
Appeal Decisions

Inquiry Held on 11-13 & 17-19 September 2019

Site visits made on 10 & 18 September 2019

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 October 2019

Appeal A: APP/B5480/C/18/3193586

Land known as Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 2A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Everett against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 30 November 2017.
 - The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 2A from use as agricultural land to a sui generis use as a Scaffolding Contractors Yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles, boards and scaffolding equipment and storage of scaffolding equipment including poles & boards.
 - The requirements of the notice are 1. Cease the use of the land shown edged in black on the attached plan as plot 2A for the purposes as set below: (i) a Sui Generis Use as a Scaffolding Contractors Yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles, boards and scaffolding equipment and storage of scaffolding equipment including poles, boards and clips; and (ii) return the land to a solely agricultural use. 2. Remove from the land any scaffolding equipment including poles, boards and clips and apparatus and equipment used in connection with the maintenance and repair of scaffolding equipment, goods, rubbish, apparatus, ancillary structures and installations brought onto the land in connection with the unauthorised uses that are not solely associated with the agricultural use and resulting from compliance with requirement (1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/B5480/C/18/3193588

Land known as Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 3A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dean Everett against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 30 November 2017.
- The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 3A from use as agricultural land to a sui generis use

comprising a civil engineering and demolition contractors use including storage, servicing, maintenance and repair of plant and machinery (Plot 3A).

- The requirements of the notice are 1. Cease the use of the land shown edged in black on the attached plan as plot 3A for the purposes as set below: (i) a sui generis use comprising a civil engineering and demolition contractors use including storage, servicing, maintenance and repair of plant and machinery; and (ii) return the land to a solely agricultural use. 2. Remove from the land any plant and machinery including 360° excavators, compressors, lighting towers, roll on roll off vehicles, van, pickup trucks and apparatus and equipment used in connection with the servicing, maintenance and repair of plant and machinery, ancillary structures and installations brought onto the land in connection with the with the unauthorised uses that are not solely associated with the agricultural use and resulting from compliance with requirement (1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/B5480/C/18/3193591

Land known as Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 4A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Everett against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 30 November 2017.
 - The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 4A from use as agricultural land to a sui generis use as a scaffolding contractors yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles and equipment and the storage of scaffolding equipment including poles & boards (Plot 4A).
 - The requirements of the notice are 1. Cease the use of the land shown edged in black on the attached plan as plot 4A for the purposes as set below: (i) a sui generis use as a scaffolding contractor's yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles and equipment and the storage of scaffolding equipment including poles & boards; and (ii) return the land to a solely agricultural use. 2. Remove from the land any scaffolding equipment including poles, boards and clips and apparatus and equipment used in connection with the maintenance and repair of scaffolding equipment, goods, rubbish, apparatus, ancillary structures and installations brought onto the land in connection with the with the unauthorised uses that are not solely associated with the agricultural use and resulting from compliance with requirement (1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal D: APP/B5480/C/18/3193594

Land known as Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 5A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dean Everett against an enforcement notice issued by the

- Council of the London Borough of Havering.
- The enforcement notice was issued on 30 November 2017.
 - The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 5A from use as agricultural land to a sui generis use comprising the hire of mobile and tower cranes including the storage, servicing and maintenance of mobile and tower cranes.
 - The requirements of the notice are 1. Cease the use of the land shown edged in black on the attached plan as plot 5A for the purposes as set below: (i) a sui generis use comprising the hire of mobile and tower cranes including the storage, servicing and maintenance of mobile and tower cranes; and (ii) return the land to a solely agricultural use. 2. Remove from the land any mobile and tower cranes and associated crane parts and equipment; apparatus and equipment used in connection with the servicing, repair, cleaning and maintenance of mobile and tower cranes and associated equipment, goods, rubbish, apparatus, ancillary structures and installations brought onto the land in connection with the unauthorised use that are not solely associated with the agricultural use and resulting from compliance with requirement (1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal E: APP/B5480/C/18/3193596
Land known as Aveley Marshes to north-west of 9-15 Juliette Way,
Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot
6A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Everett against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 30 November 2017.
 - The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 6A from use as agricultural land to a sui generis use comprising of a base for a construction, demolition and haulage company including the hiring out of lorries, roll on roll off containers, skips, sweeping vehicles, excavators and other plant and equipment including excavators, storage of aggregates materials, stationing of skips and storage of plant and equipment.
 - The requirements of the notice are 1. Cease the use of the land shown edged in black on the attached plan as plot 6A for the purposes as set below: (i) a sui generis use comprising of a base for a construction, demolition and haulage company including the hiring out of lorries, roll on roll off containers, skips, sweeping vehicles, excavators and other plant and equipment including excavators, storage of aggregates materials, stationing of skips and storage of plant and equipment; and (ii) return the land to a solely agricultural use. 2. Remove from the land any plant and equipment including grab and tipper lorries, roll on roll off containers, skips, road sweeping vehicles, excavators, lifting platforms, aggregates materials, apparatus and equipment used in connection with the servicing, repair, cleaning and maintenance of plant and machinery, goods, rubbish, apparatus, ancillary structures and installations brought onto the land in connection with the unauthorised use that are not solely associated with the agricultural use and resulting from compliance with requirement (1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal F: APP/B5480/C/18/3193613

Land known as Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 11A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Everett against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 30 November 2017.
 - The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 11A from use as agricultural land to a mixed/composite sui generis use involving the storage of HGV's and plant and an industrial process involving the dismantling and cannibalisation of HGV's and plant and the storage of their constituent parts, and a scrapped vehicle parts and tyres export business (Plot 11A).
 - The requirements of the notice are 1. Cease the use of the land shown edged in black on the attached plan as plot 11A for the purposes as set below: (i) a mixed/composite sui generis use involving the storage of HGV's and plant and an industrial process involving the dismantling and cannibalisation of HGV's and plant and the storage of their constituent parts, and a scrapped vehicle parts and tyres export business; and (ii) return the land to a solely agricultural use. 2. Remove from the land any HGV's and plant, constituent parts of HGV's and plant, scrapped vehicle parts and tyres and apparatus and equipment used in connection with the dismantling and cannibalisation of HGV's and plant, goods, rubbish, apparatus, ancillary structures and installations brought onto the land in connection with the unauthorised use that are not solely associated with the agricultural use and resulting from compliance with requirement (1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal G: APP/B5480/C/18/3193615

Land known as Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 14A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dean Everett against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 30 November 2017.
- The breach of planning control as alleged in the notice is without planning permission: the unauthorised material change of use of the land shown on the attached plan edged in black and numbered as 14A from use as agricultural land to a mixed/composite planning unit used for three distinct uses including (i) agriculture including the ordinarily incidental/ancillary storage of plant and equipment and containers; (ii) a sui generis haulage use including, the parking, servicing, repair and refuelling of HGV's, trailers and tankers along with the ordinarily incidental /ancillary purposes associated with this use including stationing of fuel/chemical tanks and storage of plant and equipment associated with the maintenance of HGV's, trailers and tankers, and (iii) a sui generis use involving the buying and selling of containers and portable buildings.
- The requirements of the notice are 1. Cease the use of the land shown edged in black and cross hatched on the attached Plot 14A plan A (scale 1:5000 plan) with the wider planning unit hatched with diagonal lines and same land is shown edged in black and hatched with diagonal lines on Plot 14A plan B (scale 1:1250 plan and identified as 14A for the purposes as set below: (i). A mixed/composite planning unit used for three distinct uses including (i) agriculture including the ordinarily incidental/ancillary storage

of plant and equipment and containers; (ii) a sui generis haulage use including, the parking, servicing, repair and refuelling of HGV's, trailers and tankers along with the ordinarily incidental/ancillary purposes associated with this use including stationing of fuel/chemical tanks and storage of plant and equipment associated with the maintenance of HGV's, trailers and tankers, and (iii) a sui generis use involving the buying and selling of containers and portable buildings; and (ii) return the land to a solely agricultural use. 2. Remove from the land any containers and portable buildings and plant and equipment used in connection with the maintenance, servicing, repair and refuelling HGV's, trailers and tankers including fuel/chemical tanks, goods, rubbish, apparatus, ancillary structures and installations brought onto the land in connection with the unauthorised use that are not solely associated with the agricultural use and resulting from compliance with requirement (1).

- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A – 3193586, Plot 2A

1. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 2A), as shown on the plan attached to the notice, for a sui generis use as a Scaffolding Contractors Yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles, boards and scaffolding equipment and storage of scaffolding equipment including poles & boards subject to the conditions contained in the Conditions Annex appended to this decision.

Appeal B – 3193588, Plot 3A

2. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 3A), as shown on the plan attached to the notice, for a sui generis use comprising a civil engineering and demolition contractors use including storage, servicing, maintenance and repair of plant and machinery subject to the conditions contained in the Conditions Annex appended to this decision.

Appeal C – 3193591, Plot 4A

3. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 4A), as shown on the plan attached to the notice, for a sui generis use as a scaffolding contractors yard involving industrial processes relating to the

greasing of scaffolding poles, general maintenance and repairs of scaffolding poles and equipment and the storage of scaffolding equipment including poles & boards subject to the conditions contained in the Conditions Annex appended to this decision.

Appeal D – 3193954, Plot 5A

4. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 5A), as shown on the plan attached to the notice, for a sui generis use comprising the hire of mobile and tower cranes including the storage, servicing and maintenance of mobile and tower cranes subject to the conditions contained in the Conditions Annex appended to this decision and to the specific condition below:

- 1) No mobile or static crane shall be stationed or erected on the land.

Appeal E – 3193596, Plot 6A

5. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 6A), as shown on the plan attached to the notice, for a sui generis use comprising of a base for a construction, demolition and haulage company including the hiring out of lorries, roll on roll off containers, skips, sweeping vehicles, excavators and other plant and equipment including excavators, storage of aggregates materials, stationing of skips and storage of plant and equipment subject to the conditions contained in the Conditions Annex appended to this decision.

Appeal F – 3193613, Plot 11A

6. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 11A), as shown on the plan attached to the notice, for a mixed/composite sui generis use involving the storage of HGV's and plant and an industrial process involving the dismantling and cannibalisation of HGV's and plant and the storage of their constituent parts, and a scrapped vehicle parts and tyres export business subject to the conditions contained in the Conditions Annex appended to this decision.

Appeal G – 3193615, Plot 14A

7. The appeal 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 Act as amended for the development already carried out, namely the use of the land at Aveley Marshes to north-west of 9-15 Juliette Way, Purfleet Industrial Park, Aveley, South Ockendon, Essex, RM15 4YA (Plot 14A), as shown on the plan attached to the notice, for a mixed/composite planning unit used for three distinct uses including (i) agriculture including the ordinarily incidental/ancillary storage of plant and equipment and containers; (ii) a sui generis haulage use including, the parking, servicing, repair and refuelling of HGV's, trailers and tankers along with the ordinarily incidental /ancillary purposes associated with this use including stationing of fuel/chemical tanks and storage of plant and equipment associated with the maintenance of HGV's, trailers and tankers, and (iii) a sui generis use involving the buying and selling of containers and portable buildings subject to the conditions contained in the Conditions Annex appended to this decision.

Background to the Appeals

8. Juliette Way is an estate road within the Purfleet Industrial Park, an area of uses, many of which would be considered to be bad neighbour uses. While this is not a planning concept it is a well known and useful way of describing certain uses that would not sit comfortably with housing, or office uses.
9. The Industrial Park lies in a triangle of land bounded to one side by a double railway line, one part serving local trains the other the Chancel Tunnel Rail link, one of which is raised above the other on a lengthy viaduct as it sweeps past the site and across the marshes to the north. The other two sides are formed by the A13, also raised on a viaduct and the A1306, which runs from the A13 south towards Thurrock. About two-thirds of this triangle is filled with the industrial park, the remaining third, which lies to the north, consists of marshland, currently being farmed by the appellant. To the south and west, beyond the transport infrastructure is the wider area of Rainham, Wennington and Aveley Marshes, which includes a large RSPB reserve, but the marshland within the triangle does not have special distinction or protection. To the east is Aveley itself, separated from the Industrial Park by open ground and the A13 dual carriageway.
10. Juliette Way runs roughly west-east through the industrial park, the bulk of which lies to the south. To the north are a series of uses, including two of those subject to these appeals, a crane hire company and a haulage business, the latter run by the appellant. All these uses originally stretched to the edge of the industrial park, which was defined by a ditch and then the marshland. This ditch also roughly marked the edge of the green belt and the edge of the district of Thurrock. All the marshland beyond is in the green belt and within the area of the London Borough of Havering. Although it is difficult to precisely measure where the borough boundary is on the land, maps have been produced by the parties which show the red line running more or less along the original edge of the marsh. When looking at the individual planning units it is clear that some actually straddle the boundary, so strictly speaking, small areas of the marsh actually lay within Thurrock, but for the ease of understanding the wider picture, it is best to imagine the original industrial park lying entirely in Thurrock and all the land beyond within Havering.
11. It would seem that Mr Everett ran a haulage company from a different location within the Industrial Park and moved to No 13 Juliette Way in 1997 as his

business expanded. He and an associate kept an eye on the land to the rear of No 13 (the marshland in the north of the triangle) and when it came up for sale in 2006 bought the whole farm including all the land in the north of the triangle, and a substantial portion of farmland beyond. It would seem the land in the triangle was subject to flooding, possibly because of the actions of the RSPB on the nature reserve portion of the marshes, but in any event, Mr Everett dug out a silted up ditch and piled up the residue on the land adjacent to the Industrial Park. This created a strip of land all along the boundary with the industrial park that was raised above the marshland. This land was subsequently covered in hardstanding and a number of the uses within the industrial park extended onto the portion of hardstanding that lay to their rear. The timing of this event and whether it was a single operation or several is discussed below. Mr Everett uses a large part of the hardstanding for his own business and allows a number of other businesses to occupy smaller areas of the hardstanding. A number of these businesses have to take their access through Mr Everett's yard at No 13 Juliette Way.

Details of the individual sites

12. Running from the bottom of the strip of land (closest to the railway line) up to the eastern edge, closest to the A13, there are 7 sites in all. The first is 11A (appeal F). This is a large yard which contains an HGV storage and cannibalisation business. This yard forms the western end of the industrial park and has extended into the green belt as far as a large pylon that stands in the marsh. The appeal land is accessed through this main yard. To complicate matters a small strip of the extension into the marsh, closest to the railway line still lies in Thurrock and is not subject to any enforcement action, although it would seem from the aerial photographs that it was extended at the same time that the rest of the yard crept into Havering. Most of the yard is still in the industrial park in Thurrock, but a substantial portion lies within Havering and is the subject of the enforcement notice.
13. Next to 11A is 14A (appeal G). This is the extension to the yard at No 13 Juliette Way owned by Mr Everett and is accessed through that yard. It is 'L' shaped and runs along the back of the new boundary with the marsh. Mr Everett's business is a haulage contractor and a buyer and seller of containers and portacabins. He also farms the land mentioned above, and 14A has been used for all three uses, haulage, storage and sales of containers etc and agricultural storage. Slightly less than half the planning unit lies in Thurrock.
14. 2A (appeal A) is a small unit tucked between 14A and the original back of the industrial park. It houses a scaffolding contractor's yard and only a small sliver of the unit is in Thurrock. It is accessed through Mr Everett's yard and 14A.
15. Next to 2A is 3A (appeal B), another small unit tucked between 14A and the industrial park which is accessed through 14A. This contains a civil engineering and demolition contractor and is used to store and maintain plant and tools. Roughly a quarter of the planning unit lies in Thurrock.
16. The final small unit is 4A (appeal C), another scaffolders yard gaining access through 14A. just under half of this planning unit lies in Thurrock.

17. The end yard, which gains access from 14A is 6A (appeal E), this fills the whole of the space between the industrial park and the edge of the hardstanding. It contains a construction, demolition and haulage company.
18. Finally, beyond 6A is 5A (appeal D) which is an extension of the crane hire company which occupies a unit in the industrial park, about 4/5ths of the planning unit lies in Thurrock. Access to 5A is from the main crane yard in the industrial park. There is no vehicular access but Mr Jepson uses the crane in the main yard to lift crane parts into and out of 5A.

