
Appeal Decisions

Hearing held on 30 July 2024

Site visit made on 30 July 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 7 October 2024

Appeal A Ref: APP/U1105/C/22/3295011

Land at Hill Barton, Sidmouth Road, Clyst St Mary, Exeter EX5 1DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Troy Stuart of Stuart Partners Ltd against an enforcement notice issued by East Devon District Council.
- The notice was issued on 11 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of a material change of use of the land from agriculture to a mixed use agricultural and commercial parking area used by Lorries, Commercial Vehicles, Cars, Plant and Machinery and the siting of skips and shipping containers by the importation of aggregate, hard-core and underlying synthetic membrane.
- The requirements of the notice are to:
 - I. Permanently cease the use of the Land shown edged Red on the attached plan for the parking of Lorries and Commercial vehicles, Cars, Plant and Machinery and the siting of Skips and Shipping Containers
 - II. Permanently remove from the land the aggregate, hard-core and any underlying synthetic membrane laid on the Land, and permanently reinstate the Land to its condition before the breach took place
 - III. Dismantle and permanently remove the banked area towards the south of the Land, in the approximate position shown edged Blue on the Plan attached and permanently reinstate the Land to its condition before the breach took place ensuring the spoil is not distributed over the land south of the area shown edged blue on the plan.
- The periods for compliance with the requirements are:
 - Step I. Within TWO weeks of this Enforcement Notice taking effect.
 - Step II. Within THREE months of this Enforcement Notice taking effect.
 - Step III. Within THREE months of this Enforcement Notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).
- This decision supersedes that issued on 26 June 2023. That decision on the appeal was quashed by order of the High Court.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Appeal B Ref: APP/U1105/W/23/3323252

Hill Barton Business Park, Sidmouth Road, Clyst St. Mary, Devon EX5 1BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Troy Stuart of Stuart Partners Ltd against the decision of East Devon District Council.
- The application Ref is 22/0686/MFUL.
- The development proposed is change of use of land at Hill Barton Business Park for the purposes of parking, associated with the existing operations at Hill Barton Business Park, for a temporary period of 3 years.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

Appeal A

1. The breach of planning control refers to the importation of aggregate, hard-core and underlying synthetic membrane, but not their deposition. Section 176(1) of the Act allows me to correct any defect, error or misdescription in the enforcement notice. I consider the lack of reference to deposition in the description of the breach to be a minor defect in the notice. For clarity, I will correct the enforcement notice to refer to deposition of those materials. This does not affect the requirements of the notice.
2. The requirements of the enforcement notice refer to permanently reinstating the land to its condition before the breach took place in both steps II. and III. Step II. could not achieve the reinstatement of the land without step III. I consider this to be a minor error in the notice. Therefore, I will also correct the enforcement notice to delete that phrase from requirement II.
3. To correct these errors in the enforcement notice would not cause injustice to either the appellant or Council.

Appeal B

4. The planning application seeks a temporary use of the land for a period of three years. This would allow a review of the use, location and form of development through the planning process during that period. If I were to allow the appeal, it would be subject of a condition requiring the use to cease after that period. I have taken the temporary nature of the development into account in coming to my decision.
5. The development plan comprises the East Devon Local Plan (LP), East Devon Villages Plan (VP) and Farringdon Neighbourhood Plan (NP). In addition, an emerging Local Plan has undergone consultation under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012. I was told that it was likely to undergo additional consultation before Regulation 19 by the end of 2024. The Council indicated adoption of the plan may be in the autumn of 2025. I will return to this, and the weight to be attached to the plan, in my main issues.
6. Following the hearing, a draft National Planning Policy Framework (the draft Framework) was issued for consultation along with proposed other changes to the planning system. I gave the appellant and Council the opportunity to comment and have taken their responses into account in coming to my decision.

Both appeals

7. Section 180 of the Act states that where, after service of an enforcement notice, planning permission is granted for development carried out before that grant of permission, the notice shall cease to have effect so far as inconsistent with that permission. As set out during the hearing, if I uphold the notice but allow appeal B the enforcement notice would remain extant and, whilst not requiring compliance during the temporary period of the planning permission, due to the effect of section 180 of the Act, would have effect following the expiry of that permission.

