The Planning Inspectorate

Room 3B
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5433
Customer Services:
0303 444 5000

Email:
teame2@planninginspectorate.gov.uk

www.gov.uk/planning-inspectorate

Wiltshire Council
Planning Appeals
Monkton Park Office
Chippenham
Wiltshire
SN5 1ER

Your Ref:
Our Ref: APP/Y3940/C/18/3193744
Further appeal references at foot of letter

26 September 2019

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeals by Mrs Susan Howe, Mr Simon Howe
Site Addresses: Land at and adjacent to Appleford, Thornhill, Royal Wootton Bassett, Wiltshire, SN4 7RX and Appleford, Thornhill, Royal Wootton Bassett,

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

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Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/

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Yours faithfully,

Craig Maxwell
Craig Maxwell

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Linked cases: APP/Y3940/C/18/3193745

The Planning Inspectorate

Appeal Decisions

Inquiry opened on 26 February 2019
Site visit made on 19 July 2019

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

Appeal A: APP/Y3940/C/18/3193744
Appeal B: APP/Y3940/C/18/3193745
Land at and adjacent to Appleford, Thornhill, Royal Wootton Bassett, Wiltshire, SN4 7RX.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Susan Howe (Appeal A) and Mr Simon Howe (Appeal B) against an enforcement notice issued by Wiltshire Council.
- The enforcement notice, numbered 15/00498/ENF, was issued on 23 October 2017.
- The breach of planning control as alleged in the notice is: Without planning permission the unauthorised material change of use of the Land from a residential and equestrian use to a mixed use for residential, equestrian and the use of the Land for driver vehicle training including theory and practical driver training and the stationing of vehicles associated with this use; and b) the unauthorised development of a gravelled hard surface area being used for ancillary parking associated with the unauthorised use.
- The requirements of the notice are: a) The cessation of the use of the land for driver vehicle training, including both theory and practical training purposes; (b) The cessation of the use of the land for the stationing of all vehicles associated with the use of the land for driver vehicle training; (c) Remove all vehicles, plant and equipment associated with the unauthorised use of the land; (d) Excavate the unauthorised gravelled hard surface marked cross hatched on the attached plan and remove all resultant materials from the land; and (e) Reinstate the land levels in the cross hatched area on the attached plan to match the land levels on the immediately adjacent land using top soil and sown with rye grass seed.
- The period for compliance with the requirements is 4 months.
- Appeal A 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, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered. Appeal B is proceeding on grounds (b), (c), (d), (f) and (g).

Decisions

1. I direct that the enforcement notice be varied by deleting from Section 5 the words "c) Remove all vehicles, plant and equipment associated with the unauthorised use of the land." and by the substitution of 6 months as the period for compliance. Subject to these variations I dismiss the appeal, uphold the enforcement notice, and, in respect of Appeal A, refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. At the Inquiry an application for costs was made by Mrs Howe against Wiltshire Council. This application is the subject of a separate Decision.

Reasons

Grounds (b) and (c) – both appeals

3. The land the subject of the notice comprises a residential bungalow and gardens, a sizeable vehicle parking and manoeuvring area alongside and about 4ha of land used for equestrian purposes. The basis of an appeal on ground (b) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, the matters have not occurred. In this case it is not disputed that each of the constituent uses of the mixed use have occurred, rather it is argued that each individual primary use is occurring in its own planning unit, and hence the mixed use has not occurred.

4. The "planning unit" is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use, and the concept of a mixed use is one of two or more primary uses existing within the same planning unit. The judgment in *Burdle v. Secretary of State for the Environment (1972)* established the test that within common ownership, it is only possible to identify a separate planning unit where there is a functional or physical separation of activity". In this case the equestrian activities are mainly carried out on the open land with associated facilities including a manège, and most of the residential activities are likely to occur within the dwelling and its curtilage. However, the parking and manoeuvring area which forms the focal point of the driving school activities is also integral to the equestrian and residential uses, and indeed some, if not most, of the vehicles based there have some element of dual use, driving school/equestrian or driving school/residential, while the dwelling, on the evidence provided, clearly functions as a base for both the equestrian and driving school activities. In short, and notwithstanding that the equestrian use benefits from a distinct planning permission, there is not clear functional and physical separation of activity on the site. As a matter of fact and degree I find that the appeal site is the most appropriate planning unit against which to assess the materiality of change in this instance, and all three primary uses occur on it, comprising the mixed use. The appeal on ground (b) fails accordingly.

