
Appeal Decisions

Inquiry Held on 19 – 21 January and 26 January 2021

Site visit made on 18 February 2021

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 29 March 2021

Appeal A: APP/K3605/C/19/3229849

Lian Yard, Redhill Road, Cobham KT11 1EG

- 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 Alexander Stewart-Clark against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 1 May 2019.
 - The breach of planning control as alleged in the notice is the erection of boundary fence and gates adjacent to Redhill Road.
 - The requirements of the notice are (a) dismantle and permanently remove the fence, supporting post and gates from the land adjacent to Redhill Road between A to B to C, marked on the attached plan for illustration purposes and (b) permanently remove from the land all the resultant waste products associated with complying with step (a).
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/K3605/C/19/3229852

Lian Yard, Redhill Road, Cobham KT11 1EG

- 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 Alexander Stewart-Clark against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 1 May 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the land for parking and storage of vehicles.
 - The requirements of the notice are (a) to permanently cease the use of the land for the storage and parking of vehicles and (b) permanently remove from the land all vehicles, materials, equipment and portacabins brought onto the land associated with the use of the site for the storage and parking of vehicles.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/K3605/C/19/3229853

Lian Yard, Redhill Road, Cobham KT11 1EG

- 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 Alexander Stewart-Clark against an enforcement notice issued by Elmbridge Borough Council.
- The enforcement notice was issued on 1 May 2019.
- The breach of planning control as alleged in the notice is the formation of hardstanding.

- The requirements of the notice are (a) permanently remove the hardstanding, the approximate location of which is shown hatched on Site Plan A, (b) reseed the section shown on Site Plan B and (c) permanently remove from the land any resultant waste materials from complying with steps (a) and (b)
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal D: APP/K3605/X/19/3232369

Lian Yard, Redhill Road, Cobham KT11 1EG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alexander Stewart-Clark against the decision of Elmbridge Borough Council.
 - The application Ref 2019/0143, dated 17 January 2019, was refused by notice dated 16 January 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the provision of a hard surface to be used for the purposes of an undertaking within an industrial building (B1/B8).
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Decisions

Appeal A

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 1 month and the substitution of 9 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 1 month and the substitution of 6 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

3. The appeal is allowed on grounds (f) & (g), and it is directed that the enforcement notice be varied by addition of the following requirement: The northern access track may be returned to its former condition of a narrow concrete drive. And by the deletion of 3 months and the substitution of 9 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

4. The appeal is dismissed.

Reasons

Background

5. There was an Established Use Certificate over the whole Planning Unit of Lian Yard as open storage timber yard with ancillary use of saw milling equipment (72/152) granted in 1972, but the use was subsequently found to have been abandoned in the 1980s in a decision made on an enforcement notice in 1993.
6. In 1997 an enforcement notice was issued which required the removal of hardstanding on the site along with other development. Although there is some dispute as to whether this notice was enforceable or not, or how much hardstanding there was, it seems to be agreed that the notice was complied with.
7. An aerial photograph taken in 1999 shows the appeal site beyond building A was in use with many vehicles and other items present. The front part of the site appears to have little use apart from the two access tracks. Trees and bushes front Redhill Road.
8. Aerial photographs of 2002 and 2003 are less defined because of cloud cover, but these appear to show a similar situation, but in this case beyond building A there appear to be many buses parked. The front area again appears to have little use apart from the access tracks.
9. The appellant has provided a plan to show historic hardstanding and this is based on the 1999 and 2003 aerial photographs. There is clearly much use of the land beyond building A in 1999 but it is not at all clear what the material forming the surface is.
10. In 2003 there are vehicles on the land beyond building A. However, there is a distinction in material surfacing on the land by building A and a little beyond it. I do not accept this shows 'hardstanding'. I accept that in some photographs there are some piles of excavated old concrete, but where it came from is not identifiable and it could, for instance, come from the old northern access.
11. An aerial photograph of 2005 appears to show the area beyond building A to be significantly less used, with much of it 'greening' over.
12. An aerial photograph of 2009 again shows limited use of the area beyond building A. The northern access does not appear to be used and is nearly covered with vegetation. The front part of the site between the accesses does not appear to be used. In the aerial photograph of 2010 there is very little use of the whole site apparent. The northern access has been lost to sight. There is probably a little activity immediately adjacent to building A. A witness notes that in about 2009/2010 beyond building A it was not hardstanding, but a grassed area where vehicles got bogged down.

