



Planning Inspectorate

Appeal Decisions

Hearing held on 10 September 2025

Site visit made on 10 September 2025

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2025

Appeal A Ref: APP/V2255/C/25/3366417

Land at The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne ME8 7UX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Paul Hancock against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 29 April 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the Land for the storage and distribution of materials and equipment and the stationing and use of vehicles in relation to a 'scaffolding' business (use class B8).
- The requirements of the notice are:
 - i) Cease the use of the Land for the storage and distribution of materials and equipment used in connection with the unauthorised business.
 - ii) Cease the use of the Land for the stationing and parking of motor vehicles used in connection with the unauthorised business.
 - iii) Dismantle all the storage structures (consisting of scaffold poles with corrugated roofs) on the Land.
 - iv) Remove all resultant materials, rubbish and rubble from the Land in connection with steps (i) to (iii) above.
- The period for compliance with the requirements is: six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended) ("the Act"). 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 ("the DPA").

Appeal B Ref: APP/V2255/W/25/3366416

The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne, Kent ME8 7UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Paul Hancock against the decision of Swale Borough Council.
- The application Ref is [23/504597/FULL](#).
- The development proposed is: Retrospective application for the change of use of the existing yard to a scaffolders yard (Class B8), including access.

Summary of decisions: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decisions.

Applications for costs

1. An application for costs was made by Mr Paul Hancock against Swale Borough Council. That application is subject to a separate decision.

Preliminary Matters

2. The appeals relate to the same land and the same development, despite the differences in their descriptions, and the appellant has submitted a single case. I have therefore considered Appeal A ground (a) and Appeal B together.
3. For Appeal A, the Land comprises a parcel of land owned by the appellant, plus a small parcel at the rear owned by another ("the Land"). The application site for Appeal B also includes the private access road over which the appellant has a right of access to the public highway.
4. The appellant withdrew his appeal on ground (e) in relation to Appeal A at an early stage. Prior to the Hearing, having considered the appellant's evidence on noise, the Council withdrew its case on the main issue for Appeal A ground (a) and Appeal B and now considers planning permission can be granted, subject to conditions.
5. There was some debate at the Hearing about the description of development in relation to Appeal B. I have considered this matter below in the section entitled 'Appeal A on ground (a)/the DPA and Appeal B'.
6. The breach of planning control is described in the Notice as 'the change of use of the land', but only a material change constitutes development requiring planning permission for the purposes of the Act. Whether or not the lawful use of the land was one within Use Class B1 (now Class E), or one of open storage or storage and distribution, the change to the use which had occurred by the time the Notice was issued was a material one. The description of the breach should therefore be corrected to the "material" change of use. As no injustice would occur to the appellant or the Council were I to do so, I shall correct the Notice in my formal decision below.
7. The parties advise that the Council has issued proceedings against the appellant in relation to a Community Protection Notice concerned with noise from the use. That is a matter independent of my consideration of these appeals.

Appeal A on ground (b)

8. Appeals on ground (b) are made on the basis that the matters stated in the Notice as constituting the breach of planning control, have not occurred.
9. The appellant acknowledges that the Land has been used for the storage of materials and equipment for his scaffolding business. But he disputes that distribution has occurred, or that the stationing and use of vehicles has occurred as a primary use.
10. The appellant considers the use to be *sui generis*, rather than one falling within Use Class B8, and references an appeal decision¹ in which the Inspector referred to a 'scaffolder's yard' as a *sui generis* use. That development appeared to have particular characteristics, including 5 portacabins stacked in 2 storeys and contained an office, and it is not stated whether or how many of the 20-25 employees worked in the office space on the site. There are some similarities between that development and the one before me, but there are also differences, such as the absence in this case of any notable office space and with only a small building on the Land containing a toilet and being used to dry wet clothing. Whether

¹ APP/C3240/C/15/3135796

the use before me falls within Class B8, use for storage or as a distribution centre, or not depends on the particular characteristics of the use.

