



Appeal Decisions

Inquiry opened on 22 November 2022

Site visit made on 16 December 2022

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal A Ref: APP/N0410/C/21/3272389

The Goose House, East side of Pyebush Lane, Beaconsfield, Buckinghamshire, HP9 2RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Ian Caldwell against an enforcement notice issued by Buckinghamshire Council.
 - The notice, numbered 18/10083/ENCU/EN/1, was issued on 23 February 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Land from agricultural use to residential use, and the carrying out of operational development to facilitate the aforesaid unauthorised material change of use comprising of the construction on the Land of a building occupied as a dwelling (in the approximate position shown cross hatched in black on the Plan) and incidental structures (in the approximate position shown hatched in black on the Plan) (the "Unauthorised Development").
 - The requirements of the notice are: 5.1 Cease the residential use of the Land; 5.2 Demolish or dismantle the building occupied as a dwelling (shown in the approximate position shown cross hatched in black on the Plan); 5.3 Demolish or dismantle the incidental structures (shown in the approximate position shown hatched in black on the Plan); 5.4 Remove from the Land all paraphernalia that has been brought onto the Land in connection with the unauthorised material change of use; and 5.5 Remove from the Land all debris and materials resulting from compliance with steps 5.1 to 5.3 of this Notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered
-

Appeal B Ref: APP/N0410/X/21/3268510

Pyebush Lane, Beaconsfield, Buckinghamshire, HP9 2RX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Timberstore against the decision of Buckinghamshire Council - South Area (South Bucks).
 - The application, ref PL/20/2416/EU is dated 28 July 2020, was refused by notice dated 27/01/2021.
 - The application was made under sections 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is: Change of use of the land to C3 residential use, and operational development consisting of a building facilitating this unauthorised use.
-

Appeal C Ref: APP/N0410/X/21/3286932

The Goose House, Pyebush Lane, Beaconsfield, Buckinghamshire, HP9 2RX, Beaconsfield, HP9 2RX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ian Caldwell against Buckinghamshire Council - South Area (South Bucks).
 - The application ref PL/21/2984/EU is dated 8 September 2021.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is: The retention of a building.
-

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the substitution of the Plan attached to the notice by the Plan attached to this decision, by the deletion, in section 3 of the notice, of the words "from agricultural use", and varied by the deletion, in section 5, of requirement 5.3 and its substitution by the words "5.3 With the exception of Utility Building E, demolish or dismantle the incidental structures (shown in the approximate positions shown hatched in black on the Plan), and by the deletion of 4 months and the substitution of 12 months as the time for compliance.
2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Appeal C

4. The appeal is dismissed.

Preliminary Matters

5. The appeals concern a parcel of land at the corner of the A40 and Pyebush Lane, part of a larger triangle of land resulting from an earlier re-alignment of the A40 (Site 1). The former A40 passes through the site, though the public right of way associated with it now runs just outside its southern boundary. The land and/or building the subject of the 2 LDC appeals (B and C) are within the land the subject of the enforcement notice (appeal A) and concern matters that are also raised in the grounds upon which Appeal A is proceeding. I deal with Appeal A first.
6. The Inquiry also considered an appeal¹ against an enforcement notice issued in respect of an adjoining parcel of land to the south (Site 2). The appeals were heard together for convenience, some witnesses being common to all, but

¹ Appeal Ref: APP/N0410/C/22/3291809

there is no physical or functional link, hence I have issued separate decision letters.

7. Prior to the opening of the Inquiry some errors were identified in the enforcement notice plan. It was agreed, as set out in the Statement of Common Ground (SOCG), that the plan required amendment to accurately show the site boundaries and the location within the site of relevant structures. An agreed plan is attached to the SOCG. It is also agreed that the description of the alleged breach of planning control need not refer to agriculture as the former use, and that it can be thus amended without injustice.