Appeal B

Main Issues

8. The main issues are:

- Whether the development is in a suitable location in terms of access to services and facilities;
- The effect of the development on the intrinsic character and beauty of the landscape;
- The effect of the use on the living conditions of occupiers of neighbouring dwellings with particular regard to light, noise and disturbance;
- The effect of the development on the setting of the nearby grade II listed building, The Thatch; and
- Whether there are any material considerations, such as the need for employment land within the area and any positive economic impacts arising from the development, that would outweigh any conflict with the development plan.

Reasons

Location

9. The appeal site is away from most other services and facilities, such as shops and homes of the staff working in these businesses. It is primarily accessed by vehicles, although there are bus stops directly outside the entrance to Hill Barton Business Park on the A3052. It is unattractive for access by foot or bicycle given the lack of foot or cycle paths and busyness of the A3052. As a result, it is not a location suitable for access by means other than vehicles.
10. The appeal site is close to the units it serves, comprising companies serving the logistics industry. It may have enabled an increase in the capacity of the businesses such that an increase in traffic to the site by staff and customers of the businesses concerned is likely to have occurred. Nevertheless, the scale and nature of the development means that is modest.
11. Strategy 1 of the LP provides an overall spatial development approach, including major employment development in East Devon's West End with other development focussed in the main towns. Strategy 7 of the LP states that development in the countryside will only be permitted where it is in accordance with development plan policies that explicitly permit such development. Hill Barton Business Park is subject of Policy VP05 of the VP that requires any development to be in accordance with relevant policies of the development plan. These development plan policies would include Policy Farr6 of the NP that relates specifically to the business park. That supports development of the business park provided it does not lead to the outward expansion of the site, as this development seeks to do.
12. Policy E4 of the LP relates to rural diversification and provides a number of criteria against which development must be assessed, including that it must be complementary to, or compatible with, the agricultural operations in the rural area. Policy E7 of the LP enables the small scale expansion of employment sites in a manner proportionate to the existing size and scale of site operations.

13. On balance, therefore, this is not a suitable location in terms of access to services and facilities. It is contrary to Policies Strategy 1 and Strategy 7, E4 and E7 of the LP, Policy VP05 of the VP and Policy Farr6 of the NP that seek to manage development in the countryside and at Hill Barton Business Park.

Landscape

14. The gently sloping and undulating countryside surrounding Hill Barton Business Park comprises fields surrounded by wide hedgerows interspersed with villages and farms. Prior to the development occurring, the business park was separated from the countryside by the houses between the parking area created and the rest of the business park.
15. The appeal site is visible from the junction of Blackmore Road and the A3052 at the entrance to the business park and across the fields through field entrances from the lane to the east. It is also visible from the adjacent neighbouring residential properties through the row of trees and hedge on the boundary.
16. The development comprises the surfacing of the land and its use for parking of large vehicles. The topsoil was scraped off the land and a bund constructed at the end closest to the junction of Blackmore Road and the A3052.
17. At present, parked vehicles are visible above the bund from the approach along the A3052. It extends development of the business park around the houses and intrudes into the countryside in views from this direction and from the lane to the east. It is also prominent in views from the neighbouring houses, particularly through the winter when leaves are off the trees and hedgerow that separates the site from the houses.
18. Further landscaping is proposed and could be required by condition, including re-grading of the bund and planting, in order to restrict views into the site. This would reduce the visibility of the parking over time. I also note that the application seeks the use only for a temporary period of three years. Nevertheless, it would remain an encroachment of unattractive and alien use into the countryside surrounding the business park.
19. Movement of vehicles on the site affects the tranquillity of the area. That affects an area in the immediate vicinity of the site, including the adjacent houses and those on the lane to the east, but would be within the context of the uses and vehicle movements on the wider business park. As a result, the effect on tranquillity is modest. It would be reduced to some extent following the further landscaping proposed, although unlikely to be extinguished altogether.
20. For these reasons, I conclude that the development harms the intrinsic character and beauty, including tranquillity, of the landscape. As such, it is contrary to Policies Strategy 7, Strategy 46, D1 and D4 of the LP, Farr 2 of the NP and the existing National Planning Policy Framework (the Framework) that seek to conserve and enhance the landscape character of the area by ensuring the character, scale and location of development be compatible with its landscape setting and not adversely affect important landscape characteristics.
21. Policy D2 of the LP sets out the landscape requirements for landscaping schemes and would need to be taken into account in dealing with any condition were the appeal allowed. However, there is no conflict with this policy at this stage.

