Planning Inspectorate

Appeal Decisions

Inquiry held on 13-15 and 17 January 2025

Site visit made on 13 January 2025

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal A Ref: APP/L3245/X/24/3340122
Unit 2, The Barns, Woolston, Oswestry SY10 8HY

- 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 Mr David Cadwallader against the decision of Shropshire Council.
- The application ref 23/05473/CPE, dated 19 December 2023, was refused by notice dated 13 February 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of building and yard for B8 storage.

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/L3245/C/23/3328271
Land at The Barns, Top Farm, Woolston, West Felton, Oswestry, SY10 8HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr David Cadwallader against an enforcement notice issued by Shropshire Council.
- The notice was issued on 11 July 2023.
- The breach of planning control as alleged in the notice is the material change of use to a mixed use development comprising of oil processing and storage, contactors compound, tourist accommodation, squash court and other leisure/tourism facilities and domestic storage and garaging.
- The requirements of the notice are to:
    i. To cease the use of the land for mixed use namely, oil processing and storage, contractors compound, tourist accommodation, squash court and other leisure facilities and domestic storage and garaging.
    ii. Remove from the land, all stock, stored items, machinery and equipment including from inside unit 1 in association with the unauthorised oil processing and storage use.
    iii. Remove from the land, all stock, stored items, machinery and equipment, including from inside unit 3 in association with the unauthorised contractors compound use.
    iv. Remove from the land, all internal walls, glazing etc which forms the squash court, remove the mezzanine floor, pool table, bar fixtures and fittings, changing facilities and all associated seating and tables etc which facilitate the unauthorised leisure uses (unit 4).
    v. Remove from the land all domestically stored items from unit 4, including but not limited to vehicles. Remove garage doors and reinstate barn walls.
    vi. Remove from the land all items associated with the tourism accommodation, including but not limited to bed, furniture, fridge and cooking equipment.
    vii. Demolish the building (unit 1), one marked ‘X’ in the plan accompanying the notice, which in part facilitated the mixed-use of the site.
    viii. Remove all stock, stored items, waste, machinery and vehicles from the shared land marked with blue hatching, on the plan accompanying the notice.
    ix. Dispose of any waste generated by the works to comply with all or any of the steps required by this notice to a site suitable to receive these items.
    x. Reinstate the land to its former condition prior to the unauthorised works commencing.

- The periods for compliance with the requirement are:
    i. One month after this notice takes effect to cease the mixed use.
    ii. Six months after this notice takes effect to undertake the works as set out in steps ii to ix inclusive.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision 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 – The Notice

1. Section 173(1)(a) of the Town and Country Planning Act 1990 (the Act) states 'An enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control'. S173(2) goes on to state that 'A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.' A notice is a nullity if it is 'hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission'[1].

2. The steps under section 5 of the enforcement notice (the notice) refer to Units 1, 3 and 4. The plan attached to the notice does not identify the units and therefore it is not clear on the face of it which units are which. However, on site, the units each have a yellow sign identifying their unit number, eg 'Unit 1'. Consequently, when read in conjunction with what is on the ground, it is sufficiently clear which units the notice is referring to. Were I to find the plan attached to the notice to not be sufficiently clear, the Council have provided a revised site plan identifying the unit numbers. For the avoidance of doubt, I shall substitute the plan attached to the notice with the revised plan.

3. The Council concede that the use taking place in Unit 1 does not involve oil processing. There is no dispute that at the time the notice was issued it was used for storage only. Accordingly, I shall omit the reference to 'oil processing' from the alleged breach of planning control.

4. The plan attached to the notice includes Unit 2 within the land edged red. Therefore, it forms part of the land to which the notice relates. The Council confirm that Unit 2 was not in use at the time the notice was issued and therefore its lawful agricultural use should be included in the overall alleged mixed-use of the site. As the Council do not seek to enforce against the agricultural use of the site, I shall correct the allegation to include agriculture as a component of the mixed-use without causing injustice to any party.

5. S173(9) of the Act states 'An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.'

[1] *Miller Mead v MHLG* [1963] 2 WLR 225

6. Section 6 (i) of the notice states 'One month after this notice takes effect to cease the mixed use.' Whilst it does not explicitly refer to a specific step under section 5, it must relate to step (i) as that is the only step requiring the cessation of the alleged mixed-use. Section 6 (ii) states 'Six months after this notice takes effect to undertake the works as set out in steps ii to ix inclusive.' It is clear this only relates to steps ii to ix. The notice fails to specify a period of compliance for requirement x and therefore misses a vital element that a notice shall include as set out in s173. Accordingly, the notice is defective on its face.