Invalidity

19. This is the third inquiry to have been arranged to deal with this strip of land. The first two were cancelled because the Council accepted their notices were invalid, the second Inquiry managed to run for three days before the notices were withdrawn. The notices the subject to this appeal have used as the allegation the matters described by the appellant's planning witness at the second inquiry and are divided up so that each notice covers an individual planning unit. These matters are not in dispute. However, the appellant's argument is that all the planning units cross the boundary between Havering and Thurrock and as Thurrock have not been involved in the issuing of any enforcement notices, and the enforcement notices subject to this appeal all cover land only in Havering, all are invalid.
20. There is no dispute that all the planning units straddle the boundary between the two councils and the notices only affect those parts of the planning units that lie within Havering. The land within Thurrock is entirely unaffected. In my view the issue of the planning unit is, unusually, somewhat of a red herring. There is no dispute that the extension of the various uses described above into the green belt was unlawful. There is no dispute what the uses are or where they are being undertaken. There is no need therefore to delve into the issue of defining the planning unit in the terms suggested by Burdle¹ and determining what are the principle and what are the ancillary uses. None of this is in dispute.
21. It was accepted that this is an unusual appeal and there would seem to be no directly relevant court cases. The appellant referred to Kemble², where the airfield at Kemble straddled the boundary between Cotswold and North Wiltshire district councils. However that case concerned the issue of an LDC by Cotswold DC for that part of the airfield within its jurisdiction which was challenged by North Wiltshire DC. The challenge failed and the court upheld the LDC. However, at one part of the judgement the judge mentions that an enforcement notice issued by North Wiltshire and appealed by the occupiers of Kemble airfield was withdrawn by the Council after criticism from the Inspector that any enforcement notice action should have been taken jointly by both councils. Nothing was made of this in the court case and it was mentioned only because much of the argument concerning the lawfulness or otherwise of the activities of the airfield was the same for the enforcement notice appeal and the LDC application. No doubt the Inspector had good reasons for his criticism in that appeal, but I do not know what they were. I can guess that in Kemble

¹ Burdle v SSE (1972) 3 ALL ER 240

² R (otao North Wiltshire DC) v Cotswold DC; Kemble airfield estates etc (2009) EWHC 3702 (Admin)

- a large airfield straddled the two councils and the alleged unlawful activities were potentially taking place across the whole airfield. Some of those activities in one Council area might prove to be ancillary to a principle activity in the other. By splitting the planning unit it would be difficult to fairly determine exactly what was going on at the airfield as a whole. The situation is quite different here, where there is no dispute as to what is going on or where.
22. The appellant accepts that a Council can enforce against an area smaller than the whole planning unit but warns that, as was made clear in the *De Mulder*³ case, this must be done with awareness of the effect on the rights of the appellant in doing so. In other words the appellant should not be prejudiced by an arbitrary division of the planning unit. The appellant claims that their case will be substantially prejudiced if the decision maker is not able to consider the entirety of each planning unit. They argue that Havering should have issued joint notices with Thurrock and by failing to do so the appellant's case is undermined for four reasons. Firstly, the appellant is deprived of the opportunity of advancing a ground (a) appeal for the whole of each planning unit and so the overall planning balance exercise will be flawed. Secondly, he is prevented from making a ground (d) appeal for the entire planning unit in each appeal. Thirdly, the impact of the notices, if they are upheld, might prevent lawful activities taking place in Thurrock. Finally, fourthly, a later cross boundary planning application could be prevented by Havering refusing to consider it due to s70C of the Act. I shall deal with each in turn below.
23. Before doing so it is worth pointing out here that the lawfulness of some of the uses in the industrial park is also in doubt. None have planning permission from Thurrock, and it is argued that some may actually require a permission, as their sui-generis nature is, presumably, not covered by the specific planning permission for the industrial park. However, as the appellant notes, there is no evidence to actually suggest any of the uses are unlawful⁴ and the appellants case is based on the assumption the uses in Thurrock will remain in place. This seems reasonable to me. What little evidence there is for any interest Thurrock Council have shown in the site suggests that in 2009 they were aware of the unlawful extension of the land into the green belt to the rear of the industrial park and wrote to Mr Everett's business partner about this. No mention was made of any doubt about the use of the land within the industrial park, which, had it been an issue, would surely have been raised at this point. This suggests to me the appellant is correct to consider the use of the land within the industrial park as beyond criticism at this point, and I shall assume that is the case.
24. It is obviously true that the ground (a) appeal can only relate to the land included in the enforcement notice, and so cannot affect the land in Thurrock. Thus the ground (a) appeals for any planning units that straddle the boundary will only affect part of those planning units, the part within the Havering borough council area. However, why this should prejudice the appellant is hard to fathom. The appellant argues that the land in Thurrock lies in an industrial park, where there are relevant policies which encourage employment uses. The appellant is denied the benefit of these policies in any balancing exercise concerning the green belt land in Havering. This is true, but it is difficult to see

³ *De Mulder v SSE* (1974) QB 792

⁴ P53 Tim North proof

how it is prejudicial. Had all the land been in Havering, and the same policies applied, the fact that part of the planning unit was in an industrial park, where employment uses were encouraged, would have little bearing on whether it should be allowed to extend onto adjacent land in the green belt, where a completely different set of highly restrictive policies apply. In any balancing exercise, the positive support for employment uses in the industrial park would have little weight when considering the use of land on a different, albeit adjacent site in the green belt.

25. The fact that the uses exist in the industrial park and will continue to do so regardless of the outcome of these appeals is clearly a factor to be taken into account, as is the impact of refusing the appeals on the likelihood of any of the uses continuing and the knock-on effect on jobs, but this would be the case regardless of which Council area the industrial park was located in.
26. It is the case that a ground (d) appeal can only be made for the land covered by the notice, but again it is difficult to detect any prejudice in that fact. During closings the appellant chose to argue that the uses might well not be lawful in Thurrock and so they were denied an opportunity to test this with a ground (d). However, there has been nothing to prevent the appellant or the occupiers of the land in Thurrock from applying for an LDC or a making a s78 application to regularise the situation in the industrial park, at any time, but they have chosen not to do so. The appellant hypothesised that I might decide to give little weight to the fallback position of the continued operation of the uses in Thurrock if I decided they might cease to operate, but that is not the case and I am, as noted above, happy to accept the appellant's original view that the uses in Thurrock are effectively lawful.
27. As to the impact on lawful activities taking place in Thurrock, this is entirely a matter for the appellant, or the occupiers of the land affected. Their continued occupation of land in Thurrock is not affected by the outcome of these appeals. If their business relies on the use of unlawful development in the green belt, then that is a risk they took when locating on the land. There will be no requirement for them to cease any activities that are lawfully taking place in Thurrock, but if that is a consequence of losing the relevant appeal then so be it. The outcome would still be the same even if joint enforcement notices had been issued by the two councils, if the use of the land in Havering was found to be unlawful, but that in Thurrock to be lawful. In fact this merely shows up the pointlessness of suggesting Thurrock should be involved in enforcement action, as there are no unlawful activities going on in the Borough in their jurisdiction.
28. Finally, it is again true that a later cross boundary application could be turned away by Havering, on the basis that there was an extant enforcement notice under s70C. But again, why this would be prejudicial is not clear. If the use of land in the green belt in Havering is found to be unlawful and the notices upheld, then it is only right, that having had the planning merits of that use considered as part of this appeal, the Council need not reconsider it again and so invoke s70C.
29. A number of other viability issues are raised in Mr North's proof which I shall deal with below. If the outcome of the appeals requires the appellant, or the occupiers of the land to remove some chattels or uses that currently straddle the boundaries between the two councils, then again, it is difficult to see how

this is a matter of prejudice arising from the issue of notices in Havering only. For the same reason as given above, this would not be any different if joint notices were issued and part of the site found to be lawful. There is no interference with the legitimate operation of any uses or activities lawfully being carried out in Thurrock, unless they actually require the unlawful use of land in Havering in order to continue. If they did require such unlawful land use in order to continue then any interference with the occupiers' human rights would be proportional.

