

ENFORCEMENT NOTICE EN2022/0236

GROUNDINGS OF APPEAL

INTRODUCTION

1. These are the grounds of appeal against enforcement notice ES/23/0043 I/COU issued 29th November 2023 and due to take effect on 1st January 2024 ('the EN'). The EN was issued by Buckinghamshire Council ('the LPA'). The EN relates to land relating to land to the west of Lake End Road, Dorney, Buckinghamshire SL4 6QS ('the Land').
2. The EN requires correction, and there are legal points in addition to the grounds of appeal pursuant to s174(2) of the Town and Country Planning Act 1990 ('TCPA').
3. The grounds of appeal under s174(2) are grounds E, B, C, D, A, and G.

RECENT BACKGROUND

4. The EN was issued on 29th November 2023. The LPA did not issue a PCN or other request for information before issuing the EN, nor were enquiries made as to the identity of occupiers or of persons with interest(s) in the Land.
5. No discussion or dialogue was attempted by the LPA with the owners of the Land prior to issue of the EN.

WIDER HISTORY

6. The Land is bordered to the north by the M4 motorway and to the east by the B3026 which rises to cross the M4 motorway. To the south and west are parcels of agricultural land and a small cluster of dwellings, themselves enclosed by the Jubilee River.

7. In 2020 a section of land to the east (bordering the B3026) was the subject of compulsory purchase by Highways England for the alteration and improvement of the B3026 and its bridging of the M4 as part of the M4 widening scheme.

8. The wider pertinent history of the Land is:

- On 6th June 2007 an Enforcement Notice ('2007 EN') was served which sought to prevent an alleged material change of use from agricultural use to a mixed agricultural use and storage for non-agricultural plant, equipment, vehicles and materials. This was appealed (APP/N0410/C/07/2050412) and on 1st March 2010 Inspector Bridget Campbell upheld the 2007 EN but varied it with an amended plan, effectively exempting the area cross hatched on the new plan ('the Yard'). This effectively created lawful use (for the Yard) for open storage and a builder's yard allowing as part of that use the importation and sorting of waste.
- On 30th May 2008 a further enforcement notice was served ('2008 EN'). This 2008 EN was a 'county matters' enforcement notice and prohibited the importation and processing of waste. Although the 2008 EN was initially appealed that appeal was later withdrawn and waste (other than within the yard) was removed.
- On 9th October 2014 a temporary stop notice, a stop notice, and an enforcement notice ('2014 EN') were served. The 2014 EN was appealed. Subsequently on 18th February 2015 the LPA withdrew the 2014 EN. The reason cited was that the LPA could rely upon the 2008 EN.
- On 15th October 2020 a Lawful Development Certificate was sought in respect of a strip of land to the east of the Land. That application was not determined within the statutory time frame and so an appeal has been lodged (APP/N0410/X/22/3304031). This is due to be heard on 16th April 2024.
- On 29th November 2023 the LPA issued the EN.

RELEVANT POLICIES

9. The policies cited by the LPA on the face of the EN are:
 - a. Policy GBI of the South Bucks District Local Plan (Mar 1999, consolidated Sep 2007 and again Feb 2011) Rotherham Core Strategy 2014 ('the LP');
 - b. Policy EP3 of the LP;
 - c. Policy CP8 of the South Bucks Core Strategy (Feb 2011) ('the CS');
 - d. Policy CP9 of the CS;
 - e. Buckinghamshire Council Local Transport Plan 4;
 - f. Buckinghamshire Council Highways Development Management Guidance (Jul 2018);
 - g. Policy TR5 of the LP;
 - h. Policy TRI0 of the LP;

10. Applying the requirements of s173(10) of Act and Regulation 4(a) and (b) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002/2682) ('the Regulations') these are all of the policies in development plan which are relevant to the issue of the EN. If any other development plan policy is relevant but is not specified, then the EN fails to comply with the requirements of s173(10) and Regulation 4.

GROUND E

11. The EN was served on:

- a) **The Owner/s, Land West of Lake End Road (formerly Orchard Herbs Dorney, Buckinghamshire, SL4 6QS;**
- b) **The Occupier/s, Land West of Lake End Road (formerly Orchard Herbs), Dorney, Buckinghamshire, SL4 6QS;**
- c) Christopher John Ball, 103 High Street, Burnham, Buckinghamshire, SL1 7JZ;
- d) Matthew Lee Ball, 103 High Street, Burnham, Buckinghamshire, SL1 7JZ;
- e) Christopher Ball, 103 High Street, Burnham, Buckinghamshire, SL1 7JZ;
- f) Star Ready Mix Concrete, 2 York Avenue, Hayes, England, UB3 2TN;
- g) **The Owner of the static caravan;**

- h) The Occupier of the static caravan;**
- i) The operator of the scaffolding business;**
- j) The operator of the vehicle breaking and repair business;**
- k) The operator of Best Supply Concrete + Screed Readymix;**
- l) Go Miles Concrete, 16 Gordon Crescent, Hayes, England, UB3 4QP; *and*
- m) On Time Concrete, 31 Chaucer Avenue, Hayes, England, UB4 OAP.

