



Appeal Decision

Site visit made on 4 June 2026

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 July 2026

Appeal Ref: APP/V1505/C/24/3341993

Smilers Farm, Pound Lane, North Benfleet, Wickford, SS12 9JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Terry Rust against an enforcement notice issued by Basildon Borough Council.
 - The notice was issued on 8 March 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building ("the Building" as shown approximately edged and hatched blue on the attached notice plan) on the Land.
 - The requirements of the notice are to:
 - i) Demolish the building shown edged and hatched blue on the attached notice plan.
 - ii) Permanently remove from the Land all resultant materials from works completed in compliance with requirement (i) and return the land to its former condition.
 - The period for compliance with the requirements is: Four (4) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Background and Procedural Matters

1. The appeal site forms part of a former farm holding, which now comprises a mixture of residential and commercial buildings and uses. The appeal building was constructed without planning permission and an application (Ref. 23/01142/FULL) seeking retrospective planning permission for a metal storage unit was refused on 16th January 2024. No appeal was made against that decision.
2. At the time of my visit the building was being used as a gym, not a storage unit, and the appellant's case in respect of the appeal on ground (a) suggests that planning permission should be granted to retain the building for this use. However, Section 177(1)(a) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) only allows the grant of planning permission in respect of the matters stated in the notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. In this case, the breach of planning control alleged is operational development on its own, and nothing more.
3. In light of the above, I can only determine the deemed planning application for the operational development, without having regard to any use to which the building has been put or any proposed use. I cannot condition a specific use, as that is not part of the matters before me. Therefore, if planning permission is granted for the building, a further application would need to be made for its use.

4. As Policy BAS E10 of the Basildon District Local Plan Saved Policies relates specifically to development falling within Use Classes B1 to B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended), and I am not considering the use of the building, I have not assessed the development against this policy.
5. The revised National Planning Policy Framework 2024 (the Framework) was published during the course of the appeal. The parties were given an opportunity to comment on this, and the submissions made have been taken into consideration.

The Notice

6. The requirement at paragraph 5 of the notice includes the word 'permanently.' This is unnecessary having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice. As I am quashing the notice anyway it is not necessary to vary it.

The appeal on ground (a) and the deemed planning application

7. An appeal on ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

8. As a result of the changes to the Framework, the Council has withdrawn its Green Belt objections to the development. Accordingly, the main issues, having regard to the Council's remaining reasons for issuing the notice, are:
 - The effect of the development on the character and appearance of the area.
 - The effect of the development on the living conditions of occupiers of nearby residential properties.

Reasons

Character and appearance

9. Whilst I am advised that a building previously existed on the site, there is little evidence before me of its size, height or appearance. It is also undisputed that the former building was removed several years before the current building was constructed, and that since that time the site appears, based upon aerial images submitted, to have comprised concrete hardstanding used for external storage and/or parking, albeit it is unclear what this was in connection with. Nevertheless, it appears from the aerial photographs submitted that the site has been somewhat unsightly for many years.
10. The steel framed building, with grey steel profile cladding to its walls and roof, steel roller shutter doors and a concrete floor, has a modern agricultural and industrial appearance. Its scale and appearance is not dissimilar to others on the wider Smilers Farm site and it is surrounded by hardstanding including the concrete floor of the former buildings, as well as parking areas and access roads.
11. As the area immediately surrounding the building is hardstanding for parking and access, there is no scope to provide any meaningful or effective soft landscaping.

There is however a high fence running along the western side of the access road, that provides some screening between the site and the adjacent business and residential premises. Views of the building are limited to those from the shared private access and adjacent premises.

12. I therefore conclude that the building does not have a harmful effect on the character and appearance of the area. Consequently, there is no conflict with paragraph 135 of the Framework, which seeks to ensure development is sympathetic to local character, including the surrounding built environment and landscape setting.

Living conditions

13. There are several residential units to the north and west of the site. The dwelling to the north is within the appellant's ownership, together with most of the surrounding land and buildings. The dwellings to the west, together with the access to these, and a boarding kennels and cattery business, are separated by a high fence, albeit this is not completely solid.
14. The appeal building is approximately 5.2 metres high and situated approximately 9 metres to the northeast of the nearest residential properties, which do not have any primary windows directly facing the building. The indirect views of the site from the single storey dwellings to the west, are separated by the two access roads and are obscured by the fencing. As such, whilst the building is visible above the fence, I do not consider it to appear overbearing when viewed from nearby residential properties.
15. As I am considering only the building, and not its use, it is not possible to assess matters such as noise and disturbance, operating hours, dust and odour, traffic movements and parking.
16. I therefore conclude that the building itself does not have a harmful effect on the living conditions of occupiers of nearby residential properties. The effect of any future use of the building would be assessed as part of a separate application. Consequently, there is no conflict with paragraph 124 of the Framework, which whilst promoting the effective use of land also seeks to safeguard living conditions.

Other matters

17. The appellant has submitted some evidence of the demand for a gym in this location and the need to expand the existing gym premises occupying the adjacent building. I also acknowledge the letters of support for the gym together with the social and economic benefits of the business. However, these relate to the current use of the building, which is not part of the matters stated in the notice, as opposed to the building itself. Accordingly, these matters do not weigh in favour of my consideration of the deemed application for the building.

Conditions

18. The Council has suggested a number of conditions that it considers should be imposed if planning permission is granted. These relate primarily to the use of the building as a gym, which is not a matter before me. Whilst I have considered whether the parking layout should be conditioned at this stage, the parking and turning requirements are likely to vary depending upon the future approved use. As previously mentioned, there is no space within the red line boundary of the

appeal site to provide any meaningful soft planting. The resurfacing of the area immediately outside of the building will be informed by the parking layout as part of any future application to determine the use of the site.

Conclusion

19. I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the matters described in the notice. The appeal on grounds (f) and (g) does not therefore fall to be considered.

Formal Decision

20. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of a building on Land at Smilers Farm, Pound Lane, North Benfleet, Basildon, Essex, SS12 9JS.

R Bartlett

INSPECTOR