7. Whether or not a defect renders the notice a nullity must be viewed in context and, in particular, the importance or otherwise of that part of the notice which contains it, and whether or not it is "*inextricably bound up with the remainder of the relevant section of the notice or not and whether in its absence, the enforcement notice would otherwise be valid*"[2]. Step x states 'Reinstate the land to its former condition prior to the unauthorised works commencing.' The Council confirm this is a standard requirement they include on enforcement notices and was done so in error with this notice. The requirements of step x are effectively achieved through the requirements of steps i-ix. Accordingly, step x could be deleted without effecting the remaining requirements. Therefore, whilst the lack of a period of compliance for step x represents a defect in the notice, the notice can be corrected by the requirement being deleted entirely. Subject to this correction, it would not result in the defect rendering the notice null. I shall correct the notice accordingly.

8. Step ix of the notice states 'Dispose of any waste generated by the works to comply with all or any of the steps required by this notice to a site suitable to receive these items.' To remedy the alleged breach of planning control, it is irrelevant where the waste is disposed of once it is taken off the appeal site. Therefore, this part of the requirement is not necessary to remedy the breach of planning control. I shall correct it accordingly.

9. The appellant argues the requirements of the notice do not prevent the appellant modifying the mixed-use alleged in the notice by swapping the uses in each unit. However, step i requires the cessation of the mixed-use across the entire appeal site, thus preventing any of the units being used for any of the components of the mixed-use, regardless of which units they take place in. Accordingly, there is no error in the notice in this regard.

10. The appellant also argues the notice does not explicitly state what the lawful use of the site is. However, there is no requirement that an enforcement notice must identify what the lawful use of land or buildings is or what lawful use they must be returned to. Accordingly, there is no error in the notice in this regard.

Appeal B – The ground (b) appeal

11. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the alleged breach of planning control has not occurred as a matter of fact.

12. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) regulations 2002 states an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. There is no requirement that the red line on a

[2] *Oates v SSCLG* [2017] EWHC 2716 (Admin)

plan attached to the notice must relate to a planning unit or encompass the entire planning unit to which the site forms part of.

13. The ground (b) appeal is made on the basis that there are multiple uses taking place on the site, each with separate planning units, rather than a single mixed-use taking place on a single planning unit, as alleged by the Council.

14. *Burdle*[3] established that the planning unit is the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Bridge J suggested three broad categories of distinction: 1) a single planning unit where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) a single planning unit that is in a mixed-use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

15. The appeal site comprises two large, metal-clad sheds; a large yard between the sheds; and, a timber cabin. One of the large sheds (Unit 2) has been extended to create an additional unit (Unit 1). The other shed has been subdivided internally to create Unit 3; a garage; and, a squash court with changing rooms and a seating/bar area. The garage and squash court are known as Unit 4. The timber cabin is located to the north west of Unit 4. Access to Units 1, 2, 3 and the squash court is via the central yard area. The garage is only accessed via the driveway serving The Barn. There is no direct access from the squash court to the garage.

Units 1, 2, 3, 4 and 5

16. The appellant owns the entire appeal site. Units 1, 2 and 3 have been leased out to other businesses at various times. Although the appellant confirms that a formal tenancy agreement was entered into with NSO Oils and Stadco, there is no evidence of such agreements before me. I note the 2021 'Licence to occupy on short term basis' document between the appellant and Mr Collins. However, this document is not signed and ended on 15 December 2022 (section 4.1.1 of the document). Mr Davies confirmed Stadco entered into a formal agreement with the appellant around 2016. However, there is no evidence of this before me. I also note that Mr Roberts confirmed he never entered into such an agreement. As a consequence, there is very limited evidence that these tenants had any legal occupation of the units they were occupying.

17. In terms of the use of the site, although the units are all physically separated internally, there is a functional link between them through the central yard area. The yard is an open space with no parking demarcated. Photographic evidence indicates the land has been used for the storage of items, notably pallets and bins outside Unit 1. In addition, the yard is used for the parking of vehicles associated with the various businesses operating from the site. There is no specific area for parking or loading/unloading, with such activities taking place all over the yard, regardless of which unit such activities are being carried out in association with. Moreover, commercial vehicles are often stored on the yard, which are not associated with any of businesses operating from the units.

[3] *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

18. I note that small industrial estates, whereby each unit is a separate planning unit, may have central parking areas that each business has access to and use of. However, they would typically have demarcated parking spaces, possibly designated to specific units. The central yard area on the appeal site is more of an informal space that cannot clearly be associated with any of the units. I note the argument that the yard could be a separate planning unit in itself. However, it clearly has a functional link with each of the units by providing access to them and being used as an area of parking/storage for them.

19. In addition, there is a functional and occupational link between parts of the site and the units. The appellant occupies Unit 4 as well as occasionally using the yard for the storage of commercial vehicles and occupying units when they are vacant. Furthermore, Mr Roberts has in the past used Unit 1 and 3 at the same time. Units 2 and 3 have both been in use by two businesses at the same time (Unit 2 by Stadco and Stagecraft and Unit 3 by Stadco and Mr Roberts). However, this joint occupation was contained within the individual units and therefore does not support a functional and occupational link across the site.