Appeal A – ground (b)

8. The appeal site, as amended, is enclosed by fences and hedges, with gated accesses from Pyebush Lane and the A40 via the former A40 alignment. The entrance to Timberstore is directly opposite the Pyebush Lane access. There are a number of structures on the site, a single storey brick-built dwellinghouse with small front, rear and side gardens enclosed by low walls and fences (The Goose House) towards the eastern end beside the former A40, a brick utility/services cabinet (building E) and a timber workshop/tool store (building C) beside the old A40 at the Pyebush Lane end, and a chicken coop (building D) and feedstore (building B).
9. An appeal on ground (b) is that the breach of planning control alleged in the notice has not occurred as a matter of fact. While it is not disputed that there has been a material change of use to a residential use, the appellant maintains that is confined to the Goose House itself and its enclosed gardens, the remainder of the site being in a different, non-residential use, however it may be described. The argument then is that the change of use the subject of the notice has not occurred over the whole of the land.
10. An allegation of a material change of use must have regard to the relevant planning unit, a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change. A planning unit represents an area of land or property within which a primary use (or perhaps mixed use) is identified and any other uses within that same unit are ancillary to that primary use. Two questions arise in this case. First, was the residential use confined to the Goose House, such that the areas enforced against should be confined to that, an amendment that it is agreed can be made without injustice, or did it extend over the whole site. And if the latter, whether there was another primary use, or uses, made of the larger area, such that the correct description of the use of the land is a mixed use. If that is so, the appellant argues that the notice is incapable of correction without causing injustice and should be quashed.
11. Outside of the Goose House enclosure the site has a domestic character and appearance, being well maintained and largely devoid of anything that might suggest other non-domestic uses. The other structures² present are of a domestic scale and appearance, and have purposes that would ordinarily be considered domestic in the circumstances, be it tool storage, utilities provision or domestic poultry related. Some items present on the site at about the time the notice was issued, identified in photographs taken in 2020, are claimed to

² A larger shed has been sited on the land since the notice was issued. This is not part of the matters with which the notice is concerned.

be evidence of commercial storage, but what was there, some building materials and fencing, was present in the very small quantities typical of leftovers, and *de minimus* in terms of land use for planning purposes. Some additional items are now on site, but these appear to have been recently put there.

12. Maintenance of the appeal site is done by Mr Grodecki, who lives in the Goose House, using tools stored in building C. He says it is part of his employment at Timberstore, but along with the security his presence on the site provides, I consider that to be intimately associated with his use of the Goose House as a dwelling, which happens to be linked to his employment by Timberstore. Keeping geese and chickens on the site was also claimed to have been for the benefit of Timberstore employees, but whether or not Timberstore employees helped with the poultry, that is inconsistent with Mr Grodecki's statutory declaration of March 2019, as is his claim that he does not use the wider site for residential purposes. That declaration made clear that the outside space associated with the dwelling was the whole site, and that allowed him to keep a few geese and chickens. So far as his contrary evidence at the Inquiry is concerned, I consider that this was tailored, in some important respects, to the narrative that was being argued there by the appellant. Where it is necessary to reconcile inconsistent evidence, I consider that the 2019 declaration gives the more accurate account. Overall, I am satisfied that the entire site was used for residential purposes associated with the use of The Goose House as a dwellinghouse. In coming to this view I note Mr Grodecki's description of the land outside of the Goose House as being in the control of Timberstore, but it is the actual character of the use of the land that is determinative.
13. The other uses to which the land is said to have has been put, broadly characterised as commercial uses associated with Timberstore, are daytime parking for Timberstore staff, occasional overnight plant/equipment parking and some storage by a landscaping contractor, and storage of Timberstore stock. There is very little evidence of the use of the land for the storage of Timberstore stock, certainly what can be seen in the 2020 site visit photographs, even if the items are being stored by Timberstore, is *de minimus*. There is evidence of the use of the old A40 within the site being used for parking in the past. A 2011 application for an LDC for the existing use of part of the site for the parking of motor vehicles was refused, but evidently the old A40 was being used for the parking of vehicles at the time, and ranks of parked cars can be clearly seen in aerial photographs from 2010-2012. However, since the erection of the Goose House and the commencement of residential use in 2014 there is no parking evident on the site in those photographs beyond a single car parked immediately outside the Goose House. Timberstore employees have claimed that they regularly parked their cars there and at times ate their lunch there. This is not supported by the historic aerial photography, but in any case the way the use is described does not in my view amount to a use of the land that would be material in planning terms. Mr Kedge, the landscaping contractor, also described how he would keep some vehicles and plant overnight at the site when working in the area, but this appears to have been an intermittent and casual arrangement based on the security provided by Mr Grodecki's presence on the site. It does not appear to me to be of a nature, scale and frequency that would amount to a material or primary use of the land, and I note that no other uses were mentioned in response to a Planning Contravention Notice (PCN) in 2019.

14. As a matter of fact and degree I consider that the various non-residential uses that have occurred on the site since 2014 were of a casual, intermittent and insignificant nature. The mere use of land does not amount to development. I find accordingly that the matter stated in the notice as corrected, that is the change of use of the land to residential use as opposed to a mixed use, has occurred as a matter of fact. Save for the amendments set out above, the appeal on ground (b) fails.