13. In a photograph of 2014 there is some evidence of greater activity around building A but the northern access appears to remain disused as does most of the rest of the site. In the 2015 aerial photograph there is much less to suggest any activity, and significantly less than shown in the 2014 aerial photograph.
14. The previous owner rented the site out to a company called Leadsome who carried out groundworks. This company continued to rent the site from the appellant (who purchased it about 2007) until around 2009, when the appellant began to use it as overflow storage for Challenge Fencing. Building A was used for storage of high value items, fork lift trucks (and their maintenance), and offices and rest room for staff.
15. It was purchased from Mr Theeuf who the appellant says rented out the yard for B1/B8 purposes, but there is little evidence of that, particularly bearing in mind the applications that have been made and refused relating to the use.
16. The then existing area of hardstanding outside building A was used for storage of fencing and wood products. Building A was in a poor state of repair and from 2013-15 was completely refurbished, and following the completion of those works the hardstanding was replaced.
17. The Council visited and claimed the works exceeded the permitted development limits. The appellant finished the concreting and applied for planning permission to retain it, which was refused. He then made the LDC application.
18. The previous inspector noted in relation to the previous LDC appeal that "Because of this uncertainty, the refurbished building and hardstanding have not been used for their intended purposes by Challenge Fencing, which is why at both the site visits I have undertaken, there has been little or no activity at the site and the hardstanding has been used for the parking of a number of HGVs and trailers".
19. In 2013 the appellant made an application for an LDC for the use of building A for B1 and B8 purposes. Interested parties indicate there had been a previous LDC application in 2012 for a similar use, which they had opposed. They say the site had been abandoned and derelict for many years. This application was withdrawn and the 2013 one made, apparently, without the knowledge of locals and the Council granted the LDC.
20. An aerial photograph taken in 2013 before the improvements started clearly shows the majority of the site to have become vegetated. There is little sign of any activity on the site. The southern access appears to be used, but even this has vegetation growing down the middle. The area just outside former building A also appears worn. There appear to be very limited materials at the site and these are mainly in the approximate area of the 'tear drop'. Any use of the site is clearly very limited.
21. A lawful use for timber storage and milling seems to have been established in 1972, but since then it seems that apart from the 2013

LDC, every application has been refused. This includes in 2000 a change of use from timber storage to B1 and in 2006 an LDC for the use of the land and buildings for B1, B2 and B8 uses. It seems therefore that a lawful use of the site as a whole for B1 and B8 purposes had not been established.

22. The 2013 LDC itself is unusual as it refers only to buildings A and D and their continued use for B1 and B8 purposes. Building D has since been removed, leaving only building A. During the application process the Council advised that the application ought to be revised, as to determine the use of the building with no reference to the surrounding land would be of little benefit. A new plan was submitted, labelled "Proposed Block Plan", showing building A and an area called the 'teardrop' in front of the building and extending down to the access in the southern corner of the site, which is shared with the builder's yard. This area was outlined in red and labelled "site boundary specific to application buildings and associated circulation space", and "access and circulation spaces shown shaded". The certificate issued makes no reference to this plan other than to confirm it is the plan attached to identify the land.
23. The previous inspector in the 2017 LDC appeal noted, "It is difficult to understand what the purpose of this plan was except to denote an area of land associated with buildings A and D for which an LDC was being sought to confirm their use for B1 and B8 purposes. The appellant argues that it would be unreasonable to read the LDC in any other way and I have some sympathy with this view. But it does suggest there was uncertainty as to what the lawful use of the land as a whole was. However, setting aside what everybody thinks the site has been or not been used for, the only evidence before me is the 2013 LDC and the plan. Therefore the starting point for this appeal is that building A and the teardrop area of land shown on the plan attached to the certificate can be lawfully used for the purposes of B1 and B8". I concur with that view.
24. Two enforcement notices were issued by the Council in January 1997 and each was upheld. One notice required the use of the site as a lighting contractor's storage yard to cease, the other required the removal of gates, perimeter fencing, portable buildings and a hardstanding.
25. The plan attached to the latter enforcement notice indicates that building A (the "giraffe house") was in existence and perhaps a further small building to the north. The extent of the hardstanding enforced against is not clear, but an irregular line to the east and north of building A probably indicates its extent.
26. In November 2007 the appellant bought Lian Yard. At this time Leadsid Engineering was still using building A and the northern part of the site. It did not leave Lian Yard until about April 2009.
27. Mr Paul Saunders, the owner of BR Saunders (Transport) Limited ("BR Saunders"), gave evidence of coming to hear of, and then visiting, Lian Yard. In his proof no dates are given for these events, but as the first application for an HGV operator's licence in respect of the site was made

on 12 November 2015 they must have occurred before this date. The hardstanding and fencing were laid and erected later, in the first half of 2016, with the gates added soon afterwards.

