



Appeal Decision

Hearing Held on 29 and 30 November 2022 and 19 January 2023

Site visits made on 18 and 20 January 2023

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/X0360/C/21/3270397

Land known as Woodlands Farm, Wood Lane, Arborfield RG41 4TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Vince Bowler of Instalcom Ltd against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 15 February 2021.
 - The breach of planning control as alleged in the notice is:
 - i. Without planning permission, the material change of use of 'the Land' to a sui generis use of a contractor's yard (including the storage of materials, equipment associated paraphernalia and parking of vehicles) and offices.
 - ii. Without planning permission, the erection of two office buildings, the laying of hard surfacing, engineering operations to level the land, erection of security gates and fences.
 - The requirements of the notice are:
 - i. Cease the use of 'the Land' as a contractor's yard and offices.
 - ii. Remove from 'the Land' all vehicles, HGVs, building materials and plant used for the purposes of the contractor's yard, except for the storage of those items, and remove all other equipment and associated paraphernalia used for the purposes of the contractor's facility.
 - iii. Remove the two office buildings, including associated infrastructure, service connections, fixtures and fittings as shown in 'Area 1' which is outlined in blue on Plan B, associated with the use described in paragraph 3 of this notice from 'the Land'
 - iv. Excavate and remove from 'the Land' all hardstanding within the areas outlined in blue on Plan D and 'Area 2' on Plan B associated with the uses described in paragraph 3 of this notice. Spread topsoil to a depth of 15 cm and sow lawn grass seed over the whole of 'Area 2' as shown on Plan B; and sow grass seed over the whole area outlined in blue as shown on Plan D.
 - v. Cease the non-residential use of Woodlands Farm House as shown outlined in blue as shown on Plan C and reinstate the use of the curtilage as a residential garden.
 - vi. Remove the green mesh security fence and gates erected.
 - The period for compliance with the requirements is 3 months.
 - The appeal 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 (the 1990 Act).
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Decision

1. It is directed that the enforcement notice be corrected by:

- The deletion of paragraphs 3.i and 3.ii in full and the substitution thereto of the words:
 - 'i Without planning permission, the material change of use of 'the Land' to a mixed use of residential and contractor's yard.
 - ii Without planning permission, the erection of two office buildings (in Area 1 on Plan B attached), the laying of hard surfacing (in the area outlined in blue on Plan D and Area 2 on Plan B attached), apron around the office buildings and foundation block, erection of security gates and fences (on the northern and western boundaries of 'the Land' outlined in orange between points A, B, C and D on Plan B attached).'
- The deletion of Plan C.

and varied by:

- The deletion of the words '*as a contractors yard and offices*' in paragraph 5.i.
- The deletion of the words in paragraph 5.ii in full and the substitution thereto of the words
'Remove from 'the Land' all vehicles including HGVs, building materials and plant and equipment used and any associated paraphernalia for the purposes of the contractor's yard, except to the extent to which such items are parked or stored lawfully as set out in the Certificate of Lawful Existing Use granted on 11 August 2011 under reference CLE/2010/1528 by Wokingham Borough Council.'
- The deletion of paragraph 5.v. in full
- The deletion of paragraph 5.vi. and substitution thereto of the words '*remove the security gates and fences (on the northern and western boundaries of 'the Land' outlined in orange between points A, B, C and D on Plan B attached)*' and renumber the paragraph 5.v.
- In paragraph 6 delete the number '3' and substitute thereto the number '6'.

Subject to these corrections and variations the appeal is dismissed, and 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.

Preliminary Matters

2. A revised Statement of Common Ground (SoCG) was submitted at the Hearing. This confirmed, amongst other things, the withdrawal of ground (c). The appeal therefore proceeded on the basis of grounds (a), (b), (f) and (g).
3. I note that the office buildings which are part of the allegation and were in situ at the time the enforcement notice was served have been removed from the site.
4. At my request an updated site and landscaping plans were submitted by the appellant after the final sitting day of the Hearing. The Hearing was closed in writing by PINS on 24 August 2023.

The Enforcement Notice

5. The Enforcement Notice (EN) has plans A to D attached. Plan A identifies the Land with a thick red line. Plan C seeks to identify the residential plot of the bungalow. Plan C excludes the southern corner within the red land. The parties agreed I should correct the EN and substitute a revised plan so that the excluded area from the red outlined land on Plan A was included within the land outlined in blue on Plan C. However, Plan C is referenced only in requirement (v) where the requirement is to '*Cease the non-residential use of Woodlands Farm House as shown outlined in blue as shown on Plan C and reinstate the use of the curtilage as residential garden.*'
6. A requirement cannot require a use to recommence which is what the words '*reinstate the use of the curtilage as residential garden*' is seeking to achieve.
7. I will therefore correct requirement (i) to '*Cease the use.*' The use is the mixed use of the site as corrected pursuant to ground (b). The last lawful use of the bungalow and its plot was for residential use and because of the right of reversion under section 57(4) of the Act that is the use to which it can lawfully be put following compliance with the requirements of the EN. I will also direct that Plan C is deleted from the EN, requirement (v) is also deleted, and requirement (vi) is renumbered requirement (v). No injustice or prejudice would be caused to either party by the correction of the EN in this way.
8. Furthermore, while the requirements refer to areas set out in Plan B and Plan D the allegation does not refer to these plans. I will correct the allegation to refer to the plans for the sake of clarity. No prejudice or injustice would be caused to either party by referencing the plans within the allegation.
9. Lastly requirement (vi) renumbered (v) does not identify the security gates and fencing by reference to Plan B. I will vary that requirement to reference Plan B. No prejudice or injustice would be caused by either party by referencing the plan within the requirement.

