



## Appeal Decision

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by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 03/08/2025

Appeal reference: CAS-04141-F7Y5S1

Site address: Land at Severn Bridge Industrial Estate, Pill Row, Caldicot, Monmouthshire, NP26 5PR

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- The appeal is made under section 174 of the Town and Country Planning Act 1990 (“the Act”) as amended by the Planning and Compensation Act 1991.
  - The appeal is made by FI Real Estate Management Ltd against an enforcement notice issued by Monmouthshire County Council.
  - The enforcement notice, numbered E25/150, was issued on 19 February 2025.
  - The breach of planning control as alleged in the notice is: Unauthorised operational development consisting of hard surfacing being installed without the benefit of planning permission.
  - The requirements of the notice are: 1. All hard surfacing within the red line boundary to be removed and the resultant material to be removed from the site; 2. Restore the land to its former condition prior to the breach of planning control occurring.
  - The period for compliance with the requirements is: 6 months from the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Act.
  - A site visit was made on 25 June 2025.
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### Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the Act.

### Procedural Matters

2. Outline planning permission on the appeal site was granted in October 2023, under planning reference DM/2022/00331, for the development of commercial units suitable for use classes B1, B2 and B8 plus associated external works (the outline planning permission). I acknowledge the appellants intention to develop the site under that permission as soon as possible. However, a reserved matters application under planning reference DM/2024/01105 was made in September 2024 seeking approval of the access, appearance, landscaping, layout and scale of the outline development

(the reserved matters application) but remains undetermined. The appellants refer to delays on the part of the Council and Natural Resources Wales (NRW), but the Council's evidence indicates that there are objections to the drainage details, the resolution of which they consider would be likely to require significant design changes. There is no certainty therefore when the reserved matters application is likely to progress. Despite the appellants' assertions, the Council also confirms that no applications have been made to discharge conditions or to obtain Sustainable Urban Drainage Systems (SUDS) approval. Although it constitutes the planning permission, the outline scheme is not effectively implementable at this juncture. Accordingly, I afford the outline permission limited weight as a fallback position.

3. During my site visit I observed that the area of the unauthorised hardstanding contained 20 shipping containers, a portacabin and portaloos, a large commercial tent, several trailer units, a tractor unit, as well as several vehicles, used tyres and associated paraphernalia. The site was served by a compacted hardcore and gravelled access gently sloping down from Castle Court and the land was enclosed by weldmesh fencing and gates, as well as a length of timber fencing along its boundary with Pill Row. A sign was displayed near the entrance indicating 2.3 acres as being available to let for open storage, as well as design and build opportunities being available.

## Reasons

### *The Ground (a) appeal and the deemed planning application*

4. An appeal on ground (a) 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 terms of the deemed planning application are derived from the allegation set out in the notice. In this case, the breach of planning control as alleged is operational development consisting of hard surfacing being installed. In accordance with s.177(1) (a) of the Act, on determination of an appeal under section 174, planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.
5. The notice does not seek the cessation of any use or the removal of any other appurtenances facilitating the site's use, and these are consequently not matters before me in the appeal. The notice is concerned only with the operational development in the laying of the hardstanding. However, it is clear that the unauthorised works facilitate an open storage use and this is consistent with the appellants' case and from what I saw on my site visit. The Council does not raise any objection in principle to the stated use. Given the site's location within the industrial estate and its allocation for new industrial and business development (B1 and B8 uses) under LDP Policy SAE1(h) of the Monmouthshire Local Development Plan (LDP), I have no reason to disagree. I have therefore considered the ground (a) appeal on the basis that the hardstanding facilitates the storage use of the land, and that retrospective consent is sought by the appellants for a temporary period of 18 months.
6. Having regard to the Council's substantive reasons for issuing the enforcement notice, the main issues in determining the ground (a) appeal are:
  - a. The impact of the development on drainage with particular regard to flood risk, surface water run-off and the risk of pollution; and

- b. The effect of the development on biodiversity.