Living conditions

22. There are a number of houses between Hill Barton Business Park and the appeal site. I understand that most are owned and occupied by the owners of the business park and their staff. Nevertheless, use of the site could affect the living conditions of occupiers of the houses. Consequently, any harm to living conditions would carry the same weight as if occupied by unrelated owners and tenants.
23. My attention has been drawn to the noise, dust, lights and fumes from vehicles moving around the site that disturb the living conditions of occupiers of the neighbouring houses. I note that vehicles moving around the site at speed lead to dust rising over the hedge that separates the site from the houses and into gardens. Movements have continued overnight on occasion, which results in disturbance to neighbouring occupiers from noise and light at more sensitive times. Fumes from vehicles, particularly those accelerating, enter neighbouring gardens. It is clear that these effects result in harm to the living conditions of occupiers of neighbouring houses.
24. The appellant has accepted that these do affect occupiers of those houses. However, the use is proposed to continue for a temporary period of 3 years and the appellant has agreed a number of conditions that seek to ameliorate the above concerns. These include limiting the hours when vehicle movements can take place, location of those movements at certain times, setting a speed limit and providing schemes that would further mitigate impacts, including noise and dust management, and lighting. I note that the proposal would result in the re-surfacing of the parking area with a surface that would reduce dust emissions. Compliance with these conditions would overcome the harm I have found to the living conditions of neighbouring occupiers for the period during which the use would take place.
25. For these reasons, I conclude that the development harms the living conditions of occupiers of neighbouring dwellings with particular regard to light, noise and disturbance. However, this can be overcome through the use of appropriate conditions. On that basis, the development complies with Policies D1 and E4 of the LP and the Framework insofar as they seek to ensure development does not cause noise or air pollution or harm the living conditions of local residents.

Listed building

26. The Thatch is a grade II listed former farmhouse dating from the mid-16th century but subject to various changes and extensions over time. The older part is plastered cob on stone rubble footings with later brickwork and a thatched roof. The list description identifies a number of internal and external details of interest. The significance of the building in relation to this development is its historic and architectural details along with relationship of this old farmhouse with the surrounding countryside.
27. The Thatch was separated from open countryside, including the appeal site, by residential development of 1 and 2 Hill Barton Farm. To the opposite side of the road to the front is the industrial development of Hill Barton Business Park, that dominates the setting of the listed building. The appeal site is not visible from The Thatch. Neither are visible or experienced in views along Blackmore Road, except around the junction with the A3052 where the appeal site is visible. However, The Thatch is not visible from that junction due to the mature trees

on the roadside that block views. As a result, the open field previously in the location of the appeal site did not contribute to the setting of The Thatch.

28. For these reasons, I conclude that the development does not affect the setting of the listed building at The Thatch, nor its significance as a heritage asset. As a result, the development does not conflict with Policy EN9 of the LP or the Framework that seek to protect the significance of heritage assets, including their setting. In coming to this conclusion, I have also had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other material considerations

29. It is common ground between the parties that there is a lack of supply of available employment land at present. The draft Framework indicates support for key industries, including freight and logistics. The emerging Local Plan seeks to address that, including by allocating land around Hill Barton Business Park for a new settlement. A temporary planning permission would enable alternative accommodation for this use to be provided, potentially as part of that new settlement if the emerging Local Plan is adopted. The appellant suggests this is sufficient to overcome the adverse effects of this development that I have identified in the main issues.
30. Consequently, I need to consider the weight to be attached to that lack of supply of available employment land, weight to be attached to policies of the emerging Local Plan and draft Framework, and the need for this development.

Supply of employment land

31. The East Devon Local Economic Review published by the Council in October 2023 summarises the most up to date position in relation to the need for employment land. This indicates current demand (2022) for over 50ha of employment space, of which around 80% relates to the logistics sector, that would include the businesses occupying the appeal site. However, currently available space comprises only 1.7ha, of which over 70% is office space, i.e. unlikely to be suitable for the logistics sector.
32. Over the period 2019-2040 demand for employment space in East Devon is expected to be nearly 130ha, of which over 123ha would be for industrial and logistics space. Current and future supply over that period is anticipated to be approximately 87ha. That indicates a remaining shortfall at the end of that period of approximately 43ha.
33. Logistics businesses, such as those using the appeal site, need locations with good access to the road network. In this part of Devon, this means demand is focussed on Exeter and around the M5. Hill Barton Business Park is well located within that area, with good access to the M5. However, only the west part of East Devon is located within that market area, with potential sites for development to meet the needs of logistics operators being both within and outside East Devon. The Council accept that more land needs to be found for these operators.
34. In conclusion, there is a demonstrable and significant shortfall in the provision of employment land in the area around Hill Barton Business Park, particularly for logistics operators. This must carry significant weight in the planning balance.