20. The clearest functional link is that between the tourist accommodation log cabin (Unit 5), the yard, and the squash court and its associated facilities in Unit 4. Visitors to the log cabin would park on the yard and access it by having to go through Unit 4 and exit its back door. Unit 5 contains no bathroom facilities. Visitors would use the toilets and showers in Unit 4.

21. During the Inquiry, the appellant raised the question as to whether the use of the log cabin as tourist accommodation even amounted to a material change of use. This is on the basis of the number of times it had been used as tourist accommodation. The appellant confirmed that it had been used as tourist accommodation approximately 35 times since about 2021. However, there is no evidence before me of any details of bookings or how many days each booking was for. Accordingly, based on the evidence before me, I find that the use of the log cabin for tourist accommodation amounted to a material change of use. Given the functional link the log cabin has to Unit 4 and the central yard area, it forms part of the single mixed-use of the appeal site.

The garage

22. There is no dispute the garage is used by the appellant and his family for domestic activities associated with The Barn. Although it forms part of the same building that also comprises the squash court and Unit 3, the garage is not accessible from them and is not materially used in association with the uses taking place within them. Furthermore, it is not accessible from any other part of the appeal site and is not materially used in association with any of the other uses taking place on the appeal site.

23. Consequently, due to its residential use in association with The Barn and its lack of association with any of the uses taking place within the appeal site, the garage does not form part of any mixed-use taking place within the appeal site, but instead forms part of the separate residential use of The Barn and its planning unit. Therefore, I shall correct the notice to omit the garage from the alleged breach of planning control as part of the mixed-use and include it as a separate breach. I find no injustice would be caused to the appellant in doing this as they have made

the case the garage is lawful under the ground (d) appeal and for its retention under the ground (a) appeal and the deemed planning application.

Conclusion on the ground (b) appeal

24. I acknowledge the argument there are multiple primary uses with their own individual planning units and the appellant's attempt to define these planning units on a plan. However, as a result of the functional and occupational links that I have identified above between the different units and, most crucially, between the units and the central yard area, it is not possible to identify physically separate and distinct units. The only exception to this is the garage that forms part of Unit 4.

25. As a consequence, with the exception of the garage, I conclude from the evidence before me and on the balance of probabilities that the alleged breach of planning control comprising the material change of use to a mixed-use development comprising storage, contractors compound, tourist accommodation, squash court and other leisure/tourism facilities and agriculture has occurred.

26. The ground (b) appeal therefore fails.

Appeal B – The ground (c) appeal

27. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.

28. The ground (c) appeal is made on the basis that the log cabin is used as ancillary accommodation to the main dwelling by the appellant's son. However, the appellant also confirms that the log cabin has also been used as tourist accommodation and has been rented out on approximately 35 occasions and concedes that planning permission would be required for such a use. Although it was argued that it may not have been used for tourist accommodation for more than 28 days per year and therefore may not have needed planning permission, there was no evidence presented to support this contention.

29. Based on the evidence presented to me, on the balance of probabilities, the use of log cabin as tourist accommodation was a material change of use that requires planning permission. As planning permission has not been granted for the use of the log cabin for tourist accommodation, it represents a breach of planning control.

30. The ground (c) appeal fails.

Appeal A and Appeal B – The LDC appeal and the ground (d) appeal

31. The onus is on the appellant to demonstrate that at the time the notice was issued it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. The relevant period of immunity from enforcement action in respect of Appeal A is 10 years prior to the date of the LDC application and in respect of Appeal B it is 10 years prior to the date of the notice being issued. The ground (d) appeal for Appeal B relates to the whole of the appeal site, whereas Appeal A relates to Unit 2 only.

32. As I have found above, there is a single mixed-use of the site comprising storage, contractor's compound, tourist accommodation, squash court and other leisure/tourism facilities and agriculture. The appeal site has evolved over the years with different components of the mixed-use being introduced at different times. Each time a new component is introduced and involves a material change of use, a new mixed-use will have commenced and therefore the clock restarts in respect of the period of immunity as it would be a different use[4]. The crux of the matter is whether there has a been a single mixed-use taking place on the appeal site for a period of 10 years, without the mixed-use materially changing to another mixed-use.

33. The appellant bought the appeal site in 2001. Its use at the time was agricultural. Unit 2 was granted planning permission in 2008[5]. This application was made retrospectively. The description of the development was 'Storage shed' and the use as 'Farm Storage'. As the application was made retrospectively, regardless of the appellant's arguments, it seems to me that it must have been in agricultural use at the time the application was made. For the same reason, it cannot be argued that the application was not implemented. Upon its completion, on the basis that the building was granted planning permission for an agricultural use, the use of the site in 2008 remained agricultural.

34. In 2009, Mr Roberts and Stadco both occupied unit 3 for storage purposes. This created a mixed-use of the site comprising agriculture and storage. The Council argue that when Mr Roberts commenced operating his scaffolding business from Unit 3 in 2011, its use materially changed from storage to a contractor's compound.

