Planning Inspectorate

Appeal Decision

Site visit made on 20 October 2026

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2026

Appeal Ref: APP/M1520/C/24/3356851
First Hadleigh Bus Depot, 35 London Road, Hadleigh, Benfleet SS7 2QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Ben Maude on behalf of First Essex Buses Limited against an enforcement notice issued by Castle Point Borough Council.
- The enforcement notice was issued on 1 November 2024.
- The breach of planning control as alleged in the notice is: Breach of condition 3 of Planning Permission 24/0030/VAR.
- The condition in question is no. 3, which states that:
  3) The 17 car parking spaces adjacent to the northern boundary of the site, hereby approved, shall, within three months of the date of this permission be marked out as shown on approved plan 1290-001, maintained and retained permanently, solely for the use of staff and visitor parking. These parking spaces are to be used for no other purpose whatsoever without the prior formal consent of the Local Planning Authority and shall not be used for the parking of buses.
  REASON: In order to ensure the provision of appropriate on-site parking provisions.
- The notice alleges that the condition has not been complied with in that:
  - The 17 car parking spaces adjacent to the northern boundary of the site and approved under permission 24/0030/VAR have been marked out in accordance with approved plan 1290-001 (Annex 1) and therefore, permission 24/0030/VAR has been implemented.
  - Buses have been parked in the approved car parking spaces in breach of Condition 3 of the permission 24/0030/VAR.
  - The Landowner has failed to demonstrate that an existing lawful use of the parking spaces by buses has been established by virtue of s171B of the Town and Country Planning Act 1990.
- The requirements of the notice are to:
  - Cease the parking of buses in the '17 parking spaces' indicated on the approved plan 1290-001 (Annex 1) as approved by permission 24/0030/VAR.
- The period for compliance with the requirement is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is:

   - corrected by deleting the words "paragraph (a)" under section 1 of the enforcement notice (This Notice) and replacing them with "paragraph (b)".

   - varied by deleting the words "One (1) month" within section 6 (time for compliance) and replacing them with "six months".

2. Subject to this correction and variation, the appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

3. Section 173(1)(b) of the 1990 Act requires that a Notice specifies the paragraph of s171A(1) within which, in the opinion of the Local Planning Authority, the breach of

planning control (BPC) falls. The Notice must be clear as to whether it is development without planning permission under s171A(1)(a) or a breach of condition or limitation under s171A(1)(b) that constitutes the BPC. It is clear from the allegation that the Notice is targeting a breach of a condition. However, Section 1 of the Notice incorrectly refers to paragraph (a) of s171A(1) rather than paragraph (b) of s171A(1). The appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is, however, necessary to correct the misdescription. This would not cause injustice, and I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.

Appeal on ground (c)

4. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probabilities.

5. The appellant owns First Hadleigh Bus Depot, the appeal site, and has operated from it since June 1995. Planning permission was granted in 2002 for the replacement of existing diesel tanks at the site (the 2002 permission[1]). The approved plan shows the provision of the 17 parking spaces located along the north-west boundary of the site.

6. Condition 3 of this permission stated:

"Prior to the installation of the fuel tank hereby approved 17 car parking spaces shall be provided adjacent to the northern boundary of the site, in the area hatched on the approved plan returned herewith and shall be permanently marked out and maintained in a manner conducive to the future use of such spaces for the parking of staff vehicles. Such area shall not be used for the parking, standing, storage or repair of buses or other service vehicles and access thereto shall be maintained free of obstruction at all times.

Reason: In order to ensure the provision of additional on-site car parking provision."

7. Subsequently, permission was granted on 20 March 2024, for a variation of condition 3 (car parking spaces) of permission CPT/268/02/FUL to alter the parking layout (the s73 2024 permission[2]). The approved plan shows the revised location of the 17 parking spaces, with them positioned along the north-west boundary of the site as well as towards the centre of the appeal site.

8. Condition 3 of this permission states:

"The 17 car parking spaces adjacent to the northern boundary of the site, hereby approved, shall, within three months of the date of this permission be marked out as shown on approved plan 1290-001, maintained and retained permanently, solely for the use of staff and visitor parking. These parking spaces are to be used for no other purpose whatsoever without the prior formal consent of the Local Planning Authority and shall not be used for the parking of buses.

[1] Council reference CPT/268/02/FUL.
[2] Council reference 24/0030/VAR.

REASON: In order to ensure the provision of appropriate on-site parking provisions."

9. There is no dispute that the s73 2024 permission has been implemented. Indeed, on 10 April 2024, the Property Project Manager for First Bus contacted the Council, attaching photos of the newly installed parking bays, and requested confirmation that condition 3 could be "signed off"[3]. The Council's Planning Enforcement Officer visited the site the following day on 11 April 2024 and confirmed that the 17 car parking spaces referred to in condition 3 were laid out in general conformity with the approved plan and therefore the s73 2024 permission had been implemented. The photographs taken by the Officer on this day show cars parked in these parking bays.

10. Condition 3 of the s73 2024 permission requires that these 17 parking spaces be maintained and retained permanently, solely for the use of staff and visitor parking and shall not be used for the parking of buses. Contrary to this, the Council received complaints and photographs of the appeal site on 15 and 22 April 2024, that demonstrated that buses were being parked in the spaces allocated solely for staff and visitors, in breach of condition 3 of the s73 2024 permission.