5. An appeal on ground (c) is that that the matters enforced against, if they occurred, do not constitute a breach of planning control. The argument put forward under this ground is that the equestrian use should not be included in the mixed use enforced against. Much of this argument concerns the identification of the planning unit, but I have found that all 3 uses comprised in the mixed use as described are occurring in the same planning unit. It is well established that in mixed use cases, the allegation should refer to all the components of the mixed use, even if it is considered expedient that only one should cease. In the case of *R (oao) East Sussex CC v SSCLG [2009] EWHC 3841 (Admin)*, it was held that where there is a single mixed use it is not open to the Council to decouple elements of it. The use of the site is the single mixed use with all its component activities. The appeal on ground (c) cannot therefore succeed.

Ground (d) – both appeals

6. This ground is that it is too late to take enforcement action. By reference to section 171B(3) of the 1990 Act, the period after which no enforcement action can be taken is 10 years. For the ground (d) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the material change of use to the mixed use described in the notice commenced at least 10 years before the date the local planning authority had taken or purported to take enforcement action in respect of that breach, and that it was sustained for a continuous 10 year period. The notice the subject of this appeal was issued on 23 October 2017, but an earlier notice had been issued on 26 September 2017 and subsequently withdrawn due to an error on the plan. Both notices were aimed at the same breach of planning control, and hence the second notice can be considered as a "second bite" notice (section 171B(4)(b), the effect being that the breach must have commended on or before 26 September 2007.

7. Mrs Howe moved to Appleford in late 1999. She qualified as a driving instructor in 2000 and her accountants at the time confirm that she traded from Appleford as a self-employed driving instructor from 28 February 2000 (currently Sue's Driving School [SDS]). When she moved to Appleford she owned land nearby on which she kept horses and some horse related vehicles, a horsebox lorry, a car and trailer and an articulated trailer. In 2001 she sold the nearby land, having purchased the 4ha around Appleford, and moved the equestrian vehicles to Appleford. Her evidence is that she had been giving lessons using those vehicles, and continued doing so when she based them at Appleford, along with car driving lessons.

8. Notwithstanding the arguments made on grounds (b) and (c), it is not disputed that a driving school use, as a primary use, exists at the appeal site. The difference between the appellants and the Council concerns when that use actually commenced. The appellants assert that the current use is materially the same as that operating from the site since 2000, whereas the Council considers that up until about 2011 driver training was incidental to the occupancy of Appleford as a single dwellinghouse.

9. Up until about 2011 Mrs Howe was the sole instructor and the vehicles she kept on the site, normally one car, one 4 wheel drive and one lorry horsebox, were available for uses other than driver training. Up to 2012 evidence of vehicle insurance specifically covering driver training, and evidence of the fitting of dual controls, was only provided for cars, and car driving lessons generally involved picking up the trainees from their home. A number of witnesses gave evidence of being given driving lessons in horsebox lorries or 4WD+trailer in the period, but these were relatively few. The earliest driver insurance document that appears to cover a horsebox lorry for training dates from May 2012. Diary entries From April 2007 to March 2010, and then balance sheets to March 2013 indicate increasing frequency of LGV lessons, but prior to September 2007 these were infrequent.

10. Immediate neighbours in Thornhill gave evidence that while they knew Mrs Howe was a driving instructor, they did not become aware of driver training, and specifically training in LGVs, operating from the appeal site before 2011. From about 2011 they noticed people coming to Appleford and being trained on lorry driving, some aspects of which took place within the vehicle parking area.

Mr Harris, who was married to Mrs Howe and lived at Appleford until late 2008, gave evidence that the horse transporter lorries at Appleford were used for private use only in the time he was there, and that SDS provided car lessons only. His evidence was challenged on the basis of having an 'axe to grind', and it appears to conflict with other testimony of the horsebox lorries being used for lessons in the period he lived there. However, I found Mr Harris' evidence to be honest and straightforward, and inconsistencies with other evidence can be attributed to him simply not being aware that some tuition was taking place due to a combination of his night work pattern, estrangement from his wife and what I consider, on the balance of probabilities, to have been infrequent use of the horsebox lorry for driver training.