35. Mr Roberts confirmed that he used Unit 3 to store scaffolding and vehicles associated with his scaffolding business. He would visit the site to collect scaffolding to take and erect on site and then return it to the unit when it was no longer needed on site. There is no evidence of the unit being used for any office purposes associated with the scaffolding business. Furthermore, although Mr Roberts stated vehicles may have occasionally been maintained on site, this typically involved washing them, rather than mechanical maintenance. On this basis, I find that Mr Roberts' use of Unit 3 was for storage use only and not a contractor's yard. I shall amend the notice accordingly to omit 'contractors yard' from the allegation. Therefore, in 2011, the mixed-use of the site remained composed of agriculture and storage.

36. In 2012, the appellant constructed the squash court. Ms Eryl Thomas confirmed that she was invited to use the court by the appellant in December 2012. She remembered this as Oswestry Leisure Centre had closed in 2011 and the squash court she had since been using in Llanfyllin Leisure Centre was closed over the Christmas period. Similarly, Mr Davies recalls the squash court being constructed around this time as he remembers being on holiday in Florida that year, looking forward to using the court when it was completed.

37. I note the Council's argument that evidence suggests the court was completed in 2014 as that is when the appellant sought to have the business rates on the building changed, which effectively halved his business rates. However, given the

[4] *Beach v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 381
[5] Council reference: 08/15595/FUL

evidence from Ms Thomas and Mr Davies, I accept the appellant's contention that this was merely an oversight on his behalf.

38. On the balance of probabilities, the squash court was completed in 2012. However, there is a question as to whether its use materially changed from personal, private use to a leisure facility.

39. Upon its completion in 2012, the court was initially used by the appellant and family and friends. However, the appellant introduced an online booking system in around 2015 because it became too much taking bookings over the phone, usually via text.

40. The fact an online booking system had to be introduced suggests the squash court had transitioned from more than simply being in personal use for friends and family. Indeed, the appellant and Mr Davies confirmed users of the court are often friends of friends, people introduced to them by users of the court. Moreover, although a membership fee is not paid, albeit an attempt was made to introduce one in 2017, users of the court are described as 'members', with there being 12-14 members playing on a regular basis, a further 30 that play less regularly and approximately 100 other names on the system that are dormant accounts. In addition, it is referred to as a club and even has a name - Seven2 Sports. Furthermore, members have to pay £1 for the use of electricity and also pay for refreshments from the bar area. All of this goes beyond what would typically be described as personal, private use.

41. As a consequence, whilst the squash court may well have been in personal, private use upon its completion in 2012, the significant increase in the number of users; the introduction of the online booking system; the charging of users for electricity and refreshments; and, its operation as a club with a name resulted in a material change of use to that which is more akin to a sports club leisure use. This material change of use likely occurred around 2015 when it was necessary to introduce the online booking system.

42. The fact the online booking system is not open to the public is not a determinative factor. This is no different to a commercial gym offering fitness classes that can only be booked online if one is a member. Whilst the club is not run for commercial reasons, ie. the appellant does not seek to make money from it, that does not preclude it from being a leisure use.

43. Based on the evidence before me, the completion of the squash court in 2012 and its personal, private use introduced a new component to the existing mixed-use of the site, creating a new mixed-use comprising agricultural, storage and residential. The residential component is on the basis that the squash court was used incidental to the dwelling, The Barn. There was then a further material change of use of the appeal site in 2015 when the use of the squash court transitioned to a leisure use. Thus, the clock restarted once more as a new mixed-use was created, comprising agricultural, storage and leisure.

44. There is some dispute as to when Unit 1 was constructed. The appellant contends it was constructed in 2016. However, a photograph dated 22 March 2017 clearly shows the extension is not complete, as is does not appear to have its metal clad exterior at that time. A planning application was submitted for Unit 1 on 26 January 2017. Although the application was subsequently withdrawn/not validated, the description of the proposal on the application form is 'Erection of an

extension to an existing agricultural building' and the question 'Has the building…already started?' was answered with 'No'. Moreover, the existing use is described as 'Agricultural storage yard'.

45. Based on the evidence before me, Unit 1 was completed at some point in 2017. The appellant argues that Mr Roberts was the first to use Unit 1 immediately after it was constructed. However, Mr Roberts confirmed he did not occupy Unit 1 until 2019. Therefore, there is little evidence to suggest the building was used for storage between its completion in 2017 and its first occupation by Mr Roberts in 2019. However, this is an academic point as I have found that Unit 1 forms part of the mixed-use taking place on the site. What remains to be considered with regard to Unit 1 is whether the building itself is operational development immune from enforcement action.