28. The hardstanding laid in 2016 was significantly more extensive than the hardstanding then in existence. The northern accessway (which appears not to have been used between 2009 and 2016) has been made much wider and hardstanding has been laid further to the north of building A.
29. BR Saunders has been using most of the site as an HGV operating centre, HGV depot or haulage yard (any of which is an appropriate label) since 2016, after the hardstanding, fencing and gates had been installed. On 12 October 2016 BR Saunders entered into two 15-year leases of the site, split into parts A and B, with Mr Stewart-Clark. Under the leases BR Saunders may use the site for the "parking and maintenance of motor vehicles, storage and light industrial use and for ancillary office use".
30. The appellant notes the land as previously developed land as defined in the National Planning Policy Framework. There is no history of agriculture/forestry having taken place. I accept that the land was previously developed with a number of buildings, but all but one has now disappeared. The National Planning Policy Framework also notes land is excluded from the definition of being previously developed, where the remains of the permanent structure or fixed surface structure have blended into the landscape. In my view this applies to the majority of the site. The aerial photographs clearly show that the land, including areas of hard standing, such as the northern track, have been taken over by the growth of vegetation. There was an enforcement notice that required removal of some hard surfacing and it is agreed that was complied with. Apart from the land properly associated with building A, I consider that the land cannot be considered as previously developed land in accordance with the Framework.

Planning unit

31. The site has been in a single ownership since at least Mr Theeuf's time. There is no evidence of physical separation within the site, now or at any time in the past.
32. Currently the whole of the site is leased to Saunders, albeit in two separate 15 year leases, one of which has a 5 year break clause. The current use is straightforward and Saunders have had occupation, control and use of the whole site. It is said that Challenge Fencing continued to use the yard. That may be the case on an ad hoc basis, or 'gentleman's agreement', and the lease would not prevent that, but there is in fact very little evidence to suggest that has been occurring to any significant or material extent, and aerial photographs do not show any significant storage. I consider it much more probable that any use that has occurred was limited and amounts to a use ancillary to the main use.

33. Challenge Fencing also say before Saunder's lease that they used the site from about 2007. Again there is some evidence for that in terms of aerial photographs, but in terms of use of the whole site area, there is little evidence of that in the aerial photographs. However, I consider from about 2007 to 2016 there was some storage or distribution use of the site, but the extent of that is not clear, although from aerial photographs it does not appear extensive. Workers at the time noted the ground beyond building A was not that stable and could get wet. However, the Challenge Fencing use, up to the lease by Saunders, does not amount to 10 years and it is interesting that when the lawful development certificate was applied for the 'tear drop' shaped land was identified that included Building A. I note that the Council say that only specific buildings were included in the application, but it is unreasonable to suggest that the identified land was not inclusively part of that use and would have been ancillary to it.
34. Prior to that there is little evidence of how the yard was used. The demolition contractor use may not have fallen within B1/B8 use. The aerial photographs show items on the land, but that does not necessarily imply a storage use, such as with the buses. It is more probable that it was not provable B1/B8 use given the applications that were made and rejected nearer that time.
35. My conclusion is that the whole site is a single planning unit. The use since purchased by the appellant, until leased to Saunders, was a single use of the site, although actual use of all the land does not appear to have occurred, with parts not in active use. Saunders' use is a single use of the whole site, and again some parts are not in active use. Prior to that, even though there is no physical separation and there was single ownership, different uses have occurred and the type of use is not demonstrated on a balance of probability, and it may well have been in mixed use. I accept it was likely to be a single planning unit.
36. Occupation is a little more vague in the early days. It was initially used by a groundworks company, with building A as a site office, but from about 2009 used for the assembly, storage and distribution of timber materials.

Use by Saunders

37. The company B R Saunders (Transport) Ltd has occupied its main site for almost 70 years. It had another place at Rivernook Farm for the parking/keeping of some vehicles. Some portable buildings were stored there along with construction products. In time the lawful use was confirmed as B8. That site was to be sold so the operation moved to the appeal site.
38. The use at Rivernook has been variously described. The appellant's agents described it as a sui generis use, the Council in the LCD application described it as continuous use or area 19 as parking of various HGVs and storage of prefabricated building containers (use class B8). I do not have the evidence from that application to know exactly how the site was used. The appellant says it was the same as here, although they had described it as a sui generis use. I have to go mainly

on the use that I discern has happened here, and therefore attach limited weight to the use at Rivernook site.