11. As the Planning Practice Guidance advises, planning permission is not normally required to home work or run a business from home provided that a business does not result in a material change of use of a property. There is no statutory definition of 'material change of use', it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree. Operating a single instructor driving school business from a residential property where students are picked up from elsewhere does not have a significant impact on the use of the land in planning terms. The LGV training model used by SDS involves students attending the property and having introductory tuition there, which is a more significant business use of the property and one has the potential to have detrimental impacts on the living conditions of neighbours by way of noise and disturbance, along with a different level and pattern of vehicle movements compared to what would normally be associated with the use of the site for equestrian and residential purposes.

12. Up until about 2011 I consider, on the balance of probability, that while there was some LGV training conducted from the property, this was relatively infrequent and not sufficient, in combination with the use as a base for car lessons, to amount to a primary use of the land. The evidence suggests that there was a significant shift in the operating model in or around 2011-2013 when Mr Howe joined Mrs Howe as a driving tutor. LGV training became predominant, and vehicles whose sole purpose was driver training were brought onto the site. The level of activity on the site related to the driver training use increased significantly in this period such that it amounted to a significant change in the character of the use of the land. As a matter of fact and degree I consider, on the balance of probabilities, that the use of the land as a base for driver training became a primary use sometime in the period 2011 to 2013. It follows that the mixed use enforced against could not have subsisted for 10 years before the notice was issued in 2017, and the appeal on this ground must fail accordingly.

Appeal A - Ground (a) and the deemed planning application

13. This ground is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The main issues arising are:

- The impact on the living conditions of neighbours in terms of noise and disturbance;
- The effect on the character and appearance of the area;

- The effect on highway safety and the convenience of other users; and
- Whether the site location and use accord with the development plan.

14. The development plan for this part of Wiltshire includes the Wiltshire Core Strategy 2015 (WCS) and the saved policies of the North Wiltshire Local Plan 2011 (NWLP). Relevant policies include Core Policies 1 and 2, which support housing and employment developments in appropriate settlements and restrict development outside defined limits, while Core Policy 19 sets out the spatial strategy for the Royal Wootton Bassett and Cricklade Community Area, which contains the appeal site. Core Policy 34 sets out the approach to development outside designated settlements. Non-agricultural rural based businesses are expected to be within or adjacent to Large or Small Villages and, among other things should meet sustainable development objectives and not adversely affect the surrounding area or detract from residential amenity. NWLP Policy NE18 aims to ensure that development does not emit excessive noise. Core Policy 51 aims to ensure that development protects landscape character, while Core Policy 57 expects a high standard of design that is complementary to the locality. Core Policy 60 aims to encourage sustainable transport by, among other things, planning developments in accessible locations, Core Policy 61 expects new development to be located and designed to reduce the need to travel, especially by private car, while Core Policy 62 requires new development to assess related transport issues. Core Policy 67 seeks to manage flood risk.

15. Policies in the National Planning Policy Framework are important material considerations.

Neighbour impact

16. The vehicle parking area at Appleford is a gravelled area adjoining the rear gardens of 2 neighbouring properties. It is on higher ground and bounded by close boarded fencing where it is close to the neighbouring dwellings. The occupants of these properties have complained about noise disturbance from the parking and use of large vehicles used for driver training. Assessments of the noise environment and the impact of driver training were carried out for the appellant by Mr Cant and his reports were reviewed by Mr Nunes for the Council, who also carried out a background noise survey.