Future planning policy

35. The emerging Local Plan indicates that an area around Hill Barton Business Park, including the appeal site, may be allocated for development as a new settlement. That would include development to contribute to meeting the needs for employment development within the area. The Council have recently undertaken further consultation seeking the identification of more sites for development. The emerging Local Plan is currently at an early stage, but the Council indicate adoption may be in the autumn of 2025.
36. Given the early stage of the plan and potential for changes, including to the location of future development, the contents of the emerging Local Plan can only be given limited weight in this appeal. Nevertheless, this needs to be considered alongside the other material considerations.
37. It is unclear when the draft Framework may be adopted, or whether it will be adopted in its current form. It would require planning policies to identify strategic sites, including for freight and logistics. That might affect the contents of local policies, subject to the implementation section of the Framework. However, the uncertainty as to whether it will be adopted in its current form means that the draft Framework carries little weight in the planning process. Nevertheless, as an indication of future government policy and, as with the emerging Local Plan, it needs to be considered alongside the other material considerations.

Need for the development

38. The site is used for the parking of vehicles by companies operating on the Hill Barton Business Park. It provides additional capacity as there is insufficient space available for parking on the premises of companies operating on the business park.
39. Gardner Transport occupies a unit on the business park and has expanded over recent years such that it parks 15 vehicles on another site within the business park on which a Waste to Energy plant is due to begin construction in 2025. It is intended that those vehicles would be parked on this site. Dunmore Construction have been parking up to 30 vehicles on the site, which enables a more efficient operation of the business and removed on road parking within the business park. Stuarts Truck and Bus is a truck sales and servicing business that has had a dramatic increase in turnover over a short period, increasing the demand for truck parking.
40. I understand that Gardner Transport and Stuarts Truck and Bus have increased the number of employees over the past couple of years. This suggests that they contribute socially and economically to the area.
41. The appeal site contributes to the existing and future needs of these businesses that contribute toward the logistics sector. This carries considerable weight in the planning process.

Conditions

42. I have imposed a condition specifying the relevant drawings as this provides certainty. I have assessed the appeal on the basis that the development would continue only for a temporary period of 3 years. A condition is necessary to limit the use for that period and ensure reinstatement of the land in accordance with a scheme of work as continuation beyond that would continue the harms set out.
43. A condition limiting vehicle manoeuvring on the site to certain times and, at some times, in certain parts of the site, and a speed limit are necessary in order to protect the living conditions of occupiers of neighbouring dwellings.
44. Condition 5 is imposed is to ensure that noise management, dust management, drainage, landscaping, ecology and lighting are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place.
45. The condition will ensure that the development can be enforced against if the landscaping, visibility splays and foul sewage details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion

46. I have concluded that the land at Hill Barton Business Park is not a suitable location in terms of access to services and facilities and the development harms the intrinsic character and beauty, including tranquillity, of the landscape. It also harms the living conditions of occupiers of neighbouring dwellings with particular regard to light, noise and disturbance, although this can be overcome through the use of appropriate conditions. I have concluded that the proposal would conflict with policies of the development plan and, as a result, it conflicts with the development plan as a whole.
47. I have found that there is a demonstrable and significant shortfall in the provision of employment land in the area and businesses within Hill Barton Business Park require additional space to enable their operation. The emerging Local Plan and draft Framework indicate support for this type of business and seek to find additional land to meet those needs. The appeal site can assist with meeting the identified need and contributing to the logistics sector in the short term. The appeal site and other land around Hill Barton Business Park may be allocated for development of a new settlement through the emerging Local Plan. Taking account that the application is for use of the land for a temporary period of 3 years that would be removed at the end of that period, I consider that these factors outweigh the harm arising from the conflict with the development plan for that period.
48. For these reasons, I conclude that the appeal should be allowed, subject to conditions.

