant weight. The moderate public benefits derived from the development do not outweigh that harm identified.
42. Dismissing the appeal and upholding the Notice would require the use at the site to cease, potentially impacting the appellant's business. However, the interference is lawful and pursues a legitimate aim in the public interest, namely compliance with development plan policies which seek to protect species and their habitats from harmful development. In the absence of evidence to demonstrate the impact of the requirements of the Notice on the appellant's business, I am satisfied that the decision to dismiss the appeal and uphold the Notice is therefore proportionate and necessary in the public interest.

Conclusion on Ground (a) and the Deemed Planning application

43. For the reasons given above, the development would conflict with the development plan as a whole and there are no other considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. Therefore, I conclude that the appeal on ground (a) shall not succeed. I shall uphold the Notice and refuse to grant planning permission on the deemed application.

The Appeal on Ground (f)

44. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
45. The corrected Notice alleges an unauthorised mixed use of the land and requires that mixed use to cease as well as the removal of the containers, vehicles and stored items as well as the scraping back of the top surface of the land to expose

soil and remove any resultant material of the land. Therefore, the purpose of the Notice is to remedy the breach of planning control and return the land to its former condition.

46. The appellant contends that the top surface of the site was never covered in hardcore or concrete material of any sort. Also, the containers are all sitting on footings and not on concrete surface, and exposed topsoil is maintained under and around the containers as shown in the image in the Flood Risk Assessment². The ground (f) appeal is, therefore, made in respect of step 5 of the requirements being excessive, which requires the appellant to restore the land back to exposed soil and remove any resultant material from this process.
47. Where an enforcement notice targets a material change of use of the land it may also require the removal of works which are integral to and solely for the purpose of facilitating the unauthorised use, even if not set out in the allegation, so that the land is restored to its condition prior to the breach.
48. I have had regard to the appellant's position and note that no hardstanding areas have been formed under the containers, and no impermeable hard surface has been laid across the whole site. However, based on the evidence presented in the photographs by both parties, as well as what I saw on site, a good proportion of the site includes a significant amount of gravel, stone and or chippings present within the compacted surface on the Land. No evidence of the condition of the land before the breach took place has been provided by the appellant to demonstrate that this unbound hard surface material was present before the unauthorised use took place.
49. Furthermore, it is reasonable to consider that the introduction of the loose unbound hard surface material would facilitate the material change of use of the land for a mixed use comprising storage, open storage and the parking of vehicles. Based on the evidence before me, I find it more likely than not that the unbound hard surface material was brought onto the land to facilitate the unauthorised mixed use of the site. Consequently, to require the scraping back of the land to expose the soil and remove unbound hard surface material is not an excessive requirement to remedy the breach and return the land to its condition before the breach took place.
50. Accordingly, the appeal on the hidden ground (f) fails.

Conclusion

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

Formal Decision

52. It is directed that the Notice is corrected and varied by:

In paragraph 3, delete the words of the allegation and substitute with the words 'without planning permission: 1. The material change of use of the land outlined in red on the attached plan to a mixed use comprising storage, open storage and parking of vehicles 2. The siting of containers.'

² There is no date to the photograph with the Flood Risk Assessment, but the document is dated 23 February 2024.

In paragraph 5, step 1, of the requirements, delete the words and substitute with the words 'Cease the mixed use of the Land outlined in red on the attached plan comprising storage, open storage and parking of vehicles.'

53. Subject to the correction and variation, 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.

M. P. Howell

INSPECTOR