17. Certain noises that had been associated with the driver training use, audible reversing alarms and some vehicle load checks carried out using hydraulic tail lifts, have been avoided or discontinued. Noise from the use is now considered to be mainly due to vehicle start-up in the morning and leaving the site, and vehicle return and parking up in the afternoon or early evening. Noise generation results from Mr Cant's initial analysis used a recording device positioned a short distance up the driveway to the vehicle parking area to monitor noise over a 5-day period and calculated an increase in sound levels from the lorry movements of about 2dBA to the outside of the nearest noise sensitive property, which was considered to be "slight" by reference to IEMA's guidelines. Mr Nunes claimed that this methodology would not satisfactorily establish background levels, and that using a building-shielded ground level receiver at possibly the noisiest location on the site, shielded among other things from the nearest sensitive receptor, combined with modelling the close boarded fence as an acoustic barrier, did not adequately model the impact at the worst affected façade, a first floor rear facing bedroom window. Another

shortcoming claimed by Mr Nunes was that Mr Cant's survey did not assess the acoustic character of the area.

18. Having subsequently been given access to the rear bedroom of the neighbouring property Mr Cant carried out a further recording exercise, using measurement positions inside the bedroom with a window half-open and, simultaneously, just outside the window. Recording took place over a short period when a lorry and a 4WD+trailer returned to the site and parked. The results were used to calculate the effect of 2 lorry movements, each 3 minutes duration. The calculated LAeq1-hr was 49dB, the same as that calculated in the first exercise. Inside the bedroom the calculated sound level for this scenario was LAeq1-hr was 35dB, meeting daytime guideline criteria set out in BS 8233:2014.

19. One of Mr Nunes particular concerns about this work is that the daytime noise levels absent lorry movements on the appeal site, 51 to 58dB (LAeq, 12 hr) were untypical of a quiet rural area. His own measurements recorded nearby, albeit off-site and hence not fully capturing other on-site day-to-day activity, indicated background noise levels of 46-49 dB (LAeq, 9.5hr) during operational hours. A background level of 47 dB (LAeq. T 0800-1700), Mr Nunes' figure, and typical daytime sound levels of 58dB (LAeq, 12 hr) as measured by Mr Cant, would indicate a magnitude of impact of substantial to severe (IEMA guidelines).

20. There are legitimate areas of concern regarding Mr Cant's initial data and calculations. For example, there is little or no correlation between average sound levels and the number of lorry movements, which suggests that there were significant noises that were unaccounted for[1], and the position of the microphone appears not suited to characterisation of the noise environment at the most sensitive receptor location. Modelling of the fence bounding the parking area as an acoustic barrier is questionable, and the calculated sound level outside the most affected façade does not appear to distinguish between ground floor and first floor windows, the latter of which overlooks the fence and serves a habitable room. Neither did I hear a convincing explanation of why Mr Cant's calculated average LAeq during the daytime period should be so untypical of a quiet rural area. Reference was made to a motorbike tuning business opposite, but there was no indication that this was actually affecting noise levels during the survey period.

21. Although conducted over a relatively short period of time and involving a limited number of vehicle movements, Mr Cant's second survey appears to me to provide a better basis for assessing the impact on neighbours. The highest measured sound level outside the window of 58dB (LAeq,30s), and the calculated effect of the "worst case scenario" of 2 lorry movements over an hour, each of 3 minutes duration, of 49dB (LAeq, 1hr), suggests that the noise levels inside the bedroom with a partially open window would probably comply with BS 8233:2014 as good or reasonable at the current level of use. There have been complaints, but these originated when reversing alarms were in use and other aspects of the use caused privacy concerns in addition to disturbance. I must also bear in mind that the equestrian use itself has included, and is likely to continue to include, the keeping and use of LGVs and 4wd+trailers on the site. Furthermore, the noise generation attributable to the

[1] The recording device was unmonitored. Vehicle movements were logged by Mrs Howe.

driving school use is of short duration and does not occur at unsociable hours or at weekends, and this can be controlled by condition. On the evidence before me I am not persuaded that the driving school use is likely to materially detract from residential amenity in terms of disturbance due to noise. As such it does not conflict with the relevant part of WCS Core Policy 34 or with NWLP Policy NE18.

Character and appearance of the area

22. The site is in the open countryside, mainly flat or gently rolling pasture or tilled fields. The parking area at Appleford is largely screened from the public highway, but it is visible from 2 public footpaths that cross the site. From these the number and size of vehicles parked on the hardstanding appears discordant and out of character. While I accept that horse transporters of various kinds are a common sight in the countryside, in the context of the low density and scale of development in the area and its rural character I consider that the somewhat urban or industrial appearance of the vehicle parking area when fully occupied appears discordant, incongruous and visually intrusive when seen from the public footpaths crossing the land. However, I accept that there is scope for tree planting that would, in time, effectively screen the parking area from public views, and this can be secured by condition. Accordingly I find no conflict with the development plan in this respect.