11. The appellant states the yard has been used primarily for storage of scaffolding equipment and vehicles associated with his business. He describes how his two lorries and a small truck are loaded in the afternoons and kept within the secure compound until morning. Most scaffolders leave their cars in the yard when they depart with the lorries and vans, but employee parking is not an unusual element of any use. The appellant's noise assessment also states that working on site is limited to the movement of scaffolding materials between their storage space and the company's vehicles.
12. The function of the use is to store scaffolding materials and transport them to building and other sites. Extensive areas of racking have been created to a height of around 2-storeys using scaffolding. Corrugated sheets provide a degree of protection from the elements from above and the rear of the racks, leaving the front open. From the scale and volume of the racking and storage space and the quantity of materials, it is clear the storage of scaffolding materials is the principal element of the use.
13. The use is different to one for a distribution centre, with the absence of deliveries to the site and its sole use by the operators. The parking of lorries on the Land overnight and when not in use is parking in the terms of the *Hickmet*² judgement. But that parking is associated entirely with the scaffolding storage use and, even though the lorries are registered at the Land, this element of the use is incidental to the storage use. Irrespective of the early morning departure of vans and lorries, with the evidence before me the single main purpose of the use is one falling within Use Class B8, with secondary activities incidental to that use.
14. I have seen no evidence of the use of vehicles, such as forklift trucks, within the site other than those arriving and departing in transportation of the stored scaffolding. Reference to the use of vehicles on the land should therefore be removed from the breach of planning control alleged, as should the references to distribution.
15. As a matter of fact and degree, the use which has occurred is therefore use for the storage of scaffolding materials and equipment (Use Class B8).
16. In conclusion, the matters stated in the Notice as constituting the breach of planning control had not occurred in the precise terms set out in Section 3 of the Notice. However, no injustice would occur to the appellant or the Council were I to correct the Notice, and I shall do so in my formal decision below.
17. The appeal on Ground (b) therefore succeeds to that extent.

Appeal A on ground (a)/the DPA and Appeal B

The nature of the development

18. The appeal on ground (a) and the DPA relates to the matters stated in the Notice as constituting the breach of planning control, as amended.

² *Crawley BC v Hickmet Ltd*, (1998) 75 P. & C.R. 500 (1997)

19. The parties agree that the planning application sought relates to the development that has occurred, and the appellant advises the description of development stated on the application form was suggested by the Council's enforcement officer.
20. The term 'scaffolders yard' describes the user of the land rather than the use for which planning permission is sought. But, in the terms of Section 55 of the Act, the parties agree the development could be described as use 'for the storage of materials and equipment in relation to a scaffolders yard, including access'. The appellant does not seek planning permission for distribution or the storage of vehicles, and I have therefore considered the application as the appellant intended it, but using the same form of words as the corrected enforcement notice. The appellant also firmly believes the use proposed is not a Class B8 use but, having found it to be, that element of the description should remain. As described above, the change is also a material one.
21. The inclusion of the words 'storage of materials and equipment' would not change the nature of the development sought and were part of the description on which the Council advertised the application. I am therefore able to amend the description of the development proposed for Appeal B to "material change of use to the storage of scaffolding materials and equipment, including access" and shall do so in my formal decision below.

Main Issue

22. The main issue is the effect of the development on the living conditions of local residents.

Living conditions

23. The Land is an open yard located to the south of a small industrial estate, and north of a dwelling known as Beggars Roost. Other dwellings are located further south, and there are recently developed park homes further north.
24. On entering the Land, ground levels fall and most of the yard is at a lower level than the adjoining dwelling. The access ramp adjoins a boundary wall enclosing a private area in front of the dwelling and an extension. Several windows at ground and first floor levels face the access to the yard, and the narrow form of the house means all upper rooms have windows facing the ramp, even if they also have windows facing the rear. At its western end the wall of the dwelling itself forms the boundary with the yard, where racking containing scaffolding materials and equipment is stored to around two storeys in height.
25. The appellant advises the loading and unloading of scaffolding materials and equipment takes place in the afternoons. Operatives arrive and leave the site with loaded vans and lorries at times between 5am and 7am.
26. The appellant's 2023 noise assessment found that early morning lorry movements just after 5am would have up to a medium noise impact, a significant observed adverse effect level ("SOAEL") in the terms of the noise policy statement for England and the Planning Practice Guidance ("PPG"). It outlined 'potential attenuation options' in the form of increasing the height of the boundary wall and phasing out lorry style vehicles for those with fully enclosed engines and reduced start up and move times. The appellant has replaced the oldest lorry with a quieter vehicle which is also compatible with the London Ultra Low Emission Zone.