46. It was held in *Murfitt*[6] that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the enforcement notice may require that the 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach is remedied. The Court of Appeal's judgment in *Caldwell*[7] clarifies the approach to be taken where the Council seeks to take action against a material change of use and, through the requirements, seeks to remove operational development that it alleges to have facilitated the unauthorised use. It was held that the *Murfitt*[8] principle did not apply in circumstances where the operational development is itself the source of or fundamental to the relevant change of use. In particular, the principle does not extend to works that are more than merely ancillary or secondary and are instead fundamental to or causative of the change of use itself. Operational development carried out "in its own right", or "fundamental to or causative of" the change of use is not "ancillary" to, "secondary" to, "associated with" or "facilitative only of" that change of use, so falls outside the principle in *Murfitt*.

47. As I have found above, the storage component of the mixed-use of the appeal site was introduced prior to the erection of Unit 1 in 2017. Therefore, it cannot be said that the erection of Unit 1 was causative of a material change of use of the site. Unit 1 was used for storage, which already formed a component of the mixed-use of the site. Therefore, it merely facilitated the existing storage component. Consequently, in accordance with the judgments of *Murfitt* and *Caldwell*, the notice can require the removal of Unit 1.

48. The appellant confirmed under oath that the tourist accommodation began operating in approximately 2021. It is argued that, due to its scale and the infrequency of its use, the tourist accommodation would not result in a material change of use of the mixed-use of the site. Whilst the footprint of the log cabin is only a minor part of the planning unit, the use extends beyond the log cabin. Guests would park in the central yard. They would then access Unit 4 and walk through it to gain access to the log cabin. As the log cabin contains no toilet or bathroom, guests would have to use those facilities in Unit 4. Moreover, as seen in the online details of the accommodation, the response to an enquiry asking 'What is shared in all this?' the answer given is 'The bar and toilets with the squash club'. Furthermore, photographs on the same webpage include the bar

[6] *Murfitt v SSE [1980] JPL 598*
[7] *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467
[8] *Murfitt v SSE [1980] JPL 598, Somak Travel v SSE* [1987] JPL 630

area and squash court. This indicates that the bar area and squash court in Unit 4 are also available for use by the guests. Therefore, the tourist use is not contained solely within the log cabin.

49. I note the appellant's statement that the log cabin was only rented out on approximately 35 occasions. However, due to the lack of evidence as to how many days this covered over the period it was in such use, it has not been sufficiently demonstrated that the frequency of its use was insignificant compared to the other components making up the mixed-use.

50. Overall, the tourist accommodation extending beyond the confines of the log cabin, notably throughout Unit 4 and the central yard area, and the frequency of its use was significant enough for a material change of use of the planning unit to occur in 2021 to a mixed-use comprising agricultural, storage, leisure and tourist accommodation. As the introduction of the tourist accommodation created a new mixed-use of the appeal site, the clock restarted. Accordingly, it is evidently clear that the mixed-use has not been taking place for a period of 10 years prior to the notice being issued or the LDC application being made.

The garage

51. As I have found the garage contained in Unit 4 does not fall within the same planning unit as the single mixed-use taking place across the remainder of the appeal site, I shall now consider whether the garage is lawful.

52. The appellant argues the garage was constructed in 2001. In support of this is a letter from 'Graysam Construction' indicating that work on the construction of the garage was started in 2000 and finished in 2001. The details of the letter are limited, and its author was not made available as a witness during the inquiry. This reduces the weight I can attribute to it. However, the garage sits beneath the bar area of the squash court. Given the internal layout of Unit 4, it would be impractical to construct the squash court in its current position, effectively in the middle of Unit 4, leaving a vacant space to the rear (where the garage is). Therefore, the garage was most likely constructed before or, at the very latest, at the same time as the squash court in 2012. Therefore, based on the evidence before me, on the balance of probabilities, the garage was completed at least 10 years prior to the issuing of the notice.

Conclusion on the LDC appeal and the ground (d) appeal

53. I find therefore, the ground (d) appeal succeeds insofar as it relates to the garage contained within Unit 4. However, in respect of the remaining ground (d) appeal, it has not been demonstrated that the mixed-use taking place on the site, or any previous mixed-use I have identified, has been taking place for a period of 10 years or more prior to the issuing of the notice. The ground (d) appeal in respect of the mixed-use as alleged therefore fails. For the same reasons, as Unit 2 falls within the same planning unit and single mixed-use, the LDC appeal also fails.

Appeal B - The ground (a) appeal

Preliminary matter

54. The appellant confirms they do not seek planning permission for the use of the log cabin for tourist accommodation. Also, as a result of my finding on the ground (d)

appeal, the garage is lawful due to it no longer being immune from enforcement action.

55. Accordingly, the ground (a) appeal proceeds on the basis that planning permission is sought for a mixed-use development comprising storage, squash court and other leisure/tourism facilities, agricultural and associated operational development.

Main issues

56. The main issues are as follows:

- Whether the location of the development is suitable, having regard to the Council's growth strategy;
- The effect of the development on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance and odour; and
- The effect of the development on highway safety.