*Drainage, flooding and the risk of pollution*

7. The Council is concerned that the development fails to incorporate water management measures, including SUDS, to reduce surface water run-off and minimise its contribution to flood risk elsewhere. In addition, it is concerned that the site is located within a potable water Source Protection Zone (SPZ), and in the absence of an appropriate drainage scheme the development risks pollution to the water environment.
8. The Welsh Government published a new Technical Advice Note (TAN) 15: Development, Flooding and Coastal Erosion (2025) during the processing of the appeal. That document confirms that it should be read in conjunction with Planning Policy Wales (PPW) and the Welsh National Marine Plan and that it replaces TAN14: Coastal Planning (1998) and the previous TAN15: Development and Flood Risk (2004). However, the Ministerial Written Statement dated 31 March 2025, which accompanied the publication of the new TAN, confirms that there will be a transitional period for its implementation. Specifically, planning applications that were submitted and registered before the publication of the new TAN, such as the application subject of this appeal, shall continue to be assessed against the previous version.
9. The site lies within Zone C1 of the Development Advice Map contained in Technical Advice Note 15 'Development and Flood Risk' (TAN 15) (2004). The Flood Map for Planning (FMfP) identifies the site is located partly within zones 2 and 3 for fluvial flooding but it is entirely within flood zone 3, which represents the highest risk areas, in relation to tidal flooding. The development is not classed as being highly vulnerable to the risk of flooding, but the development must comply with the justification tests set out within paragraph 6.2 of TAN 15.
10. In relation to these justification tests, albeit the site is allocated for industrial development and an outline planning permission for a separate scheme has been granted, I have no evidence before me that the unauthorised hardstanding is necessary to assist, or be part of a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement (test criterion i.), or that it is necessary to contribute to key employment objectives supported by the local authority and other key partners to sustain an existing settlement (test criterion ii) . Despite the appellants' assertion that the lawful use of the land is for open storage purposes under Use Class B8, there is no cogent evidence to support the appellants' claim that, prior to the breach, the site was other than a paddock. It has not been demonstrated that the site meets the definition of previously developed land (test criterion iii).
11. TAN15 advises that whether a development should proceed or not will depend upon whether the consequences of flooding of that development can be managed down to a level which is acceptable for the nature/type of development being proposed.
12. The Flood Consequences Assessment (FCA) submitted with the outline planning application confirms that even where the ground levels for the development were to be raised from between 7.08-8.68m AOD to the level of the adjoining estate road to the south of the site, which is 8m AOD, during a 1% (1 in 100 year) plus 25% for climate change annual probability fluvial flood event, the predicted flood level is 9.12m AOD. Therefore, the outline development site is predicted to flood to maximum flood depths between 1.12m and 2.04m. During a 0.5% (1 in 200 year) plus climate change

(LOD 2098) annual probability tidal flood event, the predicted flood level is 9.70m AOD. Therefore, the outline development site is predicted to flood to maximum flood depths between 1.7m and 2.62m. For both events however, this would fail the criteria contained within paragraph A1.14 of TAN15 which states all development should be flood free during these events. In addition, predicted flood levels during 0.1% (1000 year) plus climate change (LOD 2098) annual probability tidal or fluvial events would reach up to 1.46m and 3.4m respectively, and so would exceed the 1000mm acceptability threshold for these events set out in the TAN.

13. I acknowledge that NRW indicated that for the outline application scheme, predicted increases in off-site flood risk, being less than 5mm, with small areas of 20mm, would be minor, resulting in negligible loss of flood plain storage. However, the appellants have not submitted an FCA with the ground (a) appeal. Nonetheless, the results of flooding events are unlikely to differ significantly from the modelled levels in the outline FCA. Accordingly, in terms of flood risk, the unauthorised hardstanding development fails to comply with TAN15.
14. The appellants argue that given that outline planning permission has been granted the effects on the SPZ would have been addressed at that stage and found to be acceptable. The appellants also contend that the land profile of the site has not changed, the land would remain permeable and as there is no built development there would be no change to flood effects. Whilst that may have been the case, the outline scheme was based on a drainage strategy which included an attenuation pond to control the dispersal of surface water. I have seen no evidence to confirm that the site remains at pre-development ground levels, and although permeable surfaces can be designed to closely match greenfield run-off rates, they may not exactly replicate the pre-development scenario, and results may depend upon factors such as the nature of the soil or sub-base layer. Testing of the appeal site undertaken at the outline application stage indicated that infiltration drainage could not be relied upon, and I consider that the introduction of a hardstanding would be likely to alter the drainage profile of the site.
15. The appellants contend that only clean materials were used in the formation of the hardstanding and there is no evidence to support the Council's concern that the materials used pose a pollution risk. Notwithstanding this, I saw that the hardstanding's position is located within 7m of the Nedern Brook, and whilst I have seen no evidence of any pollution incidents as a result of the development, I consider that the open storage uses, including the parked vehicles and used tyres could, in the absence of a suitable drainage scheme, increase the risk of pollution entering the watercourse, thus harming potable water supplies.
16. I have considered whether the drainage and pollution concerns could be addressed by the imposition of planning conditions requiring a scheme to be submitted to and agreed with the Council. However, having regard to the drainage characteristics of the land, a suitable drainage scheme would likely need to involve considerable engineering operations which would substantially alter the form of the current development. In the absence of the details of a scheme to serve the current development, I cannot be satisfied that a suitable drainage scheme could be provided, and which could also deal with off-site flood risk and include pollution prevention measures.
17. Nonetheless, even if conditions could be imposed, the ability to deal with other drainage effects would not overcome the fundamental conflict with national planning policy as set out in TAN 15. Given the likely flood levels predicted for the appeal site, I do not consider the risk should be allowed to subsist, even for a temporary period.