Background

10. The appeal site has a long planning history including appeal decisions relating to Enforcement Notices (APP/X0360/C/14/2224629 (2014 appeal decision) and APP/X0360/C/13/2210307 and 11 (2013 appeal decisions). The planning history is set out in detail in these appeal decisions, so I will not recite it here.
11. A Certificate of Lawfulness (reference CLE/2010/1528) (LDC) was granted in 2011. This LDC certified the lawfulness of the use of 16 buildings on the site for uses which were individually specified for each building with '*ancillary use of yard as identified on Plan A2 for parking and storage of vehicles in relation to the use of the said buildings*'. In addition, it also specified the '*Use of the yard area as identified on Plan B for the storage of vehicles including cars, HGV's, plant, caravans and boats and the storage of recovered building materials*'. This LDC related to individual buildings or parts of the site of the LDC and to specified uses. There is no certificate covering the mixed use of the planning unit, which was acknowledged in the previous appeal decisions, and I see no reason to disagree with the findings of previous Inspectors. As noted in the 2014 appeal decision the LDC does not confer a storage use over the whole of the planning unit.
12. The 2014 appeal decision upheld, with corrections, the EN (2014 EN). The SoCG notes agreement between the parties that other than the hardstanding still being in place in the northwest corner forming the area outlined in blue on Plan D of the current EN, the other requirements have been complied with. Therefore, as a matter of fact the 2014 EN has not been complied with in all respects because there remains an area of hardstanding in the northwest corner which was required to be removed by the 2014 EN.

Appeal on ground (b)

13. This ground of appeal is that those matters alleged in the EN have not occurred. The appellant has clarified that the ground (b) appeal only relates to part of the allegation.
14. During the Hearing the appellant accepted that use as a contractor's yard at the date of the issue of the EN was factually correct. In relation to the office use alleged, the provision of offices was directly related to the contractor's yard element of the mixed use alleged. I am satisfied that the office use existed to support the function of the contractor's yard and, as such, the office use was ancillary to the contractor's yard element of the mixed use of the site.
15. To address the parties' positions in relation to the allegation I proposed a corrected allegation as follows:
 - i. Without planning permission, the material change of use of 'the Land' to a mixed use of residential and contractor's yard.
 - ii. Without planning permission, the erection of two office buildings (in Area 1 on Plan B attached), the laying of hard surfacing (in the area outlined in blue on Plan D and Area 2 on Plan B attached), apron around the office buildings and foundation block, erection of security gates and fences (on the north and western boundary of 'the Land' outlined in orange between points A, B, C and D on Plan B attached).
16. I will therefore direct that the allegation is corrected in accordance with the allegation set out above. It will also necessitate the variation of requirement (i) to cease the use of 'the Land'.
17. The appeal on ground (b) succeeds to this limited extent.

Appeal on ground (a)

18. The revised SoCG confirms that part compliance with requirements (iii), (iv) and (v) result in ecology and drainage matters no longer being in dispute and that they can be adequately controlled by the imposition of suitable planning conditions. The SoCG also states the appellant seeks to amend the description of fencing for which permission is sought under ground (a) to 'fencing no higher than 2m indicated by an orange line a-b-c-d on plan.' I have taken this to mean permission is sought for the alteration of the existing fencing and the gates to reduce them to a maximum height of 2m. The fencing and gates are indicated by an orange line A-B-C-D on Plan B attached to the EN.
19. The appellant confirmed that they are not seeking either use of a separate office block or the office block itself within the ground (a) deemed planning application. The bungalow and its plot are accepted by the appellant to return to its lawful residential use. The deemed planning application therefore relates to the material change of use of the land to a mixed use of residential and contractor's yard and the retention of the fencing/gates no higher than 2m indicated by an orange line A-B-C-D on Plan B.

Main Issues

20. As such, I consider the main issues in relation to the limited ground (a) appeal and the deemed planning application for a material change of use to a mixed use of residential and contractor's yard and retention of fencing and gates no higher than 2m indicated by an orange line A-B-C-D on Plan B are:
 - the effect of the development on highway safety;
 - whether the development is appropriate to a countryside location;
 - the effect of the development on the character and appearance of the area; and

- the effect of the development on the living conditions of occupiers of nearby properties particularly in relation to noise and disturbance;