Highway safety and the convenience of other users

23. The public highway passing the appeal site, White Way Lane, is a narrow single track carriageway with occasional passing places, many of them informal such as field accesses or driveways. It is about 1.4km to the north and 1.5km to the south via Pye Lane before the road network can accommodate two-way traffic. Signage at either end describes the road as "Single track road No passing places". There are long sections without passing places, some of which are hedgerow or ditch lined with high narrow verges. In many places, when vehicles meet one will have to reverse a considerable distance or mount the kerb, or both. Though not attributable, verge damage is evident in places. Reversing on long sections of narrow laneway, either in a car of a larger vehicle, can be hazardous, and there are sections where wide vehicles such as HGVs would not be able to safely pass a horse and rider, pedestrian, cyclist or motorcyclist, while finding refuge on the verges can be difficult.

24. At present the driving school operating model when training on LGVs involves trainees coming to the site, usually by private car, then being driven by Mr or Mrs Howe to the wider highway network, via the southern route, before taking control of the LGVs. Return trips are essentially the reverse. A survey of traffic flow indicated that volumes are low, less than 25 vehicles per hour, but there have been two recorded accidents, one involving a car and a pedestrian (2015) and the other involving 2 cars (2008). Neither was associated with the driving school use, but it illustrates the somewhat hazardous nature of the lane for 2-way traffic or vulnerable users, who are likely to find encountering traffic, particular larger vehicles, in certain parts of the lane to be uncomfortable or even unsafe, which could in turn lead to them avoiding using the lane. While there is undoubtedly regular use of the lane by larger vehicles such as agricultural or delivery vehicles, I consider it unsuited to such traffic, both from a highway safety point of view and the convenience and enjoyment of other users. The driving school use would add 4 LGV or other large vehicle journeys

on the lane on many days, and potentially 4 car journeys. Having regard to the nature of the limited routes available, I consider that this level of additional regular traffic would bring with it an increased risk of accidents and a more hostile environment for road users. That the appellants do not commence LGV training until they have reached a 2-lane carriageway only emphasises the unsuitable nature of the routes from the appeal site. Overall I consider that the development does not comply with WCS Core Policy 60 in that it does not support the sustainable, safe and efficient movement of people. I also find conflict with paragraph 109 of the NPPF in that it has an unacceptable impact on highway safety.

Site location

25. As part of its strategy for sustainable development the development plan for Wiltshire seeks to direct new employment development to identified larger settlements. There is a general presumption against development outside of the defined limits of the identified settlements (Core Policy 1), but modest development may be appropriate at small villages to respond to local needs and contribute to the vitality of local communities (Core Policy 2). In hamlets such as Thornhill, WCS Core Policy 34 provides that, so far as it concerns additional employment land, supported development is confined to that related to sustainable farming and food production or that considered essential to the wider strategic interest of the economic development of Wiltshire. The appeal development does not fit any category of supported development, and its location does not help to reduce the need to travel by private car, aims of WCS Policies 60 and 61, hence it conflicts with the development plan read as a whole.

26. For the appellant it is argued that WCS Core Policy 34 is no longer consistent[2] with national planning policy. Paragraph 84 of the NPPF now recognises that sites to meet local business and community needs in rural areas may have to be found beyond existing settlements, and in areas not well served by public transport. It is argued that in this context WCS Core Policy 34 is too restrictive. I disagree. The policy is but one of a suite of linked policies that set out the spatial strategy for the county, seeking to achieve sustainable development by, among other things, enhancing the self-containment of the major settlements by reducing out-commuting. The strategy does allow for carefully managed development outside of settlement boundaries.

27. However, even if reduced weight were to be accorded to WCS Policy 34, NPPF paragraph 84 makes it clear that in circumstances where sites need to be found beyond existing settlements it will be important to ensure that development does not have an unacceptable impact on local roads. In view of my findings on this matter I consider that the NPPF, read as a whole, provides little in the way of support for the development. It has also been suggested that NPPF paragraph 11(d) applies because WCS Policy 34 is out of date, but even if it was out of date, there are other important relevant development plan policies with which the development conflicts.