Location

57. Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015 sets out the settlement hierarchy for Shropshire. Policy CS3 of the Shropshire Council Adopted Core Strategy (CS) 2011 states that the Market Towns and other Key Centres will maintain and enhance their roles in providing facilities and services to their rural hinterlands and that balanced housing and employment will take place within the towns' development boundaries

58. The appeal site is located in the hamlet of Woolston, outside any of the named settlements in Policy MD1 and CS3. For the purposes of the development plan, Woolston is located within the countryside.

59. Policy CS5 of the CS allows new development in the open countryside only where it maintains and enhances countryside vitality and character and improves the sustainability of rural communities. The policy provides a list of particular development that it relates to including small-scale new economic development diversifying the rural economy, including farm diversification schemes. There is no dispute the development is not a farm diversion scheme. Nevertheless, farm diversification schemes are only given as an example. Other small-scale new economic development diversifying the rural economy are also acceptable.

60. The indent below the second bullet to Policy CS5 states that for such development applicants will be required to demonstrate the need and benefit for the development proposed. It goes on to state that development will be expected to take place primarily in recognisable settlements or be linked to other existing development and business activity where this is appropriate. Given the first bullet of CS5 relates to development diversifying the rural economy, the needs and benefits must be considered in the context of the rural economy. This does not extend to the needs and benefits of the town of Oswestry as that is clearly not part of the rural economy. If it did, then that would entirely undermine the purpose of CS5.

61. In terms of need for the storage use, there is no evidence before me of what the current provision of storage units in the locality is. Moreover, Unit 2 is currently vacant and Unit 3 is largely underutilised. Which suggests the need is not so great; if it was, then surely they would be occupied/utilised more. Nevertheless, I accept the issuing of the notice that is the subject of this appeal would dissuade a new occupier until the matter is resolved. Accordingly, I attribute the vacancy of Unit 2 and the largely underused Unit 3 limited weight.

62. Notwithstanding the above, the town of Oswestry is only a short journey away form the appeal site. There is no evidence to indicate why any need in the locality of Woolston and its immediate surroundings could not be accommodated in Oswestry. Even taking into consideration the only storage business currently operating from the site, NSO Oils, it would be highly unlikely that the needs of the business require it to be located on the appeal site. Given its proximity to Oswestry, it is reasonable to conclude that any locational need the business does have could equally be met in Oswestry.

63. In terms of the benefits of the storage use, these are not restricted to solely jobs. They can include the payment of business rates; provision of storage facilities to meet market demand; and, enabling businesses to expand. Taking these into consideration, given the nature of businesses that occupy storage units, the number of people they employ would be limited. Moreover, with the exception of the appellant, who lives adjacent to the site, there is no evidence of any of the businesses employing anyone from Woolston or the surrounding locality. Therefore, there is little evidence of job creation benefitting the rural economy. Whilst employees may live in Oswestry, Oswestry is a town and therefore does not form part of the rural economy which the development must be considered against under Policy CS5.

64. Business rates would be paid to the Council and whilst some of this would have a positive benefit to the rural economy through things such as road maintenance, the same benefits would be achieved if the businesses were located elsewhere in Shropshire.

65. The storage units allow smaller businesses to expand. Indeed, that has been seen on the site with Mr Roberts and Stadco moving between different units. However, prior to the occupation of the site, there is no evidence that Mr Roberts's business and Stadco were operating in the locality. They moved into the units from further afield. Furthermore, there is no evidence of businesses operating in the locality requiring a unit to expand into.

66. As I have identified above, there is very little evidence of the need for the storage units in this locality. Therefore, it cannot be said there is a need to meet market demand, particularly in this locality. Moreover, it is not possible to say the storage is cost-effective as there is no evidence before me of the cost of other storage units in the area to compare it against.

67. The National Planning Policy Framework (the Framework) promotes the provision of storage and distribution at a variety of scales. However, that is on the basis that it is in suitably accessible locations. Furthermore, paragraph 88 of the Framework supports a prosperous rural economy and sets out four areas of development that planning policies and decisions should enable. However, again this is not to be

read in isolation but in the context of the development being in a suitable location, as set out in the development plan.

68. Given the above, there is very little evidence of the need for the storage units in the locality. Moreover, the benefits it provides to the rural economy are very limited. Therefore, the needs and benefits of the storage development in this location have not been sufficiently demonstrated and therefore does not satisfy Policy CS5.

69. With regard to the leisure use, Policy CS5 permits sustainable rural tourism and leisure and recreation proposals which require a countryside location, in accordance with Policy CS16 and CS17. Put simply, a squash court does not require a countryside location. Squash is an indoor sport and does not require a large open space. It can quite comfortably be located within a relatively small building, as seen on the appeal site. Whilst one can of course find squash courts in a countryside location, that does not equate with them needing to be in a countryside location. Accordingly, the leisure use does not satisfy Policy CS5.

70. Policy CS16 of the CS supports schemes aimed at diversifying the rural economy for leisure uses that are appropriate in terms of their location, amongst other things. However, it must be read in conjunction with bullet 6 of Policy CS5, ie, development considered under bullet 6 of Policy CS16 must first be found to require a countryside location. As a squash court does not require a countryside location, it is therefore not supported by Policy CS16.