Highway Safety

21. The appeal site is situated to the east of Wood Lane which is a single-track road and a designated Byway Open to All Traffic (BOAT) that adjoins School Road (B3349) and a network of public footpaths to the north. School Road is characterised by frontage residential development, open fields and a primary school to the west of Wood Lane. Wood Lane serves other commercial development and a Thames Water Sewage Treatment works (situated at the end of the BOAT). There is no recorded history of collisions in this location.
22. School Road was temporarily closed on the 16 September 2022 as a through route by an Experimental Traffic Regulation Order (ETRO). The ETRO runs for a minimum of 6 months to a maximum of 18 months, but usually lasts around 12 months, before being made permanent or then abandoned. The Executive Member of the Council will decide whether to make it permanent based on public response to the principle of closure and formal objections to the Order. At the time of the Hearing the closure was not permanent, and the junction of Wood Lane and School Road has substandard visibility splays.
23. The appellant acquired the site on 11 September 2020 and stated that they started to utilise the site in late 2020/early 2021 for the alleged uses. The appellant has produced a Transport Statement (TS) which refers to the site having a lawful use for B8 Storage and Distribution. The Council disputes this description.
24. There is no existing lawful development certificate covering the mixed use of the planning unit which was acknowledged in previous appeal decisions. Furthermore, the LDC identified a site which was smaller than the area in which the contractor's yard is located on the site, in particular a roughly rectangular area of land to the northwest adjacent to Wood Lane and the area of land forming the residential plot in which the bungalow is located were excluded from the LDC site. The categorisation of the lawful use of the site as B8 Storage and Distribution is therefore not correct.
25. The TS records that there is a total covered storage area of circa 1,617m² of floor space (Instalcom Drwg No WF-PL-001 identifies six buildings with 1,317.35 m² of floor space excluding modular office block) together with open storage which the appellant states in the TS as being lawful. The floor space calculation includes some buildings (or rather parts of buildings) that were excluded from the LDC.
26. Although the alleged development exists, the appellant's TS uses modelling for the traffic generation of the development which is described in the TS as an office and storage use. The TS states that to assess the trip generation potential of the development trip rates for office and storage have been taken from the Wokingham Strategic Transport Model 4. In relation to the office buildings 12 people were employed to work in the offices full time five days a week. The offices had been removed from the appeal site at the time of the Hearing.
27. However, the alleged use is a mixed use of residential and a contractor's yard, not office and storage and therefore the basis of the modelling does not align with what has actually taken place and the use which is alleged. The alleged use description, as corrected, has been accepted by the appellant.
28. In addition, the modelling within the TS includes the retention of the modular office which the appellant has clarified is not part of their ground (a) appeal. The appellant pursued the modelling in the way it did because they understood that this was required by the Highway Authority.

29. The TS does include traffic data from the site from a four-day survey conducted in September 2020 when it is stated the site was operating with the lawful uses the subject of the LDC. The TS in relation to the surveyed data at Table 3.1 indicates that the site generated approximately three two-way vehicle movements in both AM and PM peak periods and that is noted as being a daily equivalent of 52 movements. However, the survey data does not record that 52 movements ever took place on any of the days surveyed. The busiest day was Wednesday 2 September 2020 when 18 movements were recorded (17 in movement A entering the site and 11 in movement B leaving the site).
30. The Council refer to TRICs database, which indicates the 'proposed use' of this size would generate approximately 89 daily movements which it states is significantly higher than the 52 daily movements the lawful use of the appeal site is stated to generate in the appellant's TS.
31. Local residents provided some records of vehicle movements to support their contention that traffic had increased significantly, but this data is not based on any agreed methodology and is simply a record of what traffic the local residents recorded. The records submitted as part of Document 5 at the Hearing were titled average day in November 2021 with vehicle movements between 06.00 and 18.00 with a total two-way vehicle movement of 172; and average day in September 2022 with the earliest vehicle movement at 06.12 and the latest at 18.41 and a total of two-way vehicle movements of 191. While I accept that these records are not conducted to any accepted survey methodology, there are no surveys of actual activity at the appeal site for the mixed use that is in existence by either the appellant or the Council. The Document 5 records record vans, vans with trailer and HGV vehicles. The numbers of HGV vehicles are a low proportion of the overall vehicle numbers recorded.
32. In relation to the Document 5 records the appellant considered the HGV and van with trailers to be very modest amounting to 4 movements of Instalcom HGV's and 11 van with trailer movements during the 07.00 – 08.00 peak and 5 HGV movements and 7 van with trailer movements during the 16.00-17.00 peak in September 2022. I note that there were a further 26 van movements during the 07.00 – 08.00 peak and 15 during the 16.00-17.00 peak in September 2022. The appellant considers that these figures should be seen against the context of some movements of HGV's and van/trailers even in accordance with the LDC use. The appellant also proposes a condition restricting the hours within which HGV movements to and from the site can take place. The TS states that there was a daily equivalent of 52 movements for the LDC use.
33. A survey conducted by the Council before the ETRO began on 30 June 2022 and after the ETRO had begun on 31 October 2022 the shows that traffic along School Road reduced from 653 vehicles to 328 vehicles of which 264 were LGV's, 35 OGV1 and 29 OGV2¹
34. The use is operating and there have been no traffic surveys of the actual traffic generation produced for what is alleged by either the Council or the appellant. The anecdotal evidence from local residents is that there has been a significant increase in vehicles to and from the site since the use attacked by the EN began. The local resident evidence included written, oral, video, photographic and ad hoc surveys of vehicles.
35. On the basis of the TS the appellant concluded that the development is expected to reduce the volume of HGV traffic turning at the Wood Lane/School Road junction and would thus reduce the associated risk of conflicts between vehicles. However, the TS does not assess what has actually taken place at

¹ LGV means vans, pickups and less than 3.5 tonnes with single rear tyres; OGV1 means vehicles greater than 3.5 tonnes with twin rear tyres up to rigid 3 axle vehicles; OGV2 means vehicles with 4 or more axles rigid up to 4 or more axles artic and other goods vehicles with a trailer.

the appeal site with data of actual movements of traffic at that junction. Neither does it model the development the subject of the ground (a) appeal. The TS defines the type of development as B8 and not a contractor's yard. I therefore cannot rely on the conclusions of the TS because it models a different use.