30. The appellant argues that he is prevented from suggesting a scheme of improvements to the sites that involves any of the land in Thurrock, as this could not be enforced by Havering. This too is true, but no such scheme has been suggested. A scheme of improvements has been put forward, but this relates to landscaping on the edge of the marshland and improvements in bio-diversity. It is difficult to imagine what possible improvements could be suggested that would affect the industrial park in Thurrock, a densely occupied industrial estate, that could have a bearing on the use of the land in green belt. Finally, there is an argument that it is unlawful to enforce against chattels or operational development associated with a primary use when those chattels or development lie within Thurrock. This is also true, but the Council have not done so. They are only enforcing against the chattels or operational development that is in Havering.
31. Taking all this together I do not consider there has been any prejudice to the appellant by the issue of enforcement notices affecting only those parts of the planning units that are situated within the administrative area of Havering Borough Council. The notices are not therefore invalid. In my view this is a relatively straightforward case. In essence, various lawful uses have extended onto land in the green belt. Such an extension creates a material change of use which is unlawful, hence the issue of the enforcement notices. The appeals are made on the grounds that the extensions into the green belt happened more than 10 years ago and so are immune from enforcement action or failing that, that planning permission ought to be granted. The validity argument is a smokescreen.

The Appeals on Ground (d)

32. The ground (d) appeal is being made only for plots 3A, 5A, 11A and 14A, in that the uses alleged began more than 10 years before the issue of enforcement notices. There is a subsidiary ground (d) that operational development has occurred on plot 14A, which is also immune from enforcement. The notices subject to these appeals were all issued on 30 November 2017. The 10 year period thus begins on 30 November 2007. I shall consider the issue of second bite notices below.
33. The Council rely largely on aerial photographs of the area. These show only a single snapshot in time, but insofar as the uses rely on the provision of a hardstanding, and I shall discuss this in detail below, the photographs are helpful. There are also photographs provided by the appellant and the sworn oral and written testimony of various occupiers of the sites.
34. The first aerial photograph from 2005 sets the baseline, and it is agreed that no works had commenced at that time. The industrial park is contained within

its boundaries in Thurrock and there is a ditch separating it from the marsh/grassland beyond. Mr Everett was not certain there was a stream at the back of the land but accepted there may have been a ditch. It is clear to me there was a ditch which is obvious from the photographs and given the marsh land was prone to flooding this is not surprising. What is clear is that No 13 Juliette Way, Mr Everett's yard seems to peter-out towards the marsh, as does the back of the next door site which contains a lorry washing facility. Brown land lies behind them, which is not being used and Mr Everett's lorries are all drawn up some way from the marsh edge.

35. The next aerial photograph is November 2006 and this shows considerable changes. 11A does not seem to have changed but the rear of No 13 Juliette Way has been consolidated and has begun to just creep into 14A. The strip of land along the back of the rest of the industrial park heading up to 5A, which in 2005 was a bus depot, but by the time of the 2006 photograph was occupied by Mr Jepson's crane company, would seem to have been cleared of scrub and grass and a hardstanding is being laid on the land now occupied by 2A and 3A. Two large lorries, one empty and one with planings can be seen along with piles of planings and a several bulldozers. Mr Everett agreed this area was cleared, that it lay in Thurrock and that it represented the ransom strip that he purchased at that time.
36. The ransom strip was a sliver of land that lay between the industrial park and the marsh/farmland which Mr Everett needed to buy in order to access the marsh from the industrial park. A solicitor's letter dated December 2006 accuses Mr Everett of encroaching onto the ransom strip, so it is clear that the aerial photograph of late 2006 does show this. The agreed boundary between the councils lies just beyond the edge of the industrial park and the area of encroachment does more or less follow this boundary except for the land to the rear of No 13 Juliette Way, which would seem to lie in Havering and forms part of 14A. Given the difficulty of exactly measuring the boundary on the ground, it is not surprising there is an element of uncertainty here.
37. I pause to note here that the evidence given by Mr Brown, of plot 3A, was that he sold his previous site in October 2006 and moved onto the new site at the industrial park shortly before that date. However, it is obvious that at November 2006 the land was only just being cleared and hardstanding being put down, so Mr Brown's use of the land could not have begun in October 2006 as he said. No doubt that was his intention, but it is the establishment of the material change of use that is important in this appeal. Similarly Mr Jepson, of plot 5A says he bought the yard in the industrial park in late 2005 for his crane hire business, and began using the land to the rear, that is 5A, towards the end of 2005 when the hardstanding was laid. This too cannot be accurate as there was no hardstanding as late as November 2006. The aerial photograph clearly shows the area behind the crane depot as partly covered in grass and the rest of it looks like dry soil. It is clearly different to the area of 3A, where the planings are being laid.
38. The only other photographic evidence comes from a photograph dated July 2006, provided by the appellant⁵, but this shows only the land at the railway end of the site, comprising 11A and the back of No 13 Juliette way where it is

⁵ Tim North proof appendix 2

beginning to morph into 14A. clearly a hardstanding is in the process of being laid here, but this only reinforces the view from the aerial photograph that the back of No 13 Juliette Way and part of 14A have been consolidated and hardstanding is beginning creep along to where 3A is located.

39. This is important, as the appellant wishes me to rely more on the sworn testimony of the witnesses rather than the aerial photographs. I agree this can be helpful, especially when the photographs are inconsistent or unclear, but in this case, for these dates the aerial photos are quite clear, and the memories of the witnesses seem to be inaccurate. This is not surprising for events that were now 14 years ago, for activities that carried no importance for them at that time. It also highlights the difficulty of relying on non-expert witnesses establishing the beginnings of a use. Their view as to what using the land means need not coincide with what a planner might consider to be a material change of use.
40. This brings me to Mr Everett's claim to have used the land before the hardstanding was laid. Mr Everett accepted in cross examination that he did not park HGVs on the land unless there was a hardstanding, but he did store tractors, trailers and portacabins there. Quite frankly I find this hard to believe, at least in the sense that the appellant's barrister made of it in closings, that the use of buying and selling containers and portacabins had begun, on the land comprising plot 14A, in 2006 and there had from that time been no separation in uses between no 13 Juliette Way, plot 14A and the rest of the farm/marsh.
41. Firstly, it is obvious from my site visit that the hardstanding lies on land reclaimed from the marsh after a considerable amount of material has been dumped. Mr Everett explained he cleared a drainage channel, which had become clogged after years of disuse, and dumped the materials onto the marsh at the back of the industrial park. On top of that he laid a hardstanding. Hence, it would seem, the view in the 2006 aerial photograph of a mixture of hardstanding and soil.
42. From my site visits I saw that the hardstanding is about 2m above the ground level of the marsh. It is reasonable to assume this has always been the case and it can be clearly seen in photographs from May 2007 provided by the appellant. There is no reason to assume it was not the case in 2006. It is very difficult to access the marsh from the edge of the hardstanding, except down a ramp at the far end by 5A, where access is gained to the farmland for 4 wheel drive vehicles, which was also required for the utility companies to access the power lines that run across the marsh. I also doubt the marshy land, that was subject to flooding, a particular bugbear for Mr Everett as it was caused by the RSPB raising the water levels on the nearby reserve, would be suitable for storing heavy portacabins or containers on anything other than a very temporary basis. There is no evidence in any of the many photographs, of any use of the land outside of the hardstanding for anything other than agriculture. If there was any placing of structures or chattels on the marsh then that would have been of a temporary and fleeting nature, insufficient to amount to a material change of use.
43. I also need to consider here the appellant's consideration of the planning unit encompassing plot 14A. The notice describes 14A as a mixed use of

agriculture, HGV yard and buying and selling containers and portacabins. The latter two are obviously being carried out from the plot, but agriculture is more problematical. There is photographic evidence of the storage of haybales on the wider 14A site in 2012, but that is all. Mr Everett explained that the farm he bought is mostly for cattle grazing and hay. Hay is cut and stored as winter feed for the cattle. Apart from the most recent couple of years, when he has not kept cattle due to the ongoing enforcement issues, he has stored hay regularly on the hardstanding at 14A, and uses a container on the land as a repair workshop for both his HGVs and agricultural equipment. There is no evidence for this, but nevertheless, I am not prepared to gainsay the mixed use identified in the notice. However, I do not agree with the appellant that this is part of a larger planning unit all in mixed use, consisting of the land in the industrial park, plot 14A and the extensive farmland owned by Mr Everett on both sides of the A13. In terms of Burdle, it is true there is no fencing between the farmland and the industrial park, but there is a physical barrier in the shape of the drainage ditch that has always, it would seem, run along the boundary between the hardstanding and the farmland beyond. In fact it is abundantly clear where the farmland ends and where the commercial uses begin, as the latter are confined to the substantial hardstanding that is clearly delineated from the farm or marsh land beyond. One of the options in Burdle is that a single unit of occupation contains two or more physically separate and distinct areas occupied for substantially different and unrelated purposes, which is what is happening here.