39. Building A at the appeal site is used for office/toilets/rest and refreshments for employees. At the inquiry some smaller items required for minor vehicle maintenance were also identified, but main vehicle maintenance is at the main site. The operation was described as drivers arriving early in the morning, getting their tickets for the day and driving off. Not many vehicles would return in the day, with the majority coming back in the evening. Not all return and some can be away for a number of days. A portacabin might be removed from a lorry and then transferred to a smaller vehicle for delivery into London. Other operators on occasion would deliver portacabins to the yard ready to be placed on another lorry for delivery locally. Some parts of a crane were seen to be on lorry trailers in the yard. There were also some portable buildings.
40. There were some vehicles parked close together that the Council considered were stored, but it was said that while there might be lorries and trailers in a similar position they would not have been the same ones. Although it is identified by Mr Saunders that the yard is used for the storage of portable accommodation, including storing/keeping lorries and a forklift, sometimes the company is asked to store materials at the yard until they are called for. It was identified that every day is different from another in terms of work done. Most customers are construction connected businesses.
41. I accept that some limited storage is occurring at the site, with very little in building A. It seems that much of this is directly associated with the transport business and what it transports. The building seems to be mainly to serve the operations that are occurring outside, rather than the lorries parking there to serve the building. I consider that the principal use that is occurring at this site is parking and storage of vehicles associated with the transport business and that any other storage that occurs is ancillary to that use. I conclude on the balance of probability that this is sui generis use.

Planning Policy

42. The development plan includes the Core Strategy [CS] and Development Management Plan [DMP]. CS Policy CS1, DMP Policies DM17 and DM18 aim to protect the Green Belt from inappropriate development, which accords with the aims of the National Planning Policy Framework. DM17 and DM18 relate to buildings. DMP Policy DM2 relates to design, protecting and enhancing the character of the area. It notes all development proposals must be based on an understanding of the local character and take account of the natural, built and historic environment. It should protect the amenity of adjoining and potential occupiers and users.
43. DMP Policy DM21 relates to Nature Conservation and Biodiversity and CS Policy CS15 relates to Biodiversity, aiming to preserve, manage and where possible enhance existing habitats, protected species and biodiversity features. DMP Policy DM12 relates to Heritage and aims to preserve and enhance the setting of listed buildings. It is in accordance

with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

44. The National Planning Policy Guidance identifies the way that the Green Belt should be protected.

Appeal A Fence

Ground (c)

45. A close boarded timber fence has been erected fronting Redhill Road that is over 1m high. Class A, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [GPDO] permits the erection, construction, maintenance, improvement or alteration of a gate, fence wall or other means of enclosure of up to 2m high, provided it is not adjacent to a highway.
46. I acknowledge that the gates were inserted a little later and are set well back from the road. However, it is clear that the fence and gates form a whole in providing security to Lian Yard and effectively are one operation. It is reasonable that they should be treated as one entity. I acknowledge that the gates are set well back from the road, but as explained this is necessary to allow the lorries to get off or on the road without having to wait for the operation of the gates, for safety reasons. They are as reasonably close to the road as they can be. When viewed from the road they appear to comprise part of the perimeter boundary and essentially the fence and gates are adjacent to the road.
47. The question is whether or not the proposed set-back of the gates would be 'adjacent', or not, to the highway. The word 'adjacent' is not defined in the Planning Act and the courts have held that legislators were not likely to have intended a 'one size fits all' approach. The common dictionary definition of 'adjacent' is 'lying near to' or 'contiguous', although case Law also clarifies that that 'adjacency' does not equate to something being 'contiguous' or 'abutting'.
48. Thus the position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. The thrust of case law and other appeal decisions is that a wall or fence or a pier and gates can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so. As indicated above each situation has to be considered on its merits and a planning judgement needs to be made in each case. The structure does not comply with the limitation of 1m in height for boundaries adjacent to a highway for it to be permitted development and therefore the entirety of the development alleged is unlawful.
49. I conclude that the boundary and gates as a matter of fact and degree clearly define the enclosure to the property and that these are adjacent to the highway and should be no more than 1m high to accord with the GPDO. The appeal fails on ground (c).

Ground (a)

50. The main issues are:

- Whether the proposal is inappropriate development in the Green Belt.
- The effect on openness and other Green Belt harm
- The effect on the character and appearance of the area, including the adjacent listed building.
- Whether there are any material considerations that amount to very special circumstances.