36. In my view, and without evidence to the contrary, the traffic generated by a mixed residential and contractor's yard is likely to be materially different to that of the LDC use or an office and storage use which is the basis of the TS for the appellant. The Council's reliance on the TRICS data which is for the 'proposed use of this size' rather than the alternative office and storage use modelled by the appellant is more likely to reflect traffic generation at the site. The survey of the site conducted in September 2020 shows low traffic generation on four days ranging from 10 movements on 3 September to 28 movements on 2 September. The anecdotal evidence of local residents supports a significant increase in the numbers of vehicles and activity in the site since the alleged use began.
37. In my view, there has been a material increase in traffic generation resulting from the mixed use of the appeal site for residential and contractor's yard even without the ancillary office floorspace. As the appellant has excluded the residential plot from the limited ground (a) appeal and that reduces the area that was once used in connection with the contractor's yard, the area on which the contractor's yard use is sought is still larger than that of the LDC uses. In addition, the contractor's yard use has not been demonstrated to reduce traffic generation and, in my view, is likely to have increased traffic generation, in line with at least the 89 vehicle movements referred to by the Council which is derived from TRICs data. This is significantly greater than the 52 movements referred to by the appellant as the level of the LDC use or even greater if traffic movements are at the level of the data from 2 September 2020 survey of the LDC use at 28 movements.
38. The TS does provide swept path analysis of the Wood Lane and the site access junction which demonstrates that vehicles can navigate that junction safely. The Council accept that adequate sight lines can be achieved at the site access onto Wood Lane. The area of dispute about adequate visibility splays is at the junction of Wood Lane and School Road.
39. There is acceptance by the parties that the junction of Wood Lane and School Road is substandard in terms of visibility splays. The existence of the ETRO does not negate the effect of the substandard junction at Wood Land and School Road as it may not be retained.
40. In the 2014 Appeal the Inspector concluded that although there were no official records of accidents involving cars, people or horses along the lane or at the junction he was not satisfied that the development the subject of that decision would not generate a significant amount of traffic above that experienced from any lawful use on the site to the detriment of highway safety. He was furthermore not convinced that the highway improvements before him, would be sufficient to overcome any harm or that they could be secured by way of a condition. In the current case there are no proposed highway improvements for the junction of Wood Lane and School Road, and I have concluded there has been a material increase in traffic above and beyond that experienced from any lawful use, which is detrimental to highway safety due to the substandard visibility splays at Wood Lane and School Road.
41. I therefore find that the contractor's yard use is contrary to Policies CP1, CP3 and CP6 of the Wokingham Borough Core Strategy (January 2010) (CS) which require amongst other matters for development to provide accessible and safe schemes, to enhance road safety and to not cause highway problems; Policies CC01 and TB20 of the Wokingham Borough Managing Development Delivery Plan (February 2014) (MDD) which require development within development limits and no significant impact on highway safety; Policy GA1 of the Arborfield

and Barkham Neighbourhood Plan 2019-2036 (April 2020) which requires development to consider, assess and address their impact on junctions and the roads including road safety.

Countryside Location

42. The appeal site is located within the countryside on the eastern side of Wood Lane which serves both stables, a sewerage works, the appeal site and adjacent site which are both commercial. To the south and east there are predominantly residential properties with large plots and generous rear gardens.
43. The appeal site is poorly served by any forms of public transport and is not within a Core Employment Area or a settlement. The appellant sets out the need to locate the contractor's yard in an area where there is adequate space for storage of relevant materials and equipment and within easy reach of national road networks to allow the workforce to travel nationally, regionally and locally to fulfil the contract. As such, wherever the contractor's yard is located would result in travel to and from it and the place of the contract by private vehicle. Some staff employed on the actual site live within the bungalow and my understanding is there are only limited numbers of staff who work on the appeal site permanently.
44. Inevitably those attending the site are likely to use private vehicles. However, there is a lawful employment use on part of the appeal site. The appeal concerns an employment use on a larger area of land than identified in the LDC and the residential use will remain as it was before. The appellant is a national utilities installation company which delivers contracts for infrastructure and utility installation nationally, regionally, and locally. The contractor's yard provides a site which stores relevant materials and equipment/supplies for a particular contract. The materials are delivered to the yard for storage and then are collected or delivered from the appeal site to where the work is being undertaken around the country.
45. The nature of a contractor's yard is that private vehicles travel to the yard to collect what is required and then travel on to where the contract is to be carried out. Wherever such a yard is located would result in private vehicles attending the site. Moreover, the appellant considers that the site is well located in terms of access to the wider, national, road network and the requirements of the appellant to service national, regional and local contracts. Therefore, whilst the appeal site is not located in a sustainable location and thus is contrary to CS Policy CP1 and CP6 it is probably no more unsustainable than the previous lawful use of the site. As such, this consideration outweighs the harm to those policies.
46. The contractor's yard creates economic benefits which support employment and a prosperous rural economy. The National Planning Policy Framework does support the reuse of previously developed land for business to expand and develop and supports sustainable growth and expansion of all types of business in rural areas. This guidance supports, subject to other matters being found to be acceptable, the development of such sites as the appeal site.