27. The appellant's 2025 noise impact assessment reviewed the 2023 assessment and supported its methodology. But it also found that it was not correct to have described the levels found in the 2023 report as SOAEL, as they were 3.2dB above background level, not 5dB or greater. It concluded the use was therefore not unacceptable without mitigation, but that it was good practice to have considered mitigation as environmental noise is variable. In addition, it concluded the replacement of the lorry also meant that all noise levels were now below background levels, but that the acceptability of the use was not dependent on it.
28. The 2025 noise assessment also concluded on other matters, including that the development does not increase background noise levels, that traffic in the area means that a rating penalty should not have been imposed, and that noise levels are therefore even lower. The Council has withdrawn its objection, subject to conditions, and there is no opposing technical evidence before me on these matters. I have therefore accepted these findings for the purposes of these appeals.
29. A number of comments have been made by other interested parties, both for and against the development. Many of those against the development are concerned about the effect of the development on the occupiers of Beggars Roost. The occupiers' accounts describe a noisy environment exacerbated by the semi-enclosed racking on three sides, amplifying sounds in the yard and noise associated with vehicles arriving and leaving around 5am. At the time of writing the occupier had been residing in a caravan while renovations took place in the house and has reported being unable to sleep with windows open. I have also seen comments from an occupier of the park home site in relation to noise from the Land and the gate alarm.
30. However, there is no technical evidence before me demonstrating unacceptable levels of noise pollution. The 2023 noise report was accompanied by noise measurements of the activities occurring and, as described above, some of the noise levels are now reported to be lower. Mitigation in the form of vehicle types has been implemented, and a 3.8m high barrier along the boundary with Beggars Roost adjacent to the access ramp is unnecessary. The appellant also advises he has updated the alarm which was associated with noise at the gates.
31. Some respondents have objected to disturbance from lighting, but others have suggested these effects are due to lighting elsewhere on the private access road. There is some flood lighting within the yard including a light outside the building near the access ramp at human height angled downwards. The light on the building may result in some disturbance to residents of Beggars Roost in the early mornings, but these effects could be remediated by the use of blinds or heavy curtains. Although the occupiers of the Lord Stanley Bungalow, on Otterham Quay Lane, have also reported light disturbance, that dwelling is some distance from the development and I have seen no lighting on the Land which could account for it.
32. In conclusion, with the evidence before me, the development does not significantly harm the living conditions of local residents. It therefore accords with Bearing Fruits 2031 - The Swale Borough Local Plan (2017) ("Local Plan") Policy DM14, which requires new development to cause no significant harm to amenity and other sensitive uses.
33. It also accords with paragraph 198 of the National Planning Policy Framework ("the Framework"), which requires planning decisions to ensure new development is

appropriate for its location, taking into account the likely effects of pollution on health and living conditions, avoiding noise giving rise to significant adverse impacts on health and quality of life and limiting the impact of light pollution from artificial light on local amenity.

Other Matters

34. The access road immediately outside the Land is a private road, and the local Highway Authority have not objected on the basis of effects on the public highway. Although the appeal site for Appeal B includes the private road from the Land to the public highway, I am unable to give weight to private matters relating to maintenance of and parking on the private road.
35. The Land is located within Flood Zone 3, but the Environment Agency have confirmed they have no objections to the development.