71. Similarly, although Policy CS13 of the CS supports the diversification of the rural economy; Policy MD4 of the SAMDev supports employment development; and Policy MD11 of the SAMDev supports leisure development, these are also subject to compliance with Policy CS5. As the proposal fails to satisfy Policy CS5, it must also fail to satisfy these policies.

72. I find therefore, the development is not located in a suitable location, having regard to the Council's growth strategy and therefore fails to comply with Policies CS3, CS5, CS13 and CS16 of the CS, as well as Policies MD1, MD4 and MD11 of the SAMDev. It would also fail to accord with the Framework's objective of supporting economic growth in suitable locations.

Living Conditions

73. The appeal site is located within proximity of a cluster of several residential properties. There is no concern raised regarding the effect the leisure use has on the living conditions of neighbouring residents.

74. The storage units do not contain any heavy plant or machinery. They are generally large, open units used to store goods with little activity taking place inside them.

75. However, the storing of goods requires the process of loading and unloading them. This involves large lorries accessing and manoeuvring within the site, most likely with reversing warnings making a noise. Unloading/loading the goods from/onto the lorries could utilise a forklift truck, itself making warning noises when moving around the site. In addition, with regard to the scaffolding business, the loading/unloading of trucks would likely generate noise through the clattering of metal poles when dropped or moved about. The potential for such activity to be

taking place from 3 units (1, 2 and 3) at the same time would likely create a significant amount of noise.

76. Whilst the noise generated by these activities may not be significant in the context of an industrial estate in an urban setting, the appeal site is in a rural setting, where the noise would likely be more discernible against the peaceful backdrop. Such noise would likely have a significantly harmful effect on local residents, unduly disrupting their peacefulness.

77. It is argued the use of the site for agricultural purposes would generate some noise. However, that noise would not be akin to the noise generated by the storage uses taking place on the appeal site and certainly not to the same intensity. Moreover, in a rural setting noise generated by a tractor or animals is less likely to be discernible than noise generated by a lorry or forklift truck.

78. I note the scaffold business no longer operates from the site. However, that is not to say it would not restart or that a similar business would not move on to the site.

79. Noise generated at night could be sufficiently mitigated through appropriately worded conditions limiting the hours of operation. However, that would not mitigate unacceptable noise generated during the daytime.

80. The Council also state the development generates unacceptable odour caused by the storage of oil. During my site visit I detected only a faint smell of odour when inside Unit 1, within proximity of the oil containers. However, outside the unit this was entirely unnoticeable. There is no substantive evidence that the odour would have any unacceptable effect on the living conditions of the occupants of neighbouring residential properties.

81. Although the Council's Environmental Health Officer has made no formal comment on the development and there is no record of them being consulted, that does not mean no harm exists. I have based my consideration on the evidence before me, which indicates there would be unacceptable noise that would be harmful to the living conditions of neighbouring residents.

82. I find therefore, the development has a significantly harmful effect on the living conditions of the occupants of the neighbouring residential properties, with regard to noise. As such, it fails to comply with Policy CS6 of the CS, which seeks to protect residential amenity.

83. The Council also rely on Policy CS17 and Policy MD2 of the SAMDev of the CS. However, neither of these has regard to living conditions of neighbouring residents and are therefore not relevant in the context of this main issue.

Highway Safety

84. The appeal site is accessed via single-lane, narrow, rural roads. Woolston Road is a narrow lane with very few opportunities for vehicles to pass each other. The entrance to the appeal site's yard area is wide, allowing good visibility in both directions. However, photographs of the yard indicate that at times it can be in heavy use by lorries loading/unloading at their respective units, preventing vehicles from accessing/egressing the site in a safe manner. In particular, if vehicles were loading/unloading outside units 1, 2 and 3 simultaneously, it would be very difficult for another vehicle, for example a large lorry, to safely turnaround within the site to exit in a forward gear. This could potentially result in vehicles

reversing onto the highway to exit or having to wait on the highway until other vehicles move. This could unduly prevent the free-flow of traffic along Woolston Road.

85. Added to this, members of the squash court also park on the yard, increasing the number of vehicles moving within the site and thus exacerbating the potential for conflict between site users.

86. I have considered the suitability of imposing conditions relating to the layout of the carpark, which could potentially address some of these concerns. However, in the absence of any detail of how many traffic movements the development could potentially generate or an indication of how the car park could be arranged, I am not satisfied that such conditions would be appropriate. There is no evidence before me that the yard could adequately accommodate the necessary parking provision and turning space to ensure there would be no unacceptable risk to highway safety.

87. I acknowledge the Local Highway Authority have not made any formal comment on the development. Nevertheless, I have been able to make my own assessment based on the evidence before me.