Character and Appearance of the Area

47. The appeal site is within a countryside location. The appellant has stated their intention to return the residential plot of the bungalow to residential use and to reinstate boundaries between the residential plot and the contractor's yard in line with the requirements of the EN. This would preserve the character and appearance of that part of the appeal site. In relation to the remaining part of the appeal site the contractor's yard is commercial in character and the various buildings are single storey.
48. The adjacent commercial site is set back from Wood Lane to the rear of the plot it sits on and the only indication that there was a commercial site on that

adjacent plot were the vehicles I saw entering that site. There are no views into or of the commercial site from Wood Lane, such that I would have been aware of the commercial use on it.

Fencing/Gates

49. There are large gates onto Wood Lane, which is the main access to the contractor's yard, to the west of the access to the bungalow. These gates and associated fencing are significantly above 2m in height. The Council reference the height of the gate at the 'residential access'² to be approximately 2.4m high. Requirement (vi) as varied requires the removal of the fences and gates between points A to D on Plan B. The gates themselves are a significant and visually imposing and utilitarian intervention in what would otherwise appear as a rural road with vegetation alongside and glimpses of open land beyond. The fencing is welded mesh with vertical metal supports, introducing an urban commercial form of boundary treatment.
50. The fencing running from point A to B is set back a short distance from Wood Lane and has a dominating effect, due to its urban commercial form and height, when viewed from Wood Lane. The fencing then steps back to the gates into the contractor's yard area with the fencing continuing behind a deeper verge/landscape strip with an evergreen hedge/line of trees in front of it before it turns east towards point D along the side boundary. The urban commercial form of the fencing and its height do not respect the rural character of the area and are utilitarian and functional providing security to the site. The lawful use of the site does not seem to have required such extensive fencing and gates as the current use.
51. I note that the appellant only seeks permission for fencing up to a height of 2m on the basis that they believe it would be permitted development to erect a fence of that height and that is a 'fallback'. Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain limitations. Paragraph A.1 (a) states that such development is not permitted by Class A if the height of the enclosure adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed one metre above ground level. Paragraph A.1(b) states that such development is not permitted by Class A if the height of the enclosure would, after carrying out the development, exceed two metres above ground level.
52. The thrust of case law on the matter of what is 'adjacent' is that a wall or fence or other means of enclosure can be set back from a highway but still be adjacent to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so. Such a means of enclosure does not have to abut the highway to be adjacent. Some sections of the fencing are clearly not adjacent to the highway due to their location set well back within the site on part of the side (northern) boundary. The appellant considers that all the fencing and gates are not adjacent to a highway used by vehicular traffic. However, in my view, elements of the fencing particularly on the western boundary, is adjacent to a highway used by vehicular traffic.
53. I accept that the proposed reduction in height of the fencing and gates would reduce, their effect on the character and appearance of the area. The gates and to a lesser degree the fencing at a height of 2m would however, remain a dominant and stark utilitarian feature at odds with the rural character of the lane. I am therefore not satisfied that a reduction in the height of the fencing and gates would restore the rural character and appearance of the area to an

² Paragraph 7.35 of the Council's statement of case. The photograph following the paragraph shows the relationship between the fencing and a 1.8m high close boarded fence.

acceptable level. As such, even fencing and gates at 2m in height would result in unacceptable harm to the character and appearance of the area.

Contractor's Yard Storage/Use

54. The storage of materials takes place on the open land within the contractor's yard part of the appeal site and at the time of my site visits extended into the open areas in and around the site. The area between Wood Lane and the first buildings are clearly seen in views from Wood Lane when the gates are open. The area between the buildings and Wood Lane includes additional land that was not part of the LDC site. The extent of the commercial activity and open storage is therefore greater than that found to be lawful within the LDC approval.
55. The open storage to the rear part of the site includes bays for aggregates and soil as well as materials including reels of coloured plastic cabling. The rear storage has limited impact from public views along Wood Lane, albeit there are views from adjacent rear gardens across the yard.
56. The storage area to the front of the buildings towards Wood Lane was at the time of my site visits used to store pallets with materials on in regimented rows. The materials stored, and the way in which they are stored, was functional and not seen above the large gates. However, when the gates were open the stored materials appeared as a conspicuous visual intrusion within this rural site. A reduction in height of the gates and fencing to 2m would be likely to enable views of open storage up to 2.5m³ in height on some parts of the site and particularly if it were to be stored near the boundary with Wood Lane.
57. Due to the increased area of the site in use for open storage there is a harmful effect on both the character of the area and the appearance of the site within the countryside setting. It has not been demonstrated that the whole of the area being used for storage beyond the buildings towards Wood Lane has a lawful use for open storage. As such, this prominent open storage which can be seen particularly when the gates are open and may be more visible if the gates and fencing were reduced to 2m in height, results in harm to the appearance and character of the area.
58. This is contrary to CS CP1, CP3, CP9 and CP11 as it would harm character and appearance of the area due to the scale of activity and its form, outside the development limits.
59. A revised landscaping plan seeks to enhance the boundary vegetation to provide a visual barrier of direct views of the site from adjacent and nearby residential gardens and intermittent views along School Road and views from Wood Lane. Whilst the proposed landscaping could be secured by the imposition of conditions it would not assimilate the site within the landscape but would aim to hide the site. The purpose of landscaping conditions is to enhance a development and not hide an unacceptable visual intrusion. It is not reasonable to impose maintenance conditions for landscaping in perpetuity and therefore reliance on landscaping to hide an unacceptable form of development is also not reasonable.
60. I note that the appellant supports conditions limiting the height of storage of materials within the site at a height of 2.5m which is slightly lower than the height of the highest blocks of storage I saw on site. This height is similar to the single storey structures on the site. However, unlike the buildings the storage occupies significant amounts of the contractor's yard area. The form of storage in regimented groups of types of materials, with reels of cable or pallets of plastic pipes or other materials is discernible and conspicuous even if required to be at a height of 2.5m.