Inappropriate development

51. The development plan includes the Development Management Plan. Policy DM2 is a permissive policy providing proposals have taken account of the 5 criteria, including understanding local character. Also relevant is the National Planning Policy Framework.
52. In the interpretation of the GPDO the word 'building' is defined. It notes in the definitions that it does not include in Schedule, 2 except in Class F of Part 2 and Class C of Part 11, any gate, fence or other means of enclosure. However, this is clearly related to the interpretation with the GPDO as it starts 'in this Order'. Section 336 of the Town and Country Planning Act provides definition of terms for use in the Act. In this 'building' includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. I conclude that for the purpose of considering a fence in the Green Belt it is reasonable to interpret a fence, which is a structure or erection, as a building as defined by the Planning Act.
53. The National Planning Policy Framework notes that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt; the development does not come within the exceptions identified. I conclude that the construction of the fence and gates is inappropriate development, which by definition is harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

54. The fencing is of solid and continuous form. It is readily visible from Redhill Road and, being of solid specification, has a stark visual impact. Although it has been suggested that soft landscaping could soften the fencing's appearance, planting cannot be relied upon to provide an effective and constant barrier to views. This is not least because planting takes time to fully establish and is reliant on regular maintenance to retain a consistent form.
55. For the above reasons, I find that the fencing results in a loss of Green Belt openness when compared to the effect of the replaced vegetated boundary features that were formerly in place. Furthermore, by virtue of the fencing's visual effect, the scheme conflicts with the Green Belt's purpose of assisting to safeguard the countryside from encroachment.

Character and Appearance

56. The character of the area is mixed. There are industrial type uses occurring on the adjacent land, a riding stables and a golf club are nearby. The appeal site has been used in the past by, amongst others, a ground works company. However, it maintains a relatively rural character, with many trees and other vegetation. The appeal site, prior to occupation by Saunders, was relatively unused and vegetation had taken over much of it. The front boundary was formed by small trees and other vegetation, which contributed to the rural character.
57. Foxwarren Cottage is a grade II listed building on the opposite side of the road from the appeal site. The list description is of an estate cottage, c1860 with late C20 additions. It is in red brick in header bond with contrasting black brick headers with moulded terracotta dressings. It has a plain tile roof with decorative bands of pointed and fishscale tiles and crested ridge tiles. I consider that the special interest relates to its age, design and relationship to the estate. The surroundings provide a rural setting for the cottage. However, as noted above, the rural nature of the setting has been changing over the years; this includes the construction of the M25 nearby.
58. The appeal site is in the setting of the listed building. While it does not have a rural character, its return to a semi rural nature prior to Saunders' use was important together with the vegetated boundary. However, since the site changed occupation around 2016, that semi rural character has been eroded by Saunders' use of the site and the removal of the vegetated boundary to the site and the construction of the new fence and hard surface. This has caused harm to the character and appearance of the area. I also consider that there has been some harm to the setting of the listed building. This is 'less than substantial' harm in terms of the National Planning Policy Framework. I do not consider that the fence and gates provide any public benefits. The development does not accord with Policy DM2.
59. I have considered the alternative options for the fence. Option one would result in two fences spaced apart with vegetation between and I consider that this would have a similar urbanising effect and harm the character of the area. Option two would be an improvement, and with good planting in front may not form the obvious boundary to the site and could be considered PD. However, the gate would still be the obvious boundary to the site and would not be PD and would harm the character of the area. Therefore, while improvements I do not consider that they should receive planning permission.
60. I have taken into consideration that there is a potential impact in relation to biodiversity, caused by removal of the vegetated front boundary. However, there is little detail and I have therefore not added any weight in relation to it.

Very Special Circumstances

61. The appellant puts forward a number of special circumstances related to the Saunders business, but as I have found this to be unlawful, I have

given them little weight. I appreciate there is a potential fall-back in terms of permitted development. However, given that the Saunders business is unlawful the need for any form of fence, particularly a low 1m high fence that would provide little security, is limited. While a security fence could be needed for another business use at the site, as there is none to consider at the moment I attach limited weight to it. I therefore attach little weight to the need for a security fence and the potential fall-back position. In this regard I have considered the two options for the boundary put forward by the appellant. I conclude that there are no material considerations that individually or together amount to very special circumstances that would clearly outweigh the harm by inappropriateness and other harm identified. The appeal on ground (a) fails.

Ground (f)

62. The appellant considers that the total removal of the fence and gates is excessive and that it could be cut down to 1m. I accept that the fence could either be cut down to 1m or rebuilt at a height of 1m. However, I found under ground (a) that the most probable reason for the fence was associated with security for Saunders, an unauthorised use of the yard. Without this use, I consider the likelihood of it being required or constructed is limited. I therefore consider that it is reasonable and not excessive to require its removal. The appeal on ground (f) fails.

Ground (g)

63. I acknowledge that the fence could be removed by the appellant in the time allowed by the Council. However, I have found in the main appeal that Saunders should be allowed a period of 6 months to find alternative accommodation. In that time I accept the fence provides a service in terms of security and shall therefore require its removal 1 month following that. I shall therefore extend the period for compliance to 9 months. The appeal succeeds on ground (g).