Appeal A on Ground (f)

49. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek the use to cease and to permanently reinstate the land to its condition before the breach took place. As a result, they seek to remedy the breach of planning control.

50. No lesser steps have been suggested that would remedy the breach of planning control. On that basis, I will dismiss the appeal on ground (f).

Appeal A on Ground (g)

51. An appeal on this ground is that the periods specified in the notice for compliance fall short of what should reasonably be allowed. The appellant suggests that the compliance period should be extended to 12 months.

52. I have set out above the effects of the development in relation to the main issues on appeal B. However, I note that if I were to extend the period for compliance those effects would continue without the mitigation set out in the conditions referred to in that appeal. In particular, the harm to occupiers of neighbouring properties would continue for that extended period.

53. I note the arguments of the appellant that there is no alternative accommodation for the parking should the enforcement notice take effect. However, in the absence of the mitigation provided by the conditions set out in appeal B that I cannot impose on the enforcement notice, the harmful effects would continue without mitigation.

54. In addition, I take account of the effect of section 180 of the Act set out in the above preliminary matters.

55. For these reasons, on balance I conclude that the periods specified in the notice do not fall short of what should reasonably be allowed. I will dismiss the appeal on ground (g).

Formal Decisions

Appeal A

56. It is directed that the enforcement notice is corrected by:

- the deletion of the words "the importation of aggregate, hard-core and underlying synthetic membrane" and their substitution with the words " the importation and deposition of aggregate, hard-core and underlying synthetic membrane" in section 3 The matters which appear to constitute the Breach of Planning Control; and
- the deletion of the words ", and permanently reinstating the Land to its condition before the breach took place" in paragraph II. of section 5 What you are required to do.

57. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

58. The appeal is allowed and planning permission is granted for change of use of land at Hill Barton Business Park for the purposes of parking, associated with the existing operations at Hill Barton Business Park, for a temporary period of 3 years at Hill Barton Business Park, Sidmouth Road, Clyst St. Mary, Exeter, Devon EX5 1BA in accordance with the terms of the application 22/0686/MFUL, subject to the conditions in the attached schedule.

INSPECTOR

APPEAL B – SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be retained in accordance with the application form and the following approved plans/documents:

Plan no.	Rev	Title
DR-L-011D		Location Plan
DR-L-012		Landscape Plan
6382.015	B	Indicative HGV Parking Layout Autotrack Swept Paths
6382.014	B	Indicative HGV Parking Layout
6382.013	C	Parking Area/Swales
6382.013	B	Proposed HGV Parking Scheme

- 2) The use hereby permitted shall be for a limited period of 3 years from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before 7 October 2024 3 years after decision in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 3) Vehicle manoeuvring on the site shall only take place:
- between the hours of 0700am until 1800pm on Monday to Friday;
 - between the hours of 0700am and 1400pm on Saturdays, restricted to movements to and from parking bays 20-40 as marked on plan 6382.014 Rev. B only; and
 - not at any time on Sundays or any Bank Holidays.
- 4) A site wide 10mph speed limit will be applied. Signage will be erected in a prominent position (on entering the site) displaying the 10mph site speed limit.
- 5) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision schemes for noise management, dust management, drainage, landscaping, ecology and lighting shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be maintained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT:

Richard Kimblin KC instructed by

James McMurdo MRICS MRTPI McMurdo Land, Development and Planning

Ian Richardson CMLI APG Architecture

Troy Stuart Stuart & Partners

Noel Stevens MRICS Alder King

FOR THE LOCAL PLANNING AUTHORITY:

Paul Golding MRTPI Senior Planning Officer, East Devon District Council

Gavin Spiller Principal Planning Officer, East Devon District Council

Chris Hariades CMLI

INTERESTED PARTIES:

Barrie Pearce Neighbouring occupier

Jane Chanot Farringdon Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

- Document 1: Photographs provided by Farringdon Parish Council
- Document 2: Policy Strategy 1 of LP
- Document 3: Policy Strategy 46 of LP
- Document 4: Landscape Character Assessment extract re LCT 3E Lowland Plains
- Document 5: Photographs taken as works taking place
- Document 6: Policy EN9 of LP
- Document 7: East Devon Economic Review