³ This is the maximum height of storage discussed in the Conditions session at the Hearing.

61. The amount of open storage space at the site is clearly necessary to service the contract and it would be unreasonable to seek to significantly limit the amount of area of open storage at the site. No conditions were suggested or considered relating to limiting open storage, other than aggregates, to a specific area of the site. Moreover, it was not evidenced that the appellant could reasonably operate with restricted open storage on a smaller area than that which I saw at my site visits.
62. While the appellant refers to uncontrolled storage as part of the LDC, the storage in the area on Plan A2 was only found to be lawful for parking and storage of vehicles in relation to use of said buildings and the area on Plan B for storage of vehicles and building materials. The stability of what is stored inevitably limits the height at which it can be stored safely. I am not satisfied on the evidence available that the LDC storage use was ever stored at heights of 2.5m or above nor whether that would ever be the case. Although I accept that there are no conditions limiting the height of storage for the LDC use.
63. If vehicles were stored one on top of another it is more akin to a vehicle end of life use than a storage use. Most vehicle storage is single level storage such as new vehicles waiting for delivery. In relation to building materials, again stability of what is stored, would limit the height to which it could be stored. I am therefore not satisfied that the lawful use of the site would or could result in storage significantly higher than 2.5 m height which a condition could require.
64. The amount of area of the site utilised for open storage is extensive. The amount of storage both behind and in front of the buildings towards Wood Lane draws the eye in any view into the site and unlike the buildings can be unbroken in its regimented form. The amount of material storage I saw appears necessary to service the contract and is extensive. Even at a controlled height of 2.5m, a height similar to that of the buildings on the scale of the storage areas results on site, particularly occupying the area to the front of the buildings when looking through the entrance
65. There were also available views and glimpses of the site from properties in School Road. Enhanced landscaping along the southern boundary with the residential properties gardens and other land would reduce views further.
66. Wood Lane is BOAT and is used by horse riders and walkers to enjoy the countryside. It is a lane that has always been used by commercial vehicles because of the uses which take their access from it. However, the contractor's yard component of the mixed use clearly marked a step change in the volume of vehicles and number of vehicles including those towing trailers seven days a week. I heard from local residents that they do not walk along the BOAT because of the change in the character of the lane from a place they could enjoy walking to one where the traffic is such that it is not an enjoyable place to walk. In my view, the volume of traffic seven days a week resulting from the contractor's yard use detracts from the character of the BOAT. The suggested hours of operation conditions would still allow seven day a week operation of the contractor's yard.
67. I therefore find on this issue that the contractor's yard component of the mixed use has resulted in material harm to the character and appearance of the area. This is contrary to CS Policies CP1, CP3 and CP9 which require development to be of an appropriate scale of activity and character to the area, to maintain or enhance the high quality of the environment and within development limits; Policies MDD Policy TB21 which require development to retain or enhance the condition, character and features that contribute to the landscape.

Living Conditions

68. The Council consider that the increase in the scale and intensity of the use within the countryside has resulted in additional noise and disturbance to the detriment of neighbouring residential occupiers. The local residents, who

provided evidence, consider that the operations within the site and the vehicle movements to and from the site have resulted in harm to their living conditions and the reasonable enjoyment of their properties.

69. The appellant has produced a noise report (NR). The noise report is in relation to noise within the appeal site including aggregates being loaded from the open bulk material store, transit vans driving around the site with tools and equipment being manually loaded, use of a single telehandler manoeuvring moving items such as reels of plastic cabling. However, I note that the noise measured in relation to the aggregates was only in relation to soil as there were no coarse aggregates on site at the time of the noise measurements being taken.
70. The NR did not assess noise at the bungalow, which while currently and anticipated to be used to house workers associated with the operations at the site, could also be occupied by individuals unrelated to the operations at the site. Due to the proximity of that residential unit and the relationship of the garden area to the contractor's yard this would be the most affected residential unit and it was not a receptor identified in the NR. There are no conditions existing or proposed to require occupation of that property in conjunction with the contractor's yard and nor would such conditions be reasonable.
71. The contract workforce attends the site to collect materials/supplies for a particular element of the contract, arriving first thing in the morning with vans, or vehicles towing trailers. The contract workforce arrives early, and operations are over 7 days a week. The proposed hours of operation condition would be 6.30 am to 6pm Monday to Friday and 8am to 1pm⁴ Saturday and Sunday. Currently local residents refer to vehicles arriving from 6am and Document 5 submitted at the Hearing records the first vehicle at 6.12am in September 2022. These are extensive hours giving little respite to the adjacent residential occupiers or those who use the BOAT for leisure purposes. However, any reduction in the hours of operation below this level would be likely to be unreasonable given the operational needs of the appellant.
72. In my view, the contractor's yard has resulted in noise and disturbance from activities both on the site through loading and unloading of materials, manoeuvring of vehicles within the site and on the approach to the site through the increase in vehicles coming and going from the site along Wood Lane. The NR seeks to identify and address the noise disturbance within the site only.
73. The noise associated with loading of aggregates is proposed to be mitigated by the installation of an acoustic screen. While I am satisfied that this would reduce the disturbance for local residents around the activity of loading and unloading of aggregates and could be required and controlled by the imposition of suitable conditions it would not address the overall noise and disturbance experienced by the local residents.
74. The volume of traffic experienced by residents since the operations began in late 2020/early 2021, along with the noise of empty trailers attending early in the morning, rattling and clanking along Wood Lane, individually and cumulatively have clearly caused significant noise and disturbance to local residents. This aspect of noise is not addressed in the NR and, in my view, is a significant and unacceptable harm resulting from the contractor's yard use.
75. I have considered whether the imposition of conditions could overcome the harm to the living conditions of the nearby occupiers. While an acoustic screen, additional boundary landscaping, management of onsite operations including HGV restrictions, vehicle loading and manoeuvring to limit noise, and hours of operation conditions could be imposed I am not satisfied that these would overcome the harm I have identified to the living conditions of nearby residents. The noise and disturbance associated with the volume of traffic, the