Appeal B – MCU Parking and Storage of Vehicles

Grounds (b) & (c)

64. Ground (b) relates to whether what is alleged has taken place as a matter of fact. The appellant argues that the allegation is not properly described in terms of the use of the vehicles. He claims that it encompasses all vehicles and their storage, even those that might be legitimately on site for the B1/B8 use. The allegation is clearly against the use that is taking place at the site. While there is no specific class of use described it is clear to all that the use that is alleged is occurring. It is well accepted that an enforcement notice has no effect against a lawful use if that is reverted to and these do not have to be described.
65. It is common ground that B R Saunders parks vehicles on the site, the purpose of which is in dispute. The storage of vehicles is also challenged. The appellant contends that vehicles are not stored at the appeal site, although in his statement Mr Saunders identifies part of the use at paragraph 11.1 as 'Storing/keeping lorries'. The Council's main evidence

for this is seeing various vehicles/trailers parked on site in the same position on a number of occasions, and some were seen in photographs, although these were taken on a limited number of occasions. The appellant says that although vehicles are in the position shown they regularly move, and different vehicles are present at different times. Given that Mr Saunders, the operator of the site, has identified storing as well as parking I consider it not unreasonable that the Council has included this in the notice.

66. It is also said that the enforcement notice does not specifically distinguish between the unlawful vehicles alleged and any other vehicles that are permitted at the site in accordance with permitted uses. I disagree; the only principal use that is currently occurring at the site is the use by Saunders and therefore the allegation is correctly directed at those vehicles. I acknowledge that if the Saunders use is required to cease and the land reverts to a lawful B1/B8 use then vehicles ancillary to that use will be able to use the site. It is established law that a notice does not take effect against a resumed lawful use and its parking etc.
67. It is also put that the parking and storage is incidental to the lawful use on the site, but I have found that the current use is sui generis and not the B1/B8 covered by the LDC.
68. Therefore while the parking of vehicles in relation to a B1/B8 use would be expected and ancillary to the B1/B8 use, the parking/storage is not ancillary to the lawful B1/B8 use of the site as it is a sui generis use that is taking place. The current use therefore requires planning permission. The appeal fails on grounds (b) and (c).

Ground (d)

69. This relies on a use alleged to have been occurring for a continuous period of 10 years to become lawful through the passage of time. It is clear that Saunders' use of the site commenced in 2016. As I have found above it is a sui generis use, the use for a transport yard is quite different from the previous use, with the principal use involving the coming and going of vehicles, their parking and storage. This is a materially different use from the storage use by Challenge Fencing, so commencement for considering the passage of time is in 2016. The use as alleged has not been for a continuous period of 10 years. The appeal fails on ground (d).

Ground (a)

70. The main issues in relation to this appeal are:

Whether the use is inappropriate development in the Green Belt.

71. The National Planning Policy Framework sets out what is inappropriate development, but also identifies matters that are not inappropriate development. This includes material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds), provided it preserves openness and does not conflict with the purposes of including land in it.

The effect on openness.

72. The change of use that has occurred has had a marked and material effect upon the openness of the appeal site. The hard standing area has increased and vehicles are on a much larger area of the site and their bulk has a material effect on openness. While I accept that the coming and going of vehicles is transitory, it also continues from day to day and is therefore relatively continuous. The bulk of the large vehicles, sometimes with portable buildings on their backs, have a marked impact on openness. I therefore conclude that because there is a significant impact on openness the use is inappropriate development in the Green Belt.

The effect on character and appearance including the setting of the listed building

73. Policy DM2 is a permissive policy providing proposals have taken account of the 5 criteria, including understanding local character. Here the appellant considers the character to be one of substantial commercial uses near to the site. I accept that there are some commercial uses in the area, including on the adjacent land, the golf course and equestrian centre. However, the main character of the area remains rural and not one of commercial uses. Redhill Road, passes woodland and open areas, including the golf course and various fields. Horses are ridden along the road and many dog walkers park at the end.
74. The introduction of the transport business in this location is an alien and intrusive use to the area, resulting in large lorries coming and going from the appeal site. This was not the case previously and has been enabled by considerable works to the entrance and drive.
75. The appeal site is within the setting of the adjacent listed building as identified above. It has a countryside location which is important to its setting and perception of its significance. Prior to the current use the site area was little used, there was a hedge and narrow entrances. The development undertaken has changed the setting to one of a more urban landscape and use, with a wide vehicular entrance, large sliding gates and approximately 2m high close boarded fence, where the posts are even higher. There has been 'less than substantial' harm to the adjacent listed building.
76. I conclude there would be harm in relation to Policy DM2 and the National Planning Policy Framework.

