



Appeal Decisions

Site visit made on 16 February 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal A: APP/Q4625/C/20/3256692

Woodhouse Farm, Catherine-de-Barnes Lane, Catherine-de-Barnes, Solihull B92 0DJ

- 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 Sean Horan of Sameday Transport Services Limited against an enforcement notice issued by Solihull Metropolitan Borough Council.
- The enforcement notice was issued on 1 July 2020.
- The breach of planning control as alleged in the notice is: -
Without planning permission;
 - i) The unauthorised material change of use of the land edged red on the attached plan, from use for agriculture to a transport depot use, including the parking of lorries, trailers and associated vehicles, and the stationing of a portacabin, container and two WCs.
 - ii) The unauthorised material change of use of a building to a vehicle workshop use, used in conjunction with the transport depot use, in the location annotated on the attached plan as vehicle workshop.
 - iii) Unauthorised operational development creating a hardstanding area on the area hatched green on the attached plan, and boundary fencing, gates and an earth bund as annotated on the attached plan.
- The requirements of the notice are: -
 - i) Cease the use of the land as a transport depot, and cease the parking of lorries, trailers and associated vehicles.
 - ii) Cease the use of the building as a vehicle workshop.
 - iii) Remove the portacabin, container and the two portable WCs from the land edged red on the enclosed plan.
 - iv) Take up and remove the hardstanding from the land as shown on the area hatched green on the enclosed plan. Cover this land in top-soil to match adjoining levels and re-seed with grass.
 - v) Demolish, take down, dismantle and/or remove the boundary fencing, gates and earth bund from the land.
 - vi) Remove any pipes, cables or other services laid down or installed for use in connection with the portacabin, container and WCs.
 - vii) Remove all the materials arising from steps ii), iii), iv), v) and vi) from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary Decision: The appeals on grounds (b) and (g) succeed in part, the appeals on grounds (a), (c), (e) and (f) are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Appeal B: APP/Q4625/W/20/3256579

Woodhouse Farm, Catherine-de-Barnes Lane, Catherine-de-Barnes, Solihull B92 0DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Sean Horan of Sameday Transport Services Limited against the decision of Solihull Metropolitan Borough Council.
- The application Ref PL/2019/03108/PPFL, dated 12 December 2019, was refused by notice dated 3 June 2020.
- The development proposed is the change of use of the existing building and land to sui-generis transport depot including the formation of hardstanding and installation of portacabin, container, two portable WCs and security fencing with gates.

Summary Decision: The appeal is dismissed.

Procedural Matters - Both Appeals

1. After assessing the appellant's evidence, in relation to Appeal A, it was considered that some of that evidence could reasonably be construed to apply to a ground (c) appeal. The appellant was given the chance to clarify whether he wanted to appeal on ground (c) and to submit any additional evidence in support of that ground. The parties have had the chance to submit evidence and comments on this matter and therefore, no injustice would be caused to them. I have dealt with the appeals on this basis.
2. There are 2 appeals before me that relate to the same site, the same development and the same appellant. As such, and to avoid duplication, I have dealt with the decisions together.
3. The description of the development, relating to Appeal B, in the banner heading above is taken from the application form. However, I have deleted the wording 'Retrospective detailed planning application for' from that description as it does not relate to an