⁴ The suggested hours of operation condition in Document 9 submitted at the Hearing were revised in discussion to these hours at the Hearing.

vehicles with trailers and the extensive hours of operation could not reasonably be controlled by the imposition of conditions.

76. Furthermore, the bungalow on part of the site could be occupied by persons unconnected with the operation of the contractor's yard and noise would be greatest at that receptor and unlikely to be addressed by any of the potential conditions. The hours of operation considered the minimum under which the appellant could operate (6.30 am to 6pm Monday to Friday and 8am to 1pm Saturday and Sunday) would still be extensive giving little respite to the adjacent occupiers. Any reduction in the hours of operation below this level would be likely to be unreasonable given the operational needs of the appellant.
77. I therefore find that the contractor's yard component of the mixed use has resulted in significant noise and disturbance to local residents causing significant harm to their amenity. This is contrary to CP1 and CP3 which require developments to maintain the high quality of the environment, be without detriment to the amenities of adjoining land uses or occupiers and their quality of life; MOD Policy TB20 which requires development to have no harmful impact on the amenity of adjoining land uses in terms of noise and disturbance. This harm cannot be overcome by the imposition of conditions.

Conclusion

78. Whilst I have found the development is no more unsustainable than the previous lawful use and that it provides economic benefits supporting employment and a prosperous rural economy these matters do not outweigh the harm to highway safety, character and appearance and living conditions that I have found. For the reasons set out above the appeal on ground (a) must fail.

Appeal on ground (f)

79. This ground of appeal is that the requirements of the EN are excessive and lesser steps would overcome the objections. The Council has confirmed that the purpose of the EN is to remedy the breach of planning control which has occurred.
80. In the light of my findings on the ground (b) appeal I concluded that the allegation would be directed to be corrected with a subsequent variation to requirement (i) to require the use to cease. This addresses the appellant's issue raised in the revised SoCG on requirement (i).
81. Therefore, there are two requirements that remain the subject of the ground (f) appeal. The appellant through the revised SoCG and their final written closings submissions clarified this ground of appeal as follows:
- requirement (ii) remains controversial if the Inspector concludes the LDC remains a lawful fallback position and (ii) restricts the lawful position.
 - requirement (vi) exceeds what is necessary to the extent that it ought to allow the fence to remain up to a height of 2m. The appellant's case is that the position of the fence is not adjacent to the highway, so that a 2m fence would be permitted under the GPDO.
82. The Council consider that requirement (ii) could be varied by the deletion of the words 'except for storage of those items.' The Council consider the fencing is adjacent to the highway and as such a 2m high fence would not be permitted under the GPDO.

Requirement (ii)

83. The requirements of an EN must not purport to stop the appellant from doing something they are entitled to do without planning permission by relying on existing lawful use rights, including the right of reversion under section 57(4)

of the Act, rights under the GPDO, and the right to carry out anything exempted from the definition of development under section 55 (2). This is the *Mansi* principle or doctrine⁵.

84. The requirement is:

'Remove from 'the Land' all vehicles, HGVs, building materials and plant used for the purposes of the contractor's yard, except for the storage of those items, and remove all other equipment and associated paraphernalia used for the purposes of the contractor's facility.'

85. The LDC certified the lawfulness of the use of 16 buildings on the site for uses which were individually specified for each building with *'ancillary use of yard as identified on Plan A2 for parking and storage of vehicles in relation to the use of the said buildings'*. In addition, it also specified the *'Use of the yard area as identified on Plan B for the storage of vehicles including cars, HGV's, plant, caravans and boats and the storage of recovered building materials'*.

86. I appreciate that the Council were seeking through the use of the words 'except for storage of those items' to reference the lawful use of the site. The appellant considers that the wording of the requirement restricted the lawful use of the site.

87. The wording of the requirement, whilst allowing storage of items and vehicles does not allow the parking of vehicles. As such it restricts, albeit inadvertently, the accepted lawful use of the LDC site. I will vary the requirement to address this point. There is one other point that was raised about the requirement that the reference to 'vehicles, HGV's' was an anomaly as an HGV is a vehicle. I will therefore also vary the list of items to 'all vehicles including HGV's'.