[2] The appellants' closing submissions also asserted that WCS Policies 60 and 61 were out of date due to NPPF paragraph 84, but without explanation or elaboration.

Planning balance

28. I have found that the development conflicts with the development plan read as a whole, and I consider that the development plan is up-to-date. In these circumstances planning permission should only be granted if material considerations indicate that the plan should not be followed. The considerations put forward in support of the appeal include the need for LGV/HGV drivers, both regionally and nationally, the lack of alternative sites, benefits to the local economy, and the benefits to the local community of having car and bus driver training available locally. Clearly driver training can provide a range of benefits, but the location is particularly unsuited to LGV/HGV training. I accept that the appellants have sought alternative premises without success, but these benefits, even considered cumulatively, fall well short of outweighing the conflict with the development plan and the harm in terms of highway safety.

Other matters

29. The site is in an area with a history of flooding, and it was thought that ground level changes had occurred within Flood Zone 3, which could have had consequences for flood risk in the locality. However, the ground raising allegation is disputed and has not been substantiated, and in any case the area concerned is an extension of the parking area with a gravel surface which remains porous. Had I been minded to grant planning permission, I consider that the remaining concerns regarding drainage and flood risk at the site could satisfactorily be addressed by the imposition of appropriate conditions.

Conclusion

30. For the reasons given above, and having considered all other matters raised, I conclude that the appeal on ground (a) should be dismissed, and accordingly that planning permission should be refused on the deemed planning application.

Ground (f) – both appeals

31. The ground of appeal is that the steps required to be taken are excessive. The steps in a notice are intended to achieve the purpose of either remedying the breach of control that has occurred or remedying any injury to amenity (s173(3) and (4) of the Act). In this case, requiring cessation of the use and restoration of the land to its former condition indicates that the notice is clearly aimed at the former. The principal argument put forward on this ground is that it is excessive to require the cessation of the use of the land for the stationing of vehicles associated with the driver vehicle training use and the removal of all vehicles associated with that use since most of the vehicles kept on the land are used for private purposes in addition to their use for driver training. However, where there is a mixed use, the requirements of the notice only bear on the activities associated with the unlawful component of the mixed use[3]. Hence requirement b) does not prevent the appellants from keeping/stationing vehicles on the site that are needed for, and ancillary to, the use of the land for residential and equestrian purposes. I agree nonetheless that there is a degree of ambiguity in requirement c), which in any case I do not consider to be necessary to remedy the breach of planning control. I shall vary the

[3] Eg. *Cord v SSE* [1981] JPL 40 and *Duguid v SSETR & W Lindsay DC* [2001] 82 P&CR

requirements accordingly, and the appeal on this ground succeeds to that extent.

Ground (g)

32. This ground is that the period for compliance falls short of what should reasonably be allowed. A period of 12 months is sought in order to find a suitable alternative site. Mrs Howe gave evidence that she has been looking for alternative premises, including registering with local estate agents, but has been unable to find anything suitable. A period of a year however would be excessive given the harm I have found in terms of highway safety. A short extension of the compliance period to 6 months is reasonable in my view, and I shall allow the appeal on this ground on that basis.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Peter Wadsley	Of Counsel
He called	
Susan Howe	Appellant
James Hussey	
Malcolm Styles	
Elizabeth Cadman John	
Stuart Nie	
Gail Rich	
Simon Howe	Appellant
Graham Eves	Highways and flooding
Rob Cant	Noise
David Glasson	Planning

FOR THE LOCAL PLANNING AUTHORITY:

Scott Stemp	Of Counsel
He called	
Caroline Maloney	
Stuart Harris	
Martin Stubbings	
Adrian Gowing	
Mark Wiltshire	Highways
Daniel Everett	Flooding
Ze Nunes	Noise
Allan Brown	Enforcement
Lee Burman	Planning

DOCUMENTS

1 Council's letter of notification including addressees
2 Statement of Common Ground
3 Appellants' opening submissions
4 Highway verge photograph - Eves
5 Map showing location of possible alternative sites - Burman
6 Extract from National Planning Policy Framework: Equality Impact Assessment July 2018 - Glasson
7 List of conditions
8 Council's closing submissions and Court judgements
9 Appellants' closing submissions

The Planning Inspectorate

Costs Decision

Inquiry opened on 26 February 2019

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

Costs application in relation to Appeal Ref: APP/Y3940/C/18/3193744 Land at and adjacent to Appleford, Thornhill, Royal Wootton Bassett, Wiltshire, SN4 7RX.