44. Admittedly, the mixed use on one of the planning units consisting of plot 14A and No 13 Juliette Way does involve an element of agriculture, which is clearly related to the agricultural use being undertaken on the other planning unit, the farmland. However, that is not fatal to the idea of there being two planning units. Burdle does not try to define every possible situation but is a guide to help identify planning units where there is dispute. The alternative is to argue there has been a composite use, where the component activities fluctuate from time to time but are not confined within separate and physically distinct areas. This is not what has happened as the farming has always taken place on the farmland and the commercial activities have always taken place on the hardstanding. They are easily identifiable. The only exception is the occasional use of the hardstanding for agricultural storage which has led to a mixed use on one planning unit and a sole agricultural use on the other. Finally if the appellant were correct, and this was a composite use, it would suggest the storing of containers or parking of HGVs could take place anywhere on the farmland without there being a material change of use. This is clearly an absurd result. The uses most closely follow the third Burdle suggestion of a single owner but different planning units.
45. Thus to recap, the situation in November 2006 was that a small amount of land to the rear of No 13 Juliette Way had been covered with hardstanding, which was also being laid along the back of the industrial park as far as the boundary with plot 6A. Most of this hardstanding occupied the ransom strip which lay within Thurrock but some spilled over into Havering. Certainly that bit of the hardstanding behind no 13 Juliette Way which encroached into plot 14A was being used for commercial purposes by Mr Everett, but no other uses appeared to be taking place. I don't rule out that Mr Jepson may have stored the odd crane jib on the farmland, once it had been raised but prior to the laying of the

hardstanding, but whether this amounts to the material change of use as alleged I shall discuss below.

46. The next aerial photograph is May or June 2007 and this is accompanied by photographs provided by the appellant⁶. Much of the site has now moved out into the farmland. This is clear as at the western end, by the railway, there is a pylon standing in the marsh adjacent to the current edge of plot 11A. In 2005 and 2006 this was some way from the back of 11A, but now in 2007 this gap has halved. This is further clearly demonstrated by the new drainage ditch at the back of the extended hardstanding, full of water in the early summer of 2007, which is level with the overhead gantry of the rail line. In 2006 this ditch was further away from the gantry.
47. The photograph shows that 11A has extended to make full use of the new hardstanding but little seems to be happening elsewhere. 14A, enlarged from 2006 and now running behind the industrial park would seem to have a firm hardstanding laid, but the photographs show just a handful of large lorries parked on a wide area, that now encompasses 2A and 3A. There is no sign of these uses currently in 2A and 3A taking place at all. The land now occupied by 6A and 5A is little different than in 2006, no further extension of depth has been made and there is evidence that parts are overgrown with weeds, but there is clearly some use of it being made by the crane company for storage of crane jibs. This is supported by the ground level photographs which show a levelled area of rough hardstanding, separated from the marshland by a ditch full of water, with a couple of lorry trailers parked on it.
48. The lack of any obvious activity apart from 11A was much discussed at the Inquiry. I fully accept that Mr Everett's business fluctuates, and sometimes there will be more containers or lorries parked than others, but there is very little activity at all in either the aerial or standard photographs. There is also no sign that Mr Brown had established his demolition and site clearance business on plot 3A either. Again he suggested all his equipment was away from the plot being used on site for different jobs. This is possible, but it is unlikely there would be nothing left. The aerial photograph shows a distinct gap devoid of anything, not even any small scale clutter, where plot 3A would be. A later aerial photograph from 2010 shows the plot clearly delineated with fencing and containing two large excavators. But even if these were away working, there is also a mass of other random clutter that one would expect to find in the base of a demolition contractor. This is also clearly shown in the aerial photograph from 2017, where the compound is empty of heavy equipment, but lined on three sides with storage, much of it in small containers. It is also a valid point that in the 2010 photograph, the fenced off site is smaller than that subject to the notice. By 2012 the compound had grown, occupying more of the land that seemed to have been used in 2010 by a different business, possibly Mr Everett's. Although Mr Brown claimed that the compound had not changed size, it is irrefutably larger in 2012 than in 2010.
49. Thus it seems that in mid-2007 only the part of the hardstanding that is now identified as plot 11A was obviously occupied, but then not the whole of 11A as we shall see below. The same is true of 14A, although the evidence for the use taking place is not as strong as for 11A, but I have no reason to doubt Mr

⁶ Tim North proof App 5

- Everett would have made some use of the newly created hardstanding. Finally it would seem some use is being made of part of 5A for crane storage. There is no evidence of any use being made by Mr Brown of 3A, at this point.
50. The next aerial photograph comes from May 2010 and by now the hardstanding has increased once again to take up its full width. At the western end by the railway, plot 11A has expanded right up to the base of the pylon and is pretty much in full use for storage and cannibalisation of HGVs as alleged. Containers and HGVs are parked on 14A as far as the end of 3A, which itself is clearly established in a fenced compound. Next to that the land that would become 2A and what would have been 1A had that been enforced against, is occupied by an unidentified user. Beyond 3A is a large expanse of open, newly laid hardstanding, with no sign of 4A or 6A, but 5A is in full swing, with crane parts stored on the land, and a ramp has now been built at the end to provide access down to a track that would seem to have been recently created leading across the marsh, presumably for the utility company.
51. There is no photographic evidence for what happened between June 2007 and 30 November 2007 when the notices bite. Two witnesses, Mr Brown and Mr Jepson both claim to have been using the same area of land since 2005 (Mr Jepson) and 2006 (Mr Brown), but neither of these recollections can be correct, as discussed above. Mr Everett was more helpful in that he confirmed to me the hardstanding had been extended in stages towards the pylon, as confirmed by the aerial photographs. However, photographs provided by the appellant do shed some light on the matter. Those dated August 2008⁷ show the land by 6A and 5A to be overgrown and empty, apart from some crane storage, and very little happening on the area of land covered by 2A, 3A, 4A and most of 14A. There are some lorries and vans and a few containers stored against the edge of the industrial park, but nothing else. Then the photographs dated August 2009 show a major laying of hardstanding going on. The old brown aggregate surface is covered with plastic sheeting and planings are being spread on top. The site also looks wider than in 2008. Which would tie in with the extended site shown in the aerial photograph in 2010. It seems highly likely therefore the hardstanding was extended in three separate operations, firstly in 2006, most of which remained in Thurrock, then by June 2007 a move had been made into the marshland proper, and finally in 2009 the hardstanding took the shape and extent it has now, as shown by the clearly newly laid surface in the May 2010 aerial photograph.
52. However, even if this conjecture is wrong, it does not seem credible, that the area of hardstanding shown in June 2007 could have been extended and finished, and the uses established on it within 5 months in order to have begun before 30 November 2007. That clearly is not the evidence of the photographs from 2008 and 2009 referred to above. Thus on the photographic and witness evidence it would not seem that on the balance of probability the ground (d) appeals have been made out.
53. Other evidence was provided to the inquiry, but the numerous invoices and bills only serve to show the various commercial activities were being undertaken in the industrial park, not necessarily on the land in question. Mr Brown of plot 3A did not pay rent and so had no documentary record of being

⁷ Tim North proof App 6

on the plot, but Mr Jepson did pay rent for the land to the rear of his crane yard, plot 5A. This was presented in a less than straightforward printout from his accounting system⁸. For the "Year end 2011" accounts page there is an entry "End of yard Jan-Dec 2008", for £6900. This was apparently for the rent of the land comprising 5A. The next entry on the same page is "Rent", for £7050, paid in Feb 2010, presumably relating to the year 2009. Further payments of "Rent" occur in 2011, 2012 (labelled "Jan-Dec 2011"), 2013 (labelled "Purfleet rental"), 2014, 2015 (labelled "bottom of Purfleet yard, Feb") and 2016 (labelled "bottom of yard"). These are all for £7200, and match with the same invoice numbers provided by Mr Everett's haulage firm, to whom the rent was being paid. Mr Jepson explained that whoever entered the figures and descriptions onto the system used different words to describe the same thing. Given the similarity of payment, dates, and matching invoices, it seems reasonable to assume they all related to the land at the bottom of the yard, which was owned by Mr Everett, that is plot 5A. Mr Jepson is unlikely to have paid rent for land he wasn't using, so this suggests he was using the plot consistently from 2009, which accords with the photographic evidence.