12. It also purported to be served on an entity known as 'Northwood Scaffolding' by email to "bunrhamonseascaffold@btconnect.com". Section 329(3B) TCPA does not permit service of an enforcement notice by email. This element of service is automatically unlawful and defective.

13. It was also purportedly served on "Aujla Distribution Ltd" of 268 Bath Road, Slough, SL1 4DX by recorded delivery although no tracking details were provided by the LPA of the same.

14. It was also purportedly served by displaying near to the entrance gates to the Land (a copy was left in a clear multi punch folder (not sealed or water resistant) on the fence adjacent to the entrance to the Land.

15. For the avoidance of doubt it is accepted that persons at paragraphs 11(c), (d), (e), (f), (l) and (m) are accepted as properly served. Others (those in bold at 11(a), (b), (g), (h), (i), (j) and (k), also 'service by affixation') are defective within the requirements of s329 TCPA.

16. Pertinent provisions of s329 TCPA (service) are (emphasis added):

"329.— Service of notices.

(1) Any notice or other document required or authorised to be served or given under this Act may be served or given either—

(a) by delivering it to the person on whom it is to be served or to whom it is to be given; or

(b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or

(c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or

(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (3A), to that person at that address (subject to subsection (3B)); or

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if—

(a) it is addressed to him either by name or by the description of “the owner” or, as the case may be, “the occupier” of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or

(b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and—

(i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or

(ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.

(3) Where—

(a) the notice or other document is required to be served on or given to all persons who have interests in or are occupiers of premises comprised in any land, and

(b) it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied,

the notice or document shall be taken to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if it is addressed to “the owners and any occupiers” of that part of the land (describing it) and is affixed conspicuously to some object on the land.

(3A) The condition mentioned in subsection (1)(cc) is that the notice or other document shall be—

(a) capable of being accessed by the person mentioned in that provision;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference,

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(3B) Subsection (1)(cc) shall not apply to—

(a) service of a planning contravention notice;

(b) service of a copy of an enforcement notice by a local planning authority;”

SERVICE ON BUSINESSES

17. The LPA purported to serve three businesses (paragraphs 11(i), (j) and (k) above) by handing copies of the EN to persons on the Land, and by affixing a copy of the EN to a point near the entrance to the Land.

18. Because the LPA failed to make any enquiries before issuing the EN the appellant is aware of at least six incorporated businesses (limited companies) which hold leases to occupy the Land, who do so occupy the Land (and operate from the Land) and who have not been served with the EN. They are 'persons having an interest in the land' for the purposes of TCPA and specifically for the methods by which they may/must be served pursuant to s329 TCPA.
19. Incorporated bodies are required to be served at their registered or principal office (s329(1)(d) TCPA). Section 329(1)(a) to (c) TCPA do not provide authorised forms of service on incorporated bodies.
20. Service as 'the operator of the business' or similar would only be permitted by s329(2) TCPA if the name of the operator could not be ascertained after reasonable inquiry (s329(2) TCPA). No inquiry was made by the LPA prior to service and so s329(2) TCPA does not apply.
21. Service by affixation (s329(3) TCPA) is only permissible where the land appears unoccupied (s329(3)(b) TCPA). The Land is clearly occupied and accordingly s329(3) TCPA is not available as a method of service.
22. As noted above s329(3B) expressly prohibits service of an enforcement notice by email. The purported service on "Northwood Scaffolding" by email to 'burnhamonseascaffold@btconnect.com' is unarguably and wholly unlawful and defective.
23. In addition to the above failures in relation to incorporated businesses there are also unincorporated businesses who hold leases to occupy parts of the Land and who appear not to have been served by the LPA. Doubtless this is because of the LPA's failure to enquire of the owners as to who occupies the Land, and the LPA's failure to issue any PCN under s171C TCPA requiring information as to activities on the Land.

24. The failures in service have resulted in a position whereby several persons who are entitled to be served with a copy of the EN have not been so served. They have been prejudiced in their ability to appeal the EN.
25. As is clear from the raft of appeal decisions appended relating to ground E it is no defence for the LPA to suggest that copies of the EN could/should be supplied by the Appellants to those not served, or that those persons not served could nonetheless make representations at appeal. As Inspectors have repeatedly observed, failures in service deny the ability to participate fully in an appeal process to persons who are entitled to so participate. It is particularly egregious here given the absence of any enquiry by the LPA as to identities of businesses or activities.

GROUND B

26. The EN alleges as part of the unauthorised mixed use:

- a. The preparation, storage and distribution of readymix concrete;
- b. Vehicle breaking;
- c. The siting of concrete batching plant;

And associated unauthorised operational development comprising (in part):

- d. The erection of concrete batching plants and associated equipment

27. There is, as a matter of fact, no preparation of readymix concrete on the Land, nor is there storage or distribution of the same. No concrete batching plant has been sited on the Land, and no concrete batching plant has been erected (notwithstanding the duplicitous nature of the LPA alleging 'concrete batching plant' as being both a *use of land* and *operational development*).