88. Furthermore, I note there are other commercial units within the locality that utilise large lorries. However, there is no evidence before me of the scale of these businesses and how many vehicle trips they generate compared to the appeal site. Accordingly, I attribute this very limited weight.

89. I find therefore, the development unacceptably harms highway safety, contrary to Policies CS6 and CS7 of the CS, which seek to promote highway safety.

Planning Balance

90. The appeal site has been occupied by various businesses over the years and therefore has provided some benefit to the local economy during this time. Moreover, the leisure use provides its users with an opportunity to exercise and improve their well-being. However, individually or cumulatively, these benefits do not outweigh the significant harm the development has by way of its unsuitable location; harm to the living conditions of the occupants of neighbouring residential properties; and, harm to highway safety.

Conclusion on the Appeal B ground (a) appeal and the deemed planning application

91. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and deemed planning application. Therefore, the Appeal B ground (a) appeal and the deemed planning application fails.

Appeal B - The ground (f) appeal

92. This ground of appeal 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.

93. As I have found under the ground (d) appeal, Unit 1 facilitated the existing storage component of the single mixed-use. Consequently, in accordance with the judgments of *Murfitt* and *Caldwell*, the notice can require the removal of Unit 1. Therefore, the steps requiring the removal of Unit 1 do not exceed what is necessary to remedy the breach of planning control.

94. Similarly, an enforcement notice that is directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place[9]. The mezzanine floor, internal walls etc that are required to be removed under requirement iv of the notice are all part and parcel of/facilitate the leisure use. Accordingly, their removal does not exceed what is necessary to remedy the breach of planning control. For the same reasons, the removal of vehicles and equipment from the land also does not exceed what is necessary to remedy the breach of planning control.

95. The notice does not seek the removal of the log cabin, only for its use as tourist accommodation to cease. The removal of the facilities in Unit 4, eg showers and toilets, would prevent the use of the log cabin as tourist accommodation as it contains no such facilities. Therefore, the removal of the bed, furniture, fridge and cooking equipment would not be necessary. Accordingly, I shall omit requirement vi.

96. I find therefore, the ground (f) appeal succeeds insofar as it relates to the contents of the log cabin. However, it fails in respect of the remaining matters.

Appeal B - The ground (g) appeal

97. This ground of appeal is that the period for compliance is unreasonably short.

98. Unit 2 is currently vacant and Unit 3 has very little stored in it. Furthermore, the appellant confirms Unit 4 could be cleared within 6 months. Therefore, it is likely that the requirements of the notice in respect of these units could be complied with within the periods of compliance set out in the notice.

99. Although the appellant contends there is a formal lease with the occupants of Unit 1, no such evidence is before me. Therefore, I cannot be certain how long is left on the lease, or how much notice the tenant needs to vacate the premises. Similarly, there is no evidence from the tenant as to how much time they would need to comply with the requirements of the notice. As the burden of proof is upon the appellant, it has not been sufficiently demonstrated that the requirements of the notice in respect of Unit 1 could not be complied with within the periods of compliance.

100. I find therefore, the ground (g) appeal fails.

Formal Decision

Appeal A

101. The appeal is dismissed.

[9] *Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630

Appeal B

102. It is directed that the enforcement notice is varied and corrected by the following:

- The deletion of section 3 of the notice and substitute the following:

  "Without planning permission:

  i Material change of use to a mixed-use development comprising storage, tourist accommodation, squash court and other leisure/tourism facilities and agricultural, and associated operational development; and,

  ii Material change of use to a residential garage."

- The deletion of requirement i under section 5 and substitute the following:

  "To cease the use of the land for mixed-use namely, storage, tourist accommodation, squash court and other leisure/tourism facilities and agricultural."

- The deletion of requirements v, vi and x under section 5.

- The deletion of the words "to a site suitable to receive these items." from requirement ix under section 5.

- The deletion of the plan attached to the notice and substitute it with the plan contained in Appendix A attached to this decision.

103. Subject to the corrections, 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.

A Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sioned Davies, counsel for the appellant.

They called:

David Cadwallader, the appellant

Neil Davies, Plant Manager for Marrill Limited

Lee Roberts, tenant

Richard Corbett, Roger Parry & Partners LLP

FOR THE LOCAL PLANNING AUTHORITY:

Piers Riley-Smith, counsel for the Council.

They called:

Emma Green, Interim Planning Manager, Shropshire Council

Sara Robinson, Planning Officer, Shropshire Council

INTERESTED PARTIES:

Linda Jordan, neighbouring resident

INQUIRY DOCUMENTS:

1. Marrill (Powys) Limited purchase orders, submitted by the appellant

2. Purchase order data information for POP43326, submitted by the appellant

3. Revised plan to accompany notice, including unit numbers and tourist accommodation, submitted by the Council

4. Proposed amended breaches reflecting potential separate planning units, submitted by the Council

5. Inspection Feedback Form of visit carried out by Mary Edge on 15 May 2015, submitted by the Council

Appendix A – Substituted plan attached to the Enforcement Notice