54. The first payment mentioned above, for 2008, does not have a matching invoice number and is for a different, lesser amount. However, its description is clearly for the end of the yard and the photographic evidence discussed above suggests some use was by this time, being made of 5A. The lesser amount could reflect the fact that the full extent of 5A was not created until later. There is a previous payment, simply called "Jan 07-Jan 08", for £7050, paid in January 2008 with a different reference number that does not match any invoices from Mr Everett. Mr Jepson says this was the first payment he made. It is odd that it is for more than the following year's payment of £6900 and that it has a different reference number. Nevertheless, even if it is a payment, and Mr Jepson did pay rent for 5A from January 2007 onwards (which could easily be the case as he did seem to be using the land in June 2007), this does not tell us how much of 5A was being used. I have already concluded the plot expanded considerably between 2007 and 2010 to eventually create the planning unit that is being enforced against. So the fact that rent was paid for some land to the rear of the crane yard does not help in the establishment of the material change of use.
55. In conclusion therefore, the evidence for the four plots subject to the ground (d) appeal is as follows. For 3A, there is little or no evidence that it was established by June 2007. It was in place by May 2010, but then on a smaller site than in 2012. On the balance of probability the use of plot 3A for civil engineering and demolition contractors had not begun on or before 30 November 2007. If it had, then it occupied a smaller site than it did when the notice was issued. That increase was substantial and created a new planning unit so that the clock started running again.
56. It seems possible that a small part of 5A was used for storing crane parts in 2006 and it was definitely in use in 2007. However, as for 3A, the size of 5A virtually doubled between June 2007 and May 2010, creating a new planning unit and setting the clock running again. There is no evidence this new planning unit was in place, let alone being used in November 2007.

⁸ Trevor Jepson proof App 13

57. Plot 14A has a similar history to the rest in that it was substantially increased in size between June 2007 and May 2010, creating a new planning unit and setting the clock running again. There is no evidence this new planning unit was in place, let alone being used in November 2007.
58. Finally, plot 11A was also substantially increased in size between June 2007 and May 2010, creating a new planning unit and setting the clock running again. There is no evidence this new planning unit was in place, let alone being used in November 2007.
59. The final issue for ground (d) is the future of some of the containers placed on the land. The appellant originally argued that because the requirements of various of the notices did not specifically mention "containers", those containers that were on the land in connection with the various uses could remain and that the scaffolding racks had become structures that were also lawful through the passage of time. The principle that structures or other works that have become immune through the passage of time or do not require planning permission can still be removed if part and parcel of a material change of use is well attested in *Murfitt*⁹ and *Somak Travel*¹⁰. The later case of *Bowring*¹¹ reinforced the view that the works to be removed must be integral to or part and parcel of the making of the material change of use. It would not be enough if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
60. In closings the appellant accepted that their ground (d) only referred to a specific container on plot 14A. I do not think there was any dispute that the particular container at issue, used for storage of tools and equipment for the repair of vehicles, and possibly also as a workshop for the same, has been in position, without being moved, for more than 4 years. The issue is whether it can be removed as part and parcel of the material change of use or not. Again in closings the appellant appeared to suggest that insofar as it had been used exclusively for agricultural purposes, such purposes were lawful and the container could remain, presumably relying on *Bowring*. However, it had not been used exclusively for agricultural purposes. Even if Mr Everett did maintain his tractor and other agricultural machinery by using the tools in the container, given that it stands in the middle of a large HGV haulage yard, it is not unreasonable to assume that most of the work associated with the use of the container was for the maintenance of HGVs and container lifting equipment. As such it is clearly part and parcel of the material change of use alleged, it had not been placed on the land for a lawful agricultural use. Such a use if it had taken place, was merely incidental to its main use serving the haulage yard and so it can be removed.
61. As a consequence of the above conclusions the appeals on ground (d) all fail. I do not therefore need to consider whether the notices are sufficiently similar to those issued on 2 November 2016 and so can take advantage of the second bite provisions in s171B(4).

⁹ *Murfitt v SSE* [1980] JPL 598

¹⁰ *Somak Travel v SSE* [1987] JPL 630

¹¹ *Bowring v SSCLG & Waltham Forest BC* [2013] EWHC 1115 (Admin)

The Appeal on Ground (a)

62. The plots subject to the enforcement notices all lie in the green belt the essential characteristics of which is its openness and its permanence. If development is considered to be inappropriate then it should not be approved except in very special circumstances. The first issue is therefore whether the development is inappropriate or not.

The green belt

63. Paragraphs 145-146 of the NPPF sets out the government's approach to determining whether development is inappropriate or not. Paragraph 146 says "*certain other forms of development are also not inappropriate in the green belt provided they preserve its openness and do not conflict with the purposes of including land within it...*". Sub-paragraph (e) is the relevant section for this appeal; "*material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*". The appellant argues the material changes of use here fulfil the criteria of paragraph 146, there is no net impact on openness and so the development is not inappropriate.
64. The starting point for this analysis is the state of the land if the appeals fail. It is common ground that the hardstanding is immune from enforcement and will remain. However, given the failure of the ground (d) appeals, all the goods, chattels and structures on the hardstanding that lie within Havering Council's area will be removed. This means that a section of land that lies in Thurrock between plot 11A and the railway will remain, and it is reasonable to assume will continue to be used by the vehicle cannibalisation company that occupies it. A strip of land to the rear of plot 5A also lies outside of Havering's jurisdiction and could easily be utilised by Mr Jepson for crane jib storage. However it is hard to see how the very small strip of land to the rear of 6A, 4A, 3A and 2A could continue to be used by those occupiers as the majority of their sites lie on the hardstanding in Havering. It is possible that some use could be made of this strip, possibly by Mr Everett to store containers on, and for the sake of this analysis I shall assume this is the case. Mr Everett also suggested he would continue to use the hardstanding for agricultural purposes. The evidence is that he stores hay on the land from time to time, and the photograph from 2012 shows this can be extensive. He might also park his agricultural machinery on the hardstanding, but this would seem to be limited to a tractor, hay-baler, grass cutter and trailer. He also mentioned building a barn on the land in order to store the hay. Such a barn could be permitted development if it were genuinely needed for agricultural purposes on the unit, and I shall assume a reasonable sized barn could also be built.
65. Although much was made of recent court judgements concerning what constitutes openness, it remains true that the lack of built form is an important part of openness. The visual amenity of the land is also to be taken into account, but I am not considering the impact on visual amenity of the wider area of the continued uses, merely the basic question of whether openness is preserved. In terms of openness in my view the visual impact of two containers stacked one on the other is greater than a pile of haybales of the same size. The sharp edges and obvious utilitarian shape and finish of the containers contrasts with the soft and natural appearance of hay bales.

Although the bales may fill the same volume of space as the containers, they impact on openness marginally less. If they were covered in plastic sheeting to protect them from the weather, they would seem to be larger, and possibly then have a similar impact as the containers.