11. The Council wrote to First Bus on 23 April 2024 to advise that complaints had been received and that if the buses continued to be parked in breach of condition 3, formal enforcement action would be likely. This email also refers to a telephone conversation which took place between the Council's Planning Enforcement Officer and the Property Project Manager for First Bus, where the Property Project Manager advised that the s73 2024 application should have also requested that provision be made for the parking of buses between the hours of 6pm and 4am when there are no staff on the site and there is nowhere else to park the buses.

12. Despite the above, a further email with photographic evidence of the breach was received on 29 April 2024[4], illustrating the parking of buses in the parking spaces allocated for staff and visitors. As such, as a matter of fact and degree, and based on all the evidence before me, the s73 2024 permission was implemented, and the parking of buses in the approved 17 car parking spaces, allocated solely for staff and visitors, represents a breach of Condition 3 of the s73 2024 permission.

13. Whilst the appellant accepts that the s73 2024 permission has been implemented, it considers that there has been no BPC in so far as the parking of buses had already taken place along the relevant north-west boundary of the site for more than ten years prior to the grant of the s73 2024 permission. The appellant has submitted 11 affidavits from staff members and photographs showing buses parked in the relevant part of the appeal site between December 2012 and December 2023 in support of this claim. Therefore, the appellant considers that the implementation of the s73 2024 permission was not the start of a 'new chapter' in the planning history of the site and as such the appellant was entitled to revert to its previous existing use rights to park buses in this area.

14. In support of this. the appellant has referred to *Jennings Motors Ltd v SSE & New Forest DC* [1982] JPL 181, which is the leading authority on a 'new chapter'. In the Court of Appeal, Lord Denning MR rejected the idea that a new building or a material change of use would only result in the loss of lawful use rights if the upshot

[3] Appendix 1 of the Council's Appeal Statement.
[4] Appendix 7 of the Council's Appeal Statement.

was the creation of a new planning unit. He preferred the "better theory" of the opening of a new chapter in the planning history of the land:

"This may take place where there is a radical change in the nature of the buildings on the site or the uses to which they are put – so radical that it can be looked upon as a fresh start altogether in the character of the site. If there is such a change and the occupier applies for permission and gets it subject to condition – and acts upon that permission – he cannot afterwards revert to any previous existing use rights."

15. However, even if the appellant is correct that the parking of buses in breach of condition 3 of the 2002 permission has taken place for 10 or more years, any such lawful use right accrued as such would have been lost by the implementation of the s73 2024 permission given that the parking of buses was expressly prohibited by the condition 3 of s73 2024 (as set out above). Condition 3 is valid because it was imposed for a planning purpose, to ensure that there is appropriate parking on site. It is fairly and reasonably related to the development permitted and it was not unreasonable for the Council to impose this condition. Indeed, nowhere within the application did it state that the appellant intended to park buses in this area, and the submitted and approved plan clearly shows that the relevant area is marked out for the parking of cars.

16. As such, any lawful use right accrued through breach of the condition 3 on the 2002 permission has been lost not through a 'new chapter' in the planning history, but through an express condition on a subsequent implemented permission.

17. I therefore find, as a matter of fact and degree, that the parking of buses in the area specifically allocated for staff and visitor car parking, in breach of condition 3 of the 24/0030/VAR permission, is a BPC, and the appellant has not discharged the onus to demonstrate otherwise.

18. The ground (c) appeal therefore fails.

Appeal on ground (d)

19. The onus is on the appellant under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The enforcement notice is directed at the alleged breach of condition 3 of the s73 2024 permission. Consequently, the breach of condition is subject to a ten-year immunity period under s171B(3).

20. The appellant's case is that no enforcement action could be taken in respect of the alleged BPC as by the time that application 24/0030/VAR was granted on 20 March 2024, condition 3 of the original 2002 permission had been breached for a continuous period of more than ten years with buses regularly parked in this area overnight.

21. However, even if the appellant is correct that the parking of buses in breach of condition 3 of the 2002 permission has taken place for 10 or more years, any such lawful use right accrued as such would have been lost by the implementation of the s73 2024 permission, given said use was expressly prohibited by condition 3 of this permission.

22. Furthermore, given the limited time since the s73 2024 permission was implemented, the appellant's argument under ground (d) cannot succeed.

23. I therefore conclude that at the time the Notice was issued it was not too late to take enforcement action against the matters stated in the notice.

24. The ground (d) appeal therefore fails.

Appeal on ground (f)

25. The appeal on this ground 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 (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach."

26. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirements of the notice, which require the parking of buses to cease in the 17 parking spaces approved by the s73 2024 permission.

27. The appellant states it has established use rights to park buses in the 17 parking spaces approved under s73 2024 permission. The appellant therefore considers that there has been no breach of planning control and that the requirement to cease the parking of buses in this area is excessive. However, I have already considered this under the ground (c) and (d) appeals above and have found that there is a BPC and that it was not too late to take enforcement action against the alleged BPC.

28. As the Notice does no more than seek remedy of the breach, it is not excessive. It is therefore not possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.

29. On this basis, the ground (f) appeal fails.

Appeal on ground (g)

30. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from one to six months. In particular, the appellant states that this is an unreasonably short time to find an alternative location for the bus depot.

31. The time for completing the requirements should be what is reasonably considered necessary to do this. Six months would strike a more reasonable and proportionate balance and would provide additional time for the bus depot to find an alternative location. Furthermore, six months would also ensure that the service the bus depot provides to the public would not be harmfully affected. I shall therefore extend the period from one to six months for compliance with the notice.

32. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation.

R Satheesan

INSPECTOR