88. As such, I will vary requirement (ii) as follows:

'Remove from 'the Land' all vehicles including HGVs, building materials and plant and equipment used and any associated paraphernalia for the purposes of the contractor's yard, except to the extent to which such items are parked or stored lawfully as set out in the Certificate of Lawful Existing Use granted on 11 August 2011 under reference CLE/2010/1528 by Wokingham Borough Council.'

Fencing and Gates – Requirement (vi)

89. In relation to the fencing and gates I have found that even if they were reduced to 2m in height, this would not be acceptable due to the harm to the character and appearance of the area. Furthermore, I have found that fencing is adjacent to a highway carrying vehicle traffic. Albeit I accept some elements of fencing along the side boundary of the site would not be adjacent to a highway used by vehicular traffic.

90. The GPDO does not grant retrospective planning permission. The fence and gates exceeded those limits and therefore if it is altered it would not be permitted under the GPDO. Varying the requirements so that any fence or gate meets the limitations in the GPDO would not serve to remedy the breach of planning control. The fence and gates are unlawful as a whole.

91. A 2m high fence would not be permitted development where it is adjacent to a highway used by vehicular traffic. I have considered the proposed reduction in the height of the fencing and gates under ground (a) and found that they would still harm the character and appearance of the area.

92. I accept that the grant of planning permission under the GPDO represents a realistic fallback position and may in straightforward cases be an obvious alternative that could be achieved with less cost and disruption. However, the appellant's lesser steps of reducing the fencing to 2m in height is not permitted

⁵ *Mansi v Elstree RDC* [1964] 16 P&CR 153

development because parts of the fencing are adjacent to the highway used by vehicular traffic. As such, in the absence of specific proposals on how the fencing and gates could be altered to reflect what would be permitted under the GPDO, the steps in relation to the gates and fencing are not excessive.

93. The appeal on ground (f) succeeds in part only in relation to requirement (ii) and fails in relation to requirement (vi).

Appeal on ground (g)

94. The compliance period is 3 months. The revised SoCG sets out that the appellant is seeking a 9 month compliance period in respect of all requirements. The Council are content for the period to be extended to 6 months.
95. The appellant states the majority of the requirements have been complied with. However, they consider that 9 months is required to comply with the remaining requirements as statutory undertakers would need to be engaged to carry out specific operations and they cannot attend at short notice for non-emergency work and the appellant will need time to look for alternative premises from which to operate and to fulfil their Fibre Optic installation contract. The acquisition of another commercial site in the region may take time to process.
96. While the Council referred to planning permission having been granted for another site in the Borough for the appellant, the appellant maintains that it is incorrect for the Council to suggest that site can simply accommodate the commercial operations displaced from the appeal site.
97. I appreciate that the appellant will require time to look for alternative premises from which to operate the contractor's yard and that this is necessary to fulfil the contracts and maintain employment. However, this must be balanced against the harms I have identified, particularly to the living conditions of the local residents. In my view, a period of 6 months would be a reasonable period to look for alternative premises and to comply with the requirements of the EN. I will therefore vary the compliance period to 6 months.
98. The appeal on ground (g) succeeds to this extent.

Conclusion

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

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Grant	Of Counsel instructed by ET Planning on behalf of the Appellant
Mr Russell (Motion) BEng (Hons) MCIHT CMILT	Motion, transport consultants on behalf of the appellant
Mr Symmonds Meng (Hons) MIOA	Clarke Saunders Acoustics, noise consultants on behalf of the appellant
Mr Paiginton BA (Hons) MLA CMLI PIEMA Dip Arb L4 (ABC) M.Arbor.A	Landarb Solutions, landscape/character and appearance consultants on behalf of the
Ms Temple BSc (Hons) MSc MRTPI	ET Planning, planning consultant on behalf to the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Walton	Of Kings Counsel instructed by Wokingham Borough Council's Legal Services
Mr Croucher	Principle Planning Officer, Team Manager Wokingham Borough Council
Mr Varley	Operations Manager, Development Management, Wokingham Borough Council
Mr Johnson	Highways Officer, Wokingham Borough Council

INTERESTED PERSONS:

Mr Kessock-Philip	Interested Party
Mrs Atwell	Interested Party
Mr Vokes	Interested Party
Ms Hoyle	Interested Party
Cllr C Heyliger	
Cllr P Stubbs	
Mr Varco	Interested Party
Mr White	Interested Party

DOCUMENTS SUBMITTED AT THE HEARING

- 1 List of appearances submitted by the appellant
- 2 Written comments of Mr Stephen Vokes and Diane Hoyle
- 3 Suggested conditions submitted by the Council
- 4 WBC Turning Data for LCR School Road Junction submitted by Cllr Heyliger
- 5 Copy of email sent on 11/10/2022 submitted by Mr Kessock-Philip
- 6 Barkham Village Design Statement submitted by the Council
- 7 Extract from Wokingham Borough Landscape Character Area
- 8 Assessment submitted by the Council
- 8 Drwg No LAS 160 06 Revision A submitted by the appellant
- 9 Revised list of suggested conditions submitted by the Council
- 10 Revised Statement of Common Ground submitted by the Council
- 11 Closing submissions submitted by the Council
- 12 Closing submissions submitted by the appellant

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Updated site and landscape plan submitted by the appellant
2. Comments on the updated site and landscape plan submitted by the Council
3. Email from Mr Kessock-Philip commenting on revised plans
4. Email from Mr Trotman commenting on revised plans
5. Written comments from Chris Sawle on revised plans
6. Submission and comments from Monica Atwal on revised plans