Appeal A – grounds (d) and (f)

15. Ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. It is common ground however that the material change of use to residential use has not occurred for sufficient time, 10 years, to have become immune. This ground is pleaded in relation to the operational development comprising the erection of the Goose House and the utility/services cabinet (building E), which were substantially completed more than 4 years before the notice was issued and hence would, in their own right, be immune from enforcement by virtue of section 171B(1) of the 1990 Act. It is well established that where there has been a material change of use of land, structures which may, viewed in isolation, have become immune from enforcement may nonetheless be required to be removed in order to restore the land to the condition it was in before the breach of planning control occurred. The question this ground raises, along with the appeal on ground (f), is whether, in the circumstances, the two structures can be required to be removed. In ground (f) terms, it is claimed that their removal would exceed what is necessary to remedy the breach.

16. Both parties refer to the judgement in *Kestrel Hydro*³ as the most recent consideration of relevant case law, including that in *Murfitt*⁴, *Somak Travel Ltd.*⁵, *Bowring*⁶ and the Court of Appeal and Supreme Court decisions in *Welwyn Hatfield*⁷. It sets out the principle that an enforcement notice directed at a breach of planning control by the making of an unauthorized material change of use may lawfully require the land or building in question to be restored to its condition before that change of use took place, by the removal of associated works as well as the cessation of the use itself, provided that the works concerned are integral to or part and parcel of the unauthorized use and are not works previously undertaken for some other lawful use of the land. It does not embrace operational development of a nature and scale exceeding that which is truly integral to a material change of use as the alleged breach of planning control, nor does it override the regime of different time limits for different types of development in section 171B.

17. *Kestrel Hydro* was concerned with development that was subsequent to the unauthorised material change of use enforced against. In this case it is argued that the operational development comprising the construction of the Goose House preceded the change of use of the land to residential use, and that the erection of the dwelling was not merely incidental to, ancillary or supportive of the material change of use, rather it was operational development in its own

³ *Kestrel Hydro v SCLG* [2016] EWCA Civ 784

⁴ *Murfitt v Secretary of State for the Environment* (1980) 40 P. & C.R. 254

⁵ *Somak Travel Ltd. v Secretary of State for the Environment* (1988) 55 P. & C.R. 250

⁶ *Bowring v Secretary of State for Communities and Local Government* [2013] J.P.L. 1417

⁷ *Welwyn Hatfield Council v Secretary of State for Communities and Local Government* [2010] EWCA Civ 26 and *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] UKSC 15

right. While the operational development must undoubtedly be supportive of the change of use, I find nothing in the cases cited to indicate that the development must necessarily be capable of being described as ancillary or incidental, having regard to the qualification in *Kestrel Hydro* of the use of the word 'ancillary' in *Murfitt*, it is sufficient that it is part and parcel of, and integral to the change of use. Neither is it the case that works carried out before the change of use was clearly effected, as appears to have been the case in *Somak Travel Ltd* and *Bowring*, and possibly *Murfitt*, could not be integral to and part and parcel of the change.

18. In the circumstances I consider that the operational development and the making of the material change of use should not be viewed as entirely separate developments. Mr Caldwell's evidence is that the purpose of erecting the building was, from the outset, to provide a dwelling as more suitable accommodation for one of his employees who might otherwise leave, and whose presence would ensure security of the site. The construction of the Goose House was clearly for the purposes of making a material change of use of the land to use for residential purposes, and it was integral to, and part and parcel of, that change. The operational development comprised in the erection of the dwelling, a modest single storey building, was not of a nature and scale that would take it beyond what could be considered to be integral to the material change of use.
19. I consider, in the particular circumstances of this case, that the principal form of development was the making of the material change of use of the land, and that the construction of the building can reasonably be regarded as associated works. Since the purpose of the notice is clearly to remedy the breach of planning control by returning the land to the condition it was in before the breach took place, it is not excessive to require the removal of the building.
20. In coming to this view I have noted the doubt expressed by Richards L.J. in *Welwyn Hatfield* (EWCA) that an enforcement notice directed to a material change of use could require the removal of the building itself in that case, but that was not a point that he ultimately had to decide. Nor do I consider that the fact that the Council was aware of the building while it was being erected, describing it as a "brick outbuilding", precludes it from taking enforcement action subsequently against the material change of use of the land which it was integral to, and part and parcel of, and requiring its removal.
21. Overall, I find that the requirement to demolish the building does not exceed what is necessary to remedy the breach, and that it is a requirement that the Council could properly impose under section 173(4)(a) of the 1990 Act. Accordingly, so far as they concern the Goose House, the appeals on grounds (d) and (f) fail.
22. The same cannot be said of the utilities/services cabinet, Building E. This was built in 2012 and houses water and electricity services. It significantly predates the breach of planning control, and while it currently provides services to the Goose House, I consider that it falls squarely into the category of 'works previously undertaken for some other lawful use of the land'. Its removal would exceed what is necessary to remedy the breach of planning control, so I shall vary the requirements accordingly. The appeals succeed to this limited extent.