The effect in relation to noise and disturbance

77. There is no evidence from the Council's environmental health department in terms of technical evidence, but there is the evidence of neighbours. The drivers come to the site early in the morning, get their tickets for the day and then drive the lorries off the site, many returning in the evening.
78. Neighbours' complaints include noise from diesel engines starting up, air-brakes, coupling of trailers and reversing beeps. One notes being woken from 5.30am onwards on a regular basis by engines starting. They say if

they do not close the curtains upstairs at night, there can be orange/flashing lights reflecting through the windows.

79. To my mind, while there is no technical evidence, it is plain that there will be such activity at the site, and particularly in the early morning this will be noticeable at close proximity. I accept that there is much noise from the M25 motorway, but that does not mean that there would not be significant noise and disturbance from the appeal site at particular times of the day, as identified. Motorway noise is a different type of noise, more in the background and regular and consistent, with less changes in tonal or other qualities and characteristics.
80. I also accept that a B1/B8 use could generate some similar vehicular movements, but that has not been the case before the use of the site by Saunders. So, while it is a consideration, I consider on the balance of probability it has not been shown to be likely and I attach limited weight to it.
81. Overall, I consider that at certain times of the day, particularly early morning, there is likely to be a small material impact on the living conditions of neighbouring occupiers and I attach some weight to this.

Whether there are any very special circumstances.

82. See below.

Ground (f)

83. The appellant considers that the notice over enforces. However, there clearly is some ancillary storage occurring. I do not accept that each item has to be listed. This is transitory and a changing situation from day to day and therefore a general reference to it is acceptable.
84. I have explained above why I do not consider that the notice affects any lawful use that may occur in the future. The appeal fails on ground (f).

Ground (g)

85. The appellant has explained the need for the use and the benefit of it as set out in the very special circumstances. He has also identified the difficulties in finding suitable new premises to keep the vehicles. I therefore consider that it would be unreasonable to require removal of the use within 1 month. I shall extend the period of compliance to 6 months, which provides a reasonable opportunity to find alternative accommodation, balanced against the harm the use causes. The appeal succeeds on ground (g).

Appeal C - Hardstanding

Ground (c)

86. A large area of hardstanding has been formed from the northern entrance and around building A. Evidence is that it was maintenance/replacement of the existing northern drive and

hardstanding. While I acknowledge the likely presence of concrete on the northern access, the new hardstanding is far more extensive than the original northern drive. The evidence also suggests that while there may have been some hardstanding beyond building A, that was or had been broken up and the land was not stable, so not a hardstanding. The hardstanding is outside the curtilage as decided in a previous appeal, but I acknowledge that curtilage can vary depending on circumstances.

87. The appellant notes that if the conclusion is reached that part of the hardstanding is outside of the limits of the curtilage, then the whole of the development comprised in the laying of the existing hardstanding is unauthorised. Similarly, if the use being undertaken is not an authorised B1/B8 use, the hardstanding does not benefit from permitted development rights associated with such a use. I have found above that the use is not a B1/B8 use, but a sui generis use and therefore the hardstanding is unauthorised and requires planning permission, whether or not it is within the curtilage of building A. The appeal on ground (c) fails.

Ground (a)

Whether inappropriate

88. The construction of new buildings in the Green Belt is regarded as inappropriate development in the Green Belt. There are exceptions including the provision of appropriate facilities in connection with an existing use. Engineering operations, providing openness is preserved and the use does not conflict with the purpose of including land in it, are also not considered to be inappropriate development.
89. The first does not apply as I have found Saunders current use is not B1/B8, so the hardstanding which was associated with that use, is not associated to the lawful B1/B8 use of the premises.
90. I acknowledge that the provision of the hardstanding is an engineering operation and therefore would not conflict with the Green Belt if it does not affect openness or the purpose of including land in the Green Belt.

Openness

91. The area of concrete that has been constructed is large and prominent. It has replaced the old northern access, made it much wider, with a large sweeping access to the road. The concrete area has also been enlarged in much of the inner part of the site. It is readily visible and clearly affects the openness of the Green Belt. It also enables the use of areas of the site by large vehicles and while accepting that they are not fixed, their presence is regular and this has some effect on the openness of the Green Belt. I conclude that openness is affected by the concrete hardstanding and that the development is inappropriate in the Green Belt.
92. I shall consider special circumstances together at the end.