66. The barn, if built, could be quite large, but of course would be filled with hay, which would not therefore be stored outside. The tractor and other miscellaneous equipment will also all have an impact on openness. However, even on a worse-case scenario (in terms of openness) it is difficult to see how taken together this would all take up more space than is currently occupied by plot 14A, which represents less than half the land. Even factoring in some containers and crane parts as discussed above, the use of the land would still be considerably less intensive than it is now. There would simply be much less volume of stuff on the land than if the current uses continue and this is without considering the transient nature of the hay storage compared to the greater volume of potential comings and goings of Mr Everett's business, let alone the other 6 users of the land. Put that simply it is inescapable that there would be a greater impact on openness if the uses continue than if they didn't.
67. Looked at from another view, it is simply stretching credibility beyond breaking point that the use of the land for parking a tractor and some other agricultural machinery, storing hay bales, even with a barn, some potential positioning of containers and crane jibs along the edges of the industrial park and a small area of HGV cannibalisation would have a similar impact on openness than would the operation of a much larger area for the HGV cannibalisation yard, an HGV depot, a container sales yard, two scaffolding yards, a civil engineering and demolition yard, a construction demolition and haulage yard and a crane hire yard, on the same area of land.
68. The appellant provided a Landscape and Visual Impact Analysis which concluded the uses would have a neutral effect on visual receptors and there would be no harm inflicted on the landscape and visual quality of the green belt if the uses were to remain, taking into account the theoretical remaining agricultural use of the land should the appeals fail. This was developed during the inquiry into a statement that the impact on openness would be neutral and so the development was not inappropriate. In my view the LVIA did not show this. It may be that when seen against the existing uses on the industrial park and in the context of the transport and energy infrastructure it is difficult to distinguish the appeal site from the industrial park, especially in public views. But visual impact is only one aspect of openness. The quantum of machinery, containers, vehicles, and clutter from the seven separate uses crammed onto the narrow strip of land would be likely to be significantly greater than that following the resumption of a solely agricultural use, especially as Mr Everett's farm is only for grazing cattle and producing hay.
69. Much was made of the transient nature of many of the industrial and commercial items. The containers were only stored while they were waiting to be sold, the lorries were regularly off site, as was much of Mr Brown's demolition equipment, the crane jibs and presumably the scaffolding. It was suggested the lack of any visual evidence of any activity in some of the aerial photographs supports this assertion, that sometimes the hardstanding might look quite empty. This may be true, but it is highly theoretical. In fact the

aerial photographs seem to show a steadily developing pattern. As the years go on, the hardstanding is extended and more uses are introduced. In 2012, when the hay bales are being stored on 14A, 5A and 11A are completely crammed with material, while 3A and the yards either side are fully functioning, but 6A has yet to be established. The same is true in 2013, but now there are lorries and containers scattered about 14A in place of the hay. By 2016 a large area of the hardstanding to the east is filled with material storage and lorries as plot 6A is now established, and in 2017 the container storage on 14A has really taken off with containers stacked two high. As I saw in 2019, the container element had intensified, while the other uses were little different. So there is a pattern of increasing intensity of use over time, not one of fluctuations. Even if there were, however, that would have to be compared to the agricultural use, where hay would be stored, presumably in September and gradually reduced over the winter as it was used for feed, and then nothing again until September. This is hardly equivalent to the fluctuations of container or heavy plant storage as they come and go depending on the success or otherwise of the businesses involved.

70. In my view therefore the uses all have an effect on openness that would be greater than if the appeals were refused, whether taken individually or all together. The development is therefore inappropriate and is by definition harmful to the green belt. When considering any planning application substantial weight should be given to any harm to the green belt. Very special circumstances will not exist unless the harm by way of inappropriateness and any other harm is clearly outweighed by other considerations.
71. I agree with the appellant that the material change of use of the land does not offend any of the purposes of including land within the green belt. The whole area is separated from the wider marsh by the transport infrastructure which has enisled a triangle of land, over half occupied by commercial units and less than half by farm/marshland. There are no large built up areas whose sprawl needs to be checked, no neighbouring towns are in danger of merging, there are no historic towns nearby, there would not seem to be any derelict urban land whose recycling might be affected by the use of the land and any countryside has already been encroached on by the hardstanding. The issue is simply one of openness.
72. The Council referred to a 2016 green belt study. A large proportion of Havering is designated as green belt and this was divided into parcels, each one analysed as to its overall contribution to the green belt. Parcel 2 contains the appeal sites and was considered "fundamental". This outcome is not surprising as parcel 2 covers all the land between the industrial park in Thurrock and Rainham itself. Within parcel 2 the appeal site occupies a very small area and the role the site plays within this parcel is, in my view, minimal. The Council were also understandably concerned about the effect on the integrity of the green belt as a whole if the edges were nibbled away at piecemeal. Mr Furse, the appellant's landscape witness argued that the situation was different here as the hardstanding would remain whatever the outcome of the appeal. Therefore there was a clear edge to the built up area. Any further extension of the uses into the green belt would involve considerable works to build up the land to enable a hardstanding to be laid which would completely change its character. I agree with this view, especially

if the landscape improvements (discussed below) are introduced as suggested. I would go further and query the value of the whole parcel of land contained within the railway and A13 triangle, none of which seems to fulfil any of the purposes of including land in the green belt, but that is not a matter before me, I only mention it to put into the context that when viewed on the ground how little of value the appeal sites appears to contribute to the green belt.

Other harm?

73. Other than those dealing with the green belt, the parties raised several policies from Havering's development plan. DC58 which deals with bio-diversity; DC61 which deals with urban design and DC9, DC10 and DC11, which all deal with the location of employment generating uses. Reference is also made to policies 19 and 20 of the emerging local plan which also deal with industrial sites and the economy.
74. DC58 seeks to protect the bio-diversity of application sites. However, in this case the bio-diversity has already been significantly compromised, if not extinguished by the introduction of the hardstanding, which will remain if the appeals are dismissed. Mr Thelwell for the Council did suggest the hardstanding might gradually revert to nature, which is true of almost any development over a long enough timescale, but I doubt it is a realistic possibility, particularly as Mr Everett will continue an agricultural use of the land, even on a much reduced basis to that taking part now. There is also the issue of any contaminants that may have been deposited on the land from the various industrial uses. In my view it is realistic to assume the habitat is lost and the bio-diversity interest of the land is very limited. This too is the conclusion of the appellant's ecology report¹² which also notes the continuation of the uses subject to a planning permission and proper controls would not make the situation any worse. So there will be no conflict with DC58. In fact with the imposition of a bio-diversity management plan there will be net gains. The management plan affects the farmland next to the appeal land, but as this is in the same ownership it could be secured by condition.
75. The question of urban design is dealt with by DC61 which requires new development to enhance or improve the character and appearance of the local area. It is here the VLIA becomes useful. Having visited the public viewpoints reproduced in the VLIA and seen the site from down on the marshland, it is clear that many of the dominant features, such as the crane, the buildings and the containers stacked three high are actually in the industrial park. Apart from the containers stacked two high on the marshland edge of 14A, much of the rest of the uses are screened by existing vegetation. Those that aren't, as the VLIA points out, are hard to distinguish from the clutter of uses and activities carrying on lawfully in the industrial park. From further afield, such as the RSPB reserve at Rainham, the land is effectively invisible because of the raised railway line and the distances involved. I agree with the LVIA, that the appeal land forms a narrow strip which is seen almost exclusively in the context of the industrial park to its rear and the significant transport infrastructure and large pylons and electricity cables that cross the marsh. It is, in my view, a typical edgeland of the type found on the fringes of many

¹² Tim North proof, App 69

urban areas, that has been given over to industrial parks, roads, railways and other uses that are best kept away from population centres.

76. The Council made some play of views from within the industrial park towards the green belt. These are currently blocked by the unlawful uses. However, it seemed to me these views were more theoretical than real. Many of the aerial photographs showed the rear edge of the various yards occupying the industrial park were defined by parked vehicles or containers and I saw on my site visits the backs of those sites, where not blocked by storage and parking, were fenced off. Some views through the fence may be lost, but this is of little weight and does not change my view that the uses on the land have very little impact on the surrounding area. The containers were visible on plot 14A, so the impact could hardly be described as 'neutral', but nevertheless, it is hard to find any conflict with DC61 as the uses very much maintains the character (such as it is) of the local area. However, a landscape management plan is proposed in the VLIA. This would stabilise the edge between the hardstanding and the marsh, creating a berm for planting of hedgerow and other species which would have the effect of further screening the land. There was some discussion about the introduction of trees which might harbour raptors much to the dismay of the RSPB (and to the ground nesting birds in the marshland), but there would be no need for such trees. As I saw the marshland is dotted with substantial shrubs which, if planted on the berm by the hardstanding, would be able to screen views of the containers, providing they were not stacked more than 2 high.
77. The management plan would also require the plots within the hardstanding to be delineated and to tidy up the hardstanding. The Council suggested that little weight could be placed on this plan as it was purely speculative. However, I agree with the appellant that there is nothing unusual or onerous in it. Mr Everett has a track record of maintaining the drainage of the wider farmland and carrying out improvements himself. There is nothing in the management plan, even when combined with the bio-diversity plan, that would be unreasonable. I can see no reason why it should not be secured by condition. This would be a further net gain, as well as helping screen the site more thoroughly. As such there is no conflict with DC61.