28. Concrete providers do operate from the Land but they do not prepare concrete on the Land, nor do they store it or distribute it from the Land. The Appellants believe that the LPA have likely confused storage hoppers with what they describe as 'batching

plant'. Materials are stored on the Land. Readymix concrete is not, and neither is 'batching plant' stored or erected on the Land.

29. Vehicle breaking, although having occurred previously on the Land, does not as a matter of fact, occur.

GROUND C

30. This ground of appeal relates to the Yard area excerpted by Inspector Bridget Campbell in her 2010 decision letter relating to the 2007 EN; see particularly DL29 "Thus the use of the Sweeney yard area as now used is a lawful use of that area" and her substitution of the plan to the 2007 EN to identify the Yard.

31. As Inspector Campbell rightly observed the lawfulness of that area is not dependent upon retention and continuation of precisely the same uses, provided the character of the use is not materially different (DL29).

REQUIREMENTS OF THE EN

32. This is not a ground F appeal; it is a point connected with the consequences of success on the Appellants' above grounds B/C:

- a. Requirement 4 should be deleted;
- b. Requirement 5 should be deleted;
- c. Requirement 8 should be amended to remove reference to the breaking of vehicles; *and*
- d. Requirement 15 should be deleted.

33. In addition the plan should be amended (and remaining requirements reworded) so as to excerpt the Yard area, reflective of the 2010 decision letter on the 2007 EN.

GROUND D

34. Aside from the long and lawful user forming the ground C appeal (above) the Land has been used for siting of a mobile home for residential purposes for in excess of ten years before issue of the EN (s171B(3) TCPA). A mobile home has been so stationed

(and occupied) in various locations on the Land from before 29th November 2013. Evidence will be presented by the Appellants to show the same.

GROUND A

35. Although four 'reasons' are present on the face of the EN there are in substance three reasons for issuing the EN:

- a. The development is inappropriate development in the Green Belt and for which there are no Very Special Circumstances that clearly outweigh the harm by way of inappropriateness relating to the business uses (reason 1) and the residential caravan (reason 4);
- b. The urbanising effect and cramped and clustered appearance of the Land being out of character with the more rural character of the surrounding area (reason 2); and
- c. The access to the Land does not achieve the minimum required width or visibility splays, and there is no dedicated area for turning or parking of HGV vehicles (reason 3).

36. Reason three (highways reasons) can, to the extent necessary, be the subject of appropriate conditions and/or legal obligations.

37. The remaining reasons are impact on openness of the Green Belt by way of inappropriateness of the business uses and singular residential caravan, and the alleged urbanising/cramped/clustered appearance of the Land.

38. It is agreed that the business uses/residential caravan constitutes inappropriate development for the purposes of Green Belt (NPPF 154/155) and accordingly Very Special Circumstances ('VSC') are required that clearly outweigh the harm by way of inappropriateness and any other harm (NPPF 153).

39. The VSC that pertain include that the Land makes a significant contribution to the economy, supporting a number of active and healthy businesses. Significant weight should be placed on the need to support economic growth and productivity (NPPF 85). There is no realistic prospect of the Land returning to any form of agricultural use and there is therefore a need to find an appropriate positive use to which the Land can be put, reflective of its long user and position immediately abutting the M4 motorway. The proximity of the Land to the M4 and Heathrow airport makes it eminently well-placed to support business activities.
40. Moreover policy EP3 of the South Buckinghamshire District Local Plan (Sep 2007) identifies a number of elements; the issues raised by the LPA concern allegations of an urbanising appearance, and a cramped/clustered appearance which is incompatible with the more rural character of the surrounding area. The Appellants will produce evidence that the uses of the Land do not have an urbanising effect, nor are they cramped or clustered and are not incompatible with the surrounding area which includes the M4 motorway and the Highways England compound.
41. The LPA's reliance on policy CP8 of the South Buckinghamshire Core Strategy is unclear to the Appellants since policy CP8 appears to almost entirely relate to the historic environment which does not bear on the Land. Where policy CP8 is not directed towards heritage considerations it concerns itself with development of land excluded from the Green Belt or design relating to climate change, neither of which are pertinent to the reasons for issuing the EN.
42. Policy CP9 of the Core Strategy is directed towards the natural environment but no allegation other than that already set out above is made by the LPA in relation to policy CP9.
43. The Appellants will submit evidence showing that the Land and uses thereon do not have any unacceptable adverse impacts on the character of the area. As part of any permission granted it would be possible to condition matters such as landscaping, layout, access etc as necessary, as well as the nature and extent of uses of the Land if necessary.

GROUND G

44. The EN requires that all activities cease, all materials, infrastructure and debris be removed from the red-edged area within six months.

45. There is a considerable volume of materials which will need to be removed from the Land in a timely fashion. It will be required to be removed elsewhere, and which will cost a very substantial amount of money.

46. Moreover, it is not lost on the appellant that the LPA express concern as to the adequacy of the access to the Land and of turning facilities within the Land. It would not be appropriate to visit what would likely be a significant increase in large vehicle movements (and plant operation) in an intensive operation on the Land to remove all of the materials etc from the Land within six months. This is all before the possibility of inclement weather is considered. It is unrealistic to expect such an operation to be completed within 15 months.