Conditions

36. Considering the conditions suggested by the Council, I have had regard to the approach in the Framework and the Planning Practice Guidance and have amended them accordingly without altering their fundamental aims.
37. Appeal A relates to the development which has occurred, but in relation to Appeal B it is necessary to specify the plans approved for certainty.
38. No activity has been proposed or any noise effects assessed before 5am or after 7pm. Neither has loading been proposed or any associated noise effects assessed in the early mornings. It is therefore necessary to limit operational hours within the yard in order to protect the living conditions of local residents, without limiting use of the access which also serves a number of commercial and residential uses; a further plan has been provided by the appellant for this purpose.

Conclusion on Appeal A ground (a) and Appeal B

39. In conclusion, subject to conditions, the development would not significantly harm the living conditions of local residents and would accord with the development plan policies read as a whole. There are no material considerations which require a decision to be made other than in accordance with the development plan.

Conclusion on Appeal A

40. For the reasons given above, Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected. The enforcement notice will be corrected and quashed.
41. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

Conclusion on Appeal B

42. For the reasons given above the appeal should be allowed.

Formal Decisions*Appeal A:*

43. It is directed that the enforcement notice is corrected by, in Section 3:

- the deletion of the words, “the change of use of the Land for the storage and distribution of materials and equipment and the stationing and use of vehicles in relation to a ‘scaffolding’ business’ (Use Class B8)”;
- and their substitution with the words, “the material change of use of the Land to storage of scaffolding materials and equipment (Use Class B8)”.

44. Subject to the corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out. Namely the material change of use of the Land to storage of scaffolding materials and equipment (Use Class B8) at Land at The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne ME8 7UX as shown on the plan attached to the notice and subject to the following conditions:

1. Loading or unloading of vehicles within the site identified on plan 23_1307A-001 dated 04/09/2025 shall take place only between the hours of 07:00 and 19:00 Monday to Saturday, and not at all on Sundays and Bank or Public Holidays.
2. Vehicle movements within the site identified on plan 23_1307A-001 dated 04/09/2025, shall take place only between the hours of 05:00 and 19:00 Monday to Saturday, and not at all on Sundays and Bank or Public Holidays.

Appeal B:

45. The appeal is allowed and planning permission is granted for the material change of use to storage of scaffolding materials and equipment (Use Class B8), including access at The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne, Kent ME8 7UX in accordance with the terms of the application, Ref 23/504597/FULL subject to the following conditions:

1. The development shall be carried out in accordance with the following approved plans:
 - 025.1405.01 - 01 Site Location Plan
 - 025.1405.02 – Existing/Proposed Site Plan
2. Loading or unloading of vehicles within the site identified on plan 23_1307A-001 dated 04/09/2025, shall take place only between the hours of 07:00 and 19:00 Monday to Saturday, and not at all on Sundays and Bank or Public Holidays.
3. Vehicle movements within the site identified on plan 23_1307A-001 dated 04/09/2025, shall take place only between the hours of 05:00 and 19:00 Monday to Saturday, and not at all on Sundays and Bank or Public Holidays.

Peter White

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Matthew Green	Agent
Michael Rudd	Barrister
Tim Green	Acoustic Expert
Paul Hancock	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Gambrill	Team Leader
Rebecca Corrigan	Senior Planning Officer



Planning Inspectorate

Costs Decision

Hearing held on 10 September 2025

Site visit made on 10 September 2025

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2025

Costs application in relation to Appeal A Ref: APP/V2255/C/25/3366417

Land at The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne ME8 7UX

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Hancock for a full award of costs against Swale Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission, the change of use of the Land for the storage and distribution of materials and equipment and the stationing and use of vehicles in relation to a 'scaffolding' business (use class B8).
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Costs application in relation to Appeal B Ref: APP/V2255/W/25/3366416

The Yard, Beckenham Park Industrial Estate, Otterham Quay Lane, Sittingbourne, Kent ME8 7UX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Hancock for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for development described as retrospective application for the change of use of the existing yard to a scaffolders yard (Class B8), including access.
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Decision

The submissions for Mr Paul Hancock

1. The costs application was submitted in writing.

The response by Swale Borough Council

2. The response was made orally at the hearing.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The appellant's application is made on the basis of a substantive claim, being one which relates to the merits of the appeal. In the event that a full award is not made, the appellant requests that consideration be given to a partial award relating to the costs incurred following submission of the appellant's statement and evidence.