Appeal A – ground (a) and the deemed planning application

23. The appeal on ground (a) was made contingent to success on ground (d) and (f) in respect of the Goose House, to make the argument that, if the building cannot be required to be removed, planning permission should be granted for the re-use of the Goose House as a dwelling. In view of my findings above, the appeal on ground (a) requires no further consideration and the deemed planning application must be refused.

Appeal A – ground (g)

24. An appeal on ground (g) is that that the period specified in the notice falls short of what should reasonably be allowed. In this case it is argued that a period of 12 months would be reasonable given the need for the family to find alternative suitable accommodation. Mr Grodecki and his family had intended to vacate within that period, but circumstances have changed and their plans have, understandably, become uncertain. Having particular regard to the interests of the children, which is a primary consideration, and given the high cost of housing in the area which is likely to make it more difficult to find suitable alternative accommodation, I consider that it is reasonable to extend the period for compliance as sought. The appeal on this ground succeeds accordingly.

Appeals B and C

25. The Appeal B application sought certification that the residential use of land comprising the Goose House and its enclosed gardens, along with the access to the building from Pyebush Lane, and the operational development comprising the building itself, were lawful. It was subsequently accepted, following *Welwyn Hatfield*, that the use was not lawful, but the lawfulness of the building as operation development was still claimed, as it was in the application the subject of Appeal C. The main issue in these appeals is whether the decision of the Council to refuse to grant the LDC, or the deemed decision in the case of Appeal C, was well founded.

26. For the purposes of the 1990 Act, section 191(2) provides that uses and operations are lawful at any time if: (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of an EN then in force. I have upheld the enforcement notice on Appeal A which requires that the Goose House building be removed, being integral to and part and parcel of the unauthorised material change of use. It follows that it does not satisfy section 192(2)(a), and that the refusal and deemed refusal respectively to grant a certificate of lawful use or development in respect of the change of use of the land to C3 residential use, and operational development consisting of a building facilitating this unauthorised use (Appeal B) and the retention of a building (Appeal C) were well founded. Neither appeal can therefore succeed, and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:
Douglas Edwards KC

He called	
Ian Caldwell	Appellant
Peter Kedge	Landscaping Contractor
Daniel Grodecki	Goose House Occupant (Site 1)
Piotr Robaszewski	Mobile Home Occupant (Site 2)
Michael Metcalf	Timberstore Director
Aleksandra Sieradz	Timberstore Employee
Robert Harrison	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Alex Shattock
of Counsel

He called	
Billy Johal	Enforcement Officer
Ingrid Smith	Ivy Legal

INTERESTED PERSONS

Cllr Alison Wheelhouse on behalf of Pyebush Lane Residents Association

DOCUMENTS

- 1 Appearance list - Appellants
- 2 Statement of Common Ground – Site 1 Goose House
- 3 Statement of Common Ground – Site 2 Mobile Home Site
- 4 Site visit photographs - Council
- 5 Supplementary note on 2010 Google Earth image - Appellant
- 6 Opening submissions - Appellant
- 7 Opening submissions - Council
- 8 Planning statement submitted with application ref. 12/01626/FUL - Appellant
- 9 Aerial photograph November 2013 - Appellant
- 10 Aerial photograph July 2014 - Appellant
- 11 Google Streetmap image 2010 - Council
- 12 Speaking notes – Cllr Whitehouse
- 13 Agreed distances to services from Goose House
- 14 Written Ministerial Statement on Green Belt and intentional unauthorised development 2015 - Council
- 15 Council's closing submissions, plus attachments
- 16 Appellant's closing submissions, plus attachments



The Planning Inspectorate

This is the plan referred to in my decision dated: 14 February 2023

by Paul Dignan MSc PhD

Appeal Ref. APP/N0410/C/21/3272389