Ground (f)

93. The appellant considers there is a fall-back position of provision of the hardstanding within the 'tear drop' curtilage area as decided at the last appeal. There is a lawful use certificate for B1/B8 use, which I have acknowledged would allow ancillary use in the 'tear drop' area. However, as noted above if part of the hardstanding is unlawful, the whole is unauthorised. I accept that there is a permitted right to form hardstanding associated with a lawful B1/B8 use providing it is necessary for that use. Even if reversion can be to that use, without a use going on in the building/yard, it is not possible to say whether the hardstanding left within the curtilage would be necessary and therefore permitted development. The likelihood of the fall-back position is therefore not clear.
94. The allegation within the notice is the formation of hardstanding which has occurred and removal is reasonable to remedy the breach that has occurred and fulfil the purpose of the notice.
95. The appellant argues that re-seeding is over enforcement as it is evident that much of the area has not been grassed for a long period and in the past there were areas of hardstanding. However, I do not accept that there were large amounts of hardstanding prior to the unauthorised work taking place. Aerial photographs show that much of the site has generated natural vegetation. Other evidence was that beyond building A the surface was soft. So the surface may have been hard surfacing in the past, but much of it had become overgrown and vegetated. I acknowledge that while not used for some period in the past, there was a much narrower access at the northern end and that this can be returned to the previous situation.
96. However, I do accept that the area generally would not have been a seeded area and regrowth in time with natural vegetation is most likely similar to the situation prior to the breach. The appeal succeed partially on ground (f). The notice will be varied to exclude the original northern access track.

Ground (g)

97. The evidence presented by Saunders demonstrated the difficulty in finding suitable premises in the area and the endeavour to find such premises. This is because of the lack of such sites, the extent of Green Belt and the competition with housing needs. I also appreciate the search has been into adjacent authority areas. Taking into account the benefit of this business in terms of the community, its employees and benefits in relation to the current situation I consider that it would be reasonable to allow Saunders 6 months in which to find alternative accommodation. Therefore, in relation to this appeal and the hardstanding I think the period for its removal should extend 3 months beyond the period for compliance of appeal B. Therefore the period for compliance will be extended to 9 months. The appeal on ground (g) succeeds.

Very Special Circumstances and Public Benefits

98. The whole site is a single planning unit but the weight afforded to that in terms of beneficial material considerations is small. I accept that there is a lawful B1/B8 use at the site, but that provides limited justification for the transport business that is currently occurring.
99. There clearly is an absence of alternative suitable sites, particularly considering the extent of Green Belt in the area. Even moving into the next Authority, there is an absence of suitable sites. Where a site within an urban area is found, it often is not feasible as they often go for housing which is more profitable for owners. I attach considerable weight to this.
100. There is a need for such businesses to service the economy, providing employment, social and economic benefits. The site has an Operator's Licence for a number of vehicles and no further buildings are required. Currently a significant amount of the work is related to Covid and servicing the NHS. This is important, but the Covid aspect is likely to be relatively short term: the prediction is for pressure coming off the country in the middle of June. I attach some weight to the need for this type of use, but that related to Covid is limited.
101. There is reasonable access to the highway network and no objection from the highway authority. I consider that this is more an absence of harm rather than a benefit, but add a little weight to it. I also recognise that the National Planning Policy Framework notes that planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance.
102. Overall, I consider that the use attracts some weight in terms of the employment, social and economic benefits of the use and limitations on available sites and connection to the highway network. However, these do not, either individually or together, amount to very special circumstances sufficient to outweigh the substantial weight to be given to protection of the Green Belt in Appeal B or Appeal C. I also do not consider that they amount to public benefits sufficient to outweigh the harm to the listing building because of impact on its setting.
103. The appeals fail on ground (a).

Appeal D – Proposed Provision of a Hardstanding

104. It is argued that the laying of a concrete hardstanding within the 'teardrop' shaped area would be lawful permitted development under Class J of Part 7 to Schedule 2 to the GPDO in connection with the existing established B1 and B8 building. The appellant poses the question as to whether or not the laying of a hardstanding on the "teardrop" area would be lawful by operation of Class J of Part 7 of Schedule 2; ie : would the provision of a hardstanding on the teardrop be "the provision of a hard surface within the curtilage of an industrial

building or warehouse to be used for the purpose of the undertaking concerned”.

105. While Section 192 is there to pose the question as to whether or not something might or might not be lawful in the future, it is also a question that is bounded by the facts pertaining to the particular site, at the particular date of the application. If the appellant wishes to know simply whether a B1/B8 user can construct a concrete apron in its curtilage the answer is clearly likely to be ‘yes’ if it is for the purpose of the business.
106. Section 192 of the Town and Country Planning Act says if any person wishes to ascertain whether, (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
107. If, on an application under this section, the local planning authority is provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. This makes it clear it is at the time of the application that is relevant.
108. In this case the relevant business is an unlawful sui generis use of the site on the date of the application and does not, and could not, have the permitted development rights identified at the time of application.
109. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the provision of a hard surface to be used for the purposes of an undertaking within an industrial building was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Graham Dudley

Planning Inspector

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