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs Susan Howe for a full or partial award of costs against Wiltshire Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the Land to a mixed use for residential, equestrian and the use of the Land for driver vehicle training.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties to a planning appeal are normally expected to bear their own costs, but costs can be awarded where the unreasonable behaviour of a party has caused another party to incur unnecessary or wasted expense. The application and responses were made in writing. Briefly, the appellant alleges unreasonable behaviour by the Council in terms of how it has proceeded with the appeal, citing a number of the examples of types of unreasonable behaviour set out in the Planning Practice Guidance (PPG).

3. A substantial part of the application concerns the timing of the submission of the Council's noise, flood and highways evidence, which was submitted late on the Friday before the Inquiry opened, which meant that the appellant's experts felt they were unable to deal with the Council's evidence in time for the scheduled sitting days. I agree that the very late submission of evidence amounted to unreasonable behaviour, but because of the way the Inquiry unfolded I consider that it did not actually cause unnecessary or wasted expense. This is because the original scheduled sitting days were devoted solely to the ground (d) evidence. As a consequence there was ample time to consider the late evidence in the adjournment, the Inquiry not resuming until 16 July. Time spent in the adjournment reviewing or rebutting the Council's evidence would not be attributable to the timing of submission.

4. Video evidence relied upon by the Council was also argued to be late evidence. The evidence was not provided in any physical form, but internet links to the videos were provided in an appendix to one of the Council's witnesses. I was aware of them in advance of the Inquiry, but had not viewed them for cyber-security reasons, and the Planning Inspectorate guidance on the provision of

video evidence is that it will return any such evidence sent in advance of the Inquiry. However, working electronic links were provided within the evidence exchanged, along with a description of what was shown, which appears to me to be in accordance with the Planning Inspectorate's advice to Inquiry participants. Hence the evidence should not have come as a surprise to the appellants. The appellants were given the opportunity to view the videos before they were shown in public, and had the opportunity to recall the appellant to give her account of events. In my view the evidence was provided in a timely manner and in an acceptable and accessible form, so that there was no unreasonable behaviour involved.

5. It was also submitted that the Council failed to engage in a meaningful way with the preparation of Statements of Common Ground. In part this is said to have been due to the Council changing its position on the case between a refused LDC application for the use the subject of the enforcement notice and its position on ground (d). In summary, the officer's report for the LDC application suggests that a material change of use might have occurred through intensification, whereas the Council's case at the Inquiry was that changes in the business activity at the appeal site took the use from one incidental to the use of the dwellinghouse as such, to a separate primary use.

6. On this point I would first say that the Council was not obliged to take the same position in the enforcement appeal, the LDC refusal not having been appealed, but in any case the LDC report does state that "It is considered on the balance of probabilities that the combined evidence does demonstrate that a business ancillary to the residential use of the property has been conducted at the site during 2000-2010….", a position consistent with the Council's case at the Inquiry. But in any case, the Council's Statement of Case, on ground (d), sets out the case that it subsequently put. I do not accept therefore that there was unreasonable behaviour by the Council on the substance of the case, or indeed that there was a failure to properly engage with the appellant on this matter.

7. I have reviewed the substantial communications provided by the appellant and the Council, but I could not discern any clear failure to engage, rather the Council, as far as I could see, did its best to accommodate the appellants' requests. So far as the appellants' request to deal with some of the matters on the basis of written exchanges, ultimately that decision fell to me, and I considered the Council's position to be reasonable.

8. Overall, having considered all matters raised, I find that the conditions necessary for an award of costs, either full or partial, do not exist in this case.

Paul Dignan

INSPECTOR