18. Therefore, having regard to the above, I conclude that the development has a detrimental impact on drainage with particular regard to flood risk, surface water run-off and the risk of pollution within the potable water SPZ. As such the development conflicts with national policy set out within PPW and TAN 15, and LDP Policies SD3, SD4 and S12 which deal with development within flood risk areas and Policies EP1 and EP2 which do not permit development that would cause unacceptable pollution risk upon the water environment.

### *Biodiversity*

19. The Council is concerned that the development does not embrace opportunities to enhance biodiversity and ecological connectivity and has not provided a net benefit to biodiversity required by Policy 9 of Future Wales The National Plan 2040 (FW). LDP Policy NE1 broadly follows the stepwise approach to maintaining and enhancing biodiversity set out in Planning Policy Wales (Edition 12) (PPW). PPW advises that development should actively enhance biodiversity rather than simply mitigate harm, to deliver a net benefit for biodiversity and ecosystem resilience. Accordingly, adverse environmental effects are firstly avoided, then minimized, mitigated and as a last resort compensated for.
20. Albeit not a habitat of primary importance, the preliminary ecological appraisal submitted at the reserved matters stage assessed the previously greenfield site as being of medium value. The Council indicates that some of the trees on its periphery are protected under a Tree Preservation Order (TPO). The site is situated alongside part of the Nedern Brook which would be likely to provide a supporting range of biodiversity, and which would act as a connective ecological corridor.
21. I acknowledge that the principle of a development on the site has been accepted by the granting of the outline permission and that some harm to biodiversity interests may not be wholly avoided by that consented development. However, the hardstanding largely fills the site and there is little separation between it and the ecological features found along the periphery of the site. Indeed, I saw that the developed area encroaches into the root protection areas of protected and other trees set out in the outline application Tree Protection Plan and Tree Survey & Arboricultural Impact Assessment report. Whilst the appellants assert that it is not surprising that a hardstanding does not embrace opportunities to enhance biodiversity and ecological connectivity, there is little evidence before me to suggest that the development could not have been designed to incorporate ecological enhancement measures from the outset or whether damage to biodiversity could have been minimised in the first place by minimising development size and using appropriate buffers to protect biodiversity features from construction and operational impacts. I note that the appellants are not opposed to providing enhancements, as well as a temporary landscaping scheme. Even so, it is only where all options for avoiding damage to biodiversity have been exhausted, should options to minimise effects be considered.
22. Therefore, I conclude that the development has had a harmful effect on biodiversity and fails to demonstrate that it has followed the step-wise approach to ensure a net benefit to biodiversity and ecosystem resilience in compliance with LDP Policy NE1 and FW Policy 9 as well as the advice within PPW.
23. I give appreciable weight to the appellants' contention that the development, in facilitating the use of the site for open storage purposes, will deliver jobs and

associated social benefits. However, these benefits do not outweigh the harm that I have identified above.

*Conclusion on the ground (a) appeal*

24. For the reasons given, I conclude that the ground (a) appeal fails.

Ground (f) appeal

25. An appeal on ground (f) is that 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. Bearing in mind that enforcement action is intended to be remedial rather than punitive, obvious alternatives which would overcome planning objections at less cost and disruption to the developer should be contemplated.

26. It is the appellants' contention that as the Council has supported the development of the site through the giving of outline permission, it ought to have invited a retrospective planning application. Consequently, removal of the hardstanding is excessive. Although the appellants have made comments under the ground (f) appeal, the arguments put forward are similar to those made under the ground (a) appeal. No lesser steps have been put forward in the evidence.

27. Notwithstanding this, as I have already found the development to be inappropriate in this location and to be harmful under the ground (a) appeal, in my opinion the objective of the notice can only be achieved in this case by the steps set out in the notice. Therefore, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control which has been caused by the breach. It would not be disproportionate to require the appellants to carry out the steps required by the notice and, therefore, I uphold the requirements of the notice, and the appeal fails on ground (f).

Ground (g) appeal

28. An appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a compliance period of 6 months. Whilst the appellants argue that an 18-month compliance period should be given, this is based on the duration of the temporary planning permission sought. Whilst I have considered varying the compliance period as suggested by the appellants, the breach and the harm it causes should not be allowed to continue unduly. Moreover, and given that the evidence suggests that the hardstanding was laid in only a few weeks, there is no evidence that the appellants would encounter any particular difficulties in removing the hardstanding or in restoring the site to its condition prior to the breach taking place within the 6-month period stipulated in the notice. The appeal under ground (g) therefore fails.

**Conclusion**

29. Having regard to the above and the evidence before me I conclude that the ground (a) appeal and the deemed application should not succeed. I have taken into account all matters raised by the appellants, but none are sufficient to outweigh the considerations that have led me to my conclusions that the appeal should be dismissed, and the enforcement notice should be upheld. I refuse to grant planning

permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

30. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that the findings of this Report are in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

*N Jones*

INSPECTOR