Alternative sites?

78. No other conflict with development plan policies was identified by the Council, the other policies referred to deal with the provision of employment land. It is an important part of the appellant's case that the uses on the land are not good neighbour uses and that they have nowhere else to go. Certainly, the appellant argues there are no sites in Havering or Thurrock which would welcome these uses.
79. Firstly I agree with the appellant that these do fall into the category of bad neighbour uses. The use of large lorries at any time of day or night for the crane, demolition companies and Mr Everett's HGV business, the work cannibalising HGVs and the storage of demolition materials are all potentially noisy and messy. I heard considerable evidence that such uses are not welcome on many commercial estates, which are inclined more towards 'clean' uses contained within sheds, rather than open and unsightly yards. It was suggested that some of the activities could easily be carried out within a large

shed, but I accept the appellant's view that this fails to realise the economic reality, where the rent for those sites is significantly higher than for just an open yard.

80. The appellant had provided a detailed analysis of alternative sites in Havering and concluded there were no sites available. The Council's Employment Land Review was produced in 2015 and updated in 2018¹³. The latter notes there has been little change since 2015 and notes with some surprise that there are low vacancy rates given the relatively low quality of much of the land, possibly due to demand spilling out from London where, as the appellant's witnesses also suggested, demand and price was forcing more businesses further out. The survey suggests that some industrial land could become vacant and so recycled for other uses, and again the appellant's witnesses argued that given Havering's shortage of housing land, the priority of the Council was for residential not industrial uses. The 2015 study identified 19.5ha that should become available for change of use away from employment land uses to aid regeneration and warns of the danger of a too rapid loss of employment land¹⁴.
81. As to land in Thurrock, it was argued that despite an oversupply of employment land identified in the local plan¹⁵ this was almost entirely taken up by freight and logistics centred around various port facilities. This results in a lack of flexibility and a need for more land to be identified to move non-conforming uses out of areas where they may conflict with housing. There is a whole section on enforcement issues and problems residents perceive with HGV movements to lawful sites, an issue also raised by the appellant's witnesses.
82. The Council point out there is no evidence of a formal or consistent attempt to find alternative sites and even if land is difficult to find locally, there are likely to be plenty of options further afield. Mr Jepson's crane company once used a yard in Grantham in Lincolnshire for storage purposes, for example. I agree the evidence of a search for alternatives is somewhat fragmentary, but it is clear that all the witnesses have made some attempts to find other sites, and in many cases have a history of moving from one yard to another as either they outgrow a site, or the land is repurposed. It would seem to me the Grantham yard anecdote is an example of the problems the businesses face rather than a suggestion of where else it would be reasonable to relocate to.
83. All this is to be considered within a policy background that, I would agree with the appellant, is hostile to sui-generis bad neighbour uses. The three employment land policies DC9-11 all refer to specific use classes. DC9 supports only B1, B2 and B8 in the Preferred Industrial Locations; DC10 supports only uses that do not adversely affect residential areas; and DC11 resists changes of use to industrial and business uses where there is conflict with housing or environmental policies and positively supports the change of use from commercial sites to housing. There are no policies for sui-generis uses. I accept the Council's argument that it is difficult to frame a policy for a sui-generis use, as such uses are by their very nature unpredictable. Nevertheless, any sui-generis use that is seeking planning permission will have to do so as an exception to employment land policies and would obviously have

¹³ Simon Thelwell proof, App 17

¹⁴ Executive summary p8

¹⁵ Simon Thelwell proof, App 19

to make a case for doing so, which as the appellant points out is little different from what is happening here.

84. It seems to me therefore the appellant has a reasonable case that relocation would not be a simple matter, and it may well be that there is simply nowhere else for them to go in the locality. Three of the businesses on plots 11A, 14A and 5A, would still have substantial yards within the industrial park, although Mr Everett's yard space would be reduced by half. The others on 2A, 3A, 4A and 6A would simply have to pack up and leave. Given the conclusion above on the difficulty of finding alternative space, it follows these other uses would struggle to relocate locally, which would lead to a loss of jobs. It is also possible that Mr Everett and Mr Jepson would have to scale back their work, with an associated impact on employment.
85. Finally the appellant points out that paragraph 107 of the NPPF supports the provision of overnight lorry parking facilities. I do not agree with the Council that this refers only to lorries in transit, but it is self-evident that an HGV haulage use requires space to park HGVs off the road otherwise they could cause a nuisance, as paragraph 107 warns.

Conclusions

86. I have concluded the development is inappropriate in the green belt, a finding that attracts substantial weight. However, there is no other harm to the green belt and in particular there is no harm to the purposes of including land within the green belt. I have concluded above that this is a minor loss of land, closely associated with the adjacent industrial park which barely fulfils a green belt function at all, but there is an opportunity to create a clear and defensible edge to the green belt and to the marshland beyond. There will be a positive improvement in bio-diversity and in the appearance of the adjacent marshland, while there is no conflict with either of the main policies cited by the Council DC58 and DC61.
87. I accept that relocation would be difficult for any of those occupiers forced to leave, either because their yard effectively disappears, or because they have to scale back or possibly close down their business because of lack of space. This would have an effect on employment and there would be a loss of jobs. By contrast, the appeal sites seem well suited to the sort of bad neighbour uses that are taking place. Finally there is some support from paragraph 107 of the NPPF.
88. Taking this altogether, I find there are sufficient benefits to clearly outweigh the harm I have identified and that these amount to the very special circumstances required to allow this development in the green belt. I shall allow the appeals and quash the notices.

Conditions

89. It was agreed that the proposed planning scheme suggested in the LVIA and the bio-diversity plan would need to be secured by condition. There was a concern that the hitherto unregulated uses may have led to some contamination of the land, and this would need to be surveyed and any problems rectified. The height of any storage should be limited to 5m or two

containers and no cranes should be erected on plot 5A as this would clearly harm openness and visual amenity.

90. I shall allow each appeal and each will be subject to the same conditions contained in the annex below except for plot 5A which will have an additional condition.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Rebecca Clutton of counsel
She called

Mick Brown
Dean Everett
Trevor Furse CMLI MCIHort ISA
Tim North MSc Bsc (hons) DipTP MRTPI
Peter Seales
Trevor Jepson

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Fraser-Urquhart QC
He called

Simon Thelwell BSc (hons)

DOCUMENTS

- 1 Appellant's appearances
- 2 Appellant's openings
- 3 LPA openings
- 4 Mr Brown's witness statement from October 2017
- 5 Table of photographs
- 6 APP/B9506/C/15/3134559 – appeal decision Kingfisher Cottage
- 7 Information on dealings between Havering and Thurrock
- 8 Havering green belt study
- 9 Suggested conditions
- 10 LPA closings
- 11 Appellant's closings
- 12 Statement of Common Ground
- 13 APP/Q2500/C/09/2114483 appeal decision Tallington Lakes

Conditions Annex – applicable to all permissions

- 2) The use taking place on the land the subject of the enforcement notice shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 6 months of the date of this decision a planning scheme based on the Landscape and Visual Impact Assessment prepared by Furse Landscape Consultants Ltd and the Outline Biodiversity Enhancement and Management Plan prepared by SJM Environmental, shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme(s) or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme(s) shall have been approved by the Secretary of State.
 - iv) The approved schemes shall have been carried out and completed in accordance with the approved timetable.

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

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

- 3) The use taking place on the land the subject of the enforcement notice shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 6 months of the date of this decision, an investigation and risk assessment shall have been completed in accordance with a scheme to assess the nature and extent of any existing contamination of the land and risk of further contamination taking place by the continuation of the use, the contents of which shall have been submitted for the written approval of the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, along with a timetable for works and details of future site management procedures.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Any measures approved to prevent future contamination shall be implemented in accordance with the approved timetable and thereafter maintained.

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

- 4) No operational development, building or racking, construction or other materials shall be stacked, stored or deposited on the land above a height of 5 metres measured from ground level.
- 5) No container or portable building shall be stacked on the land more than two containers or portable buildings high.