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5. Firstly, the appellant considers the Council acted unreasonably by refusing planning permission on a planning ground capable of being dealt with by conditions, and that the same rationale applied to the need for enforcement action.
6. The appellant's 2023 noise survey and assessment ("the 2023 noise assessment") in part concluded that lorries leaving the yard had a potentially medium noise impact. It advised of potential mitigation measures including an acoustic barrier and a phasing out of older lorry-style vehicles. A Mid Kent Environmental Health officer did not object, on the basis that the mitigations recommended were reasonable "assuming they can be proven to be effective", but also requiring limitations on hours of operation.
7. I note the Council's planning service concluded an acoustic barrier 2m higher than the existing boundary treatment would cause visual and amenity impacts on occupiers of the neighbouring dwelling. Their decision not to grant planning permission with a condition requiring the quieter vehicles was made on the basis that it would be difficult to draft an enforceable condition, that the noise from departures was a combination of that from vehicles and employees and the gate alarm, and that it would be likely to be at a cost which was unviable. On the latter point, the appellant had already replaced the oldest lorry months before the time of the refusal, although I have seen no evidence that this was made known to the Council's planning service.
8. Although the Council were wrong in relation to the viability of replacing the oldest lorry, the response from Environmental Health expected both potential mitigation measures to be carried out to ensure a 'suitable' reduction in noise levels was achieved, with reference to a recommended 5dB(A) below background levels, in addition to limiting hours of operation and requiring testing after mitigation measures were in place. With the Council having concluded an acoustic barrier of 3.8m or higher would not be acceptable and the appellant not accepting the later working hours suggested, it was not unreasonable for the Council to conclude the development could not be made acceptable by the imposition of planning conditions on the basis of the 2023 noise assessment.
9. Secondly, the appellant considers it unreasonable that the Notice was issued on the same basis as the refusal of the application. That the Council did not respond to correspondence, sent around the same time as the Notice was issued. And, that the Council failed to take the opportunity to invite a further application and withdraw the Notice.
10. The appellant's subsequent noise impact assessment of July 2025 ("NIA 2025") was submitted with appeal statements of case. At that stage the appellant reviewed the 2023 noise assessment and came to different conclusions on the noise levels recorded for the 2023 noise assessment and with the change to the newer lorry.
11. But the Council's appeal statements of case were submitted on the basis of the original 2023 noise assessment. In that context it was not unreasonable for the Council to have responded as it did without technical acoustic evidence. The 2023 noise assessment identified a potentially medium noise impact, which the report methodology equates to a Significant Observed Adverse Effect Level, even if the appellant later considered otherwise. The Council's response to its reason for refusal was therefore not unsupported by objective analysis. Neither had the Council prevented or delayed development which should clearly be permitted.

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12. As to whether the Council acted swiftly enough in reviewing the new NIA, it did not provide a 'Final Comments' response to the appellant's new noise information in mid August 2025. It may have been possible for the Council to review its case earlier, even though the two-month period between submission of the new NIA and the date of the Hearing fell during the holiday season.
13. However, as comments had been received by other interested parties and the time for their responses had passed at the time the appellant submitted the NIA 2025, those parties had no opportunity to respond to the new NIA except at the Hearing. For that reason, I determined the Hearing must proceed in any case and, even if the Council had reviewed its case more swiftly after receipt of the new NIA, the Hearing would have occurred in any event.
14. The Council's revised position on noise relied on the imposition of planning conditions to protect the living conditions of local residents. In my appeal decision I also found there to be a need for such conditions, on the basis that an unlimited use, without limited hours of operation, would not have been acceptable in planning terms. It was therefore not unreasonable for the Council not to have withdrawn its enforcement notice. Had it done so, and the appellant had then withdrawn his Section 78 planning appeal, the use would have been left without planning permission and without conditions or limitations.
15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and neither a full award, nor a partial award, of costs is warranted.

Decisions

16. The applications for awards of costs are refused.

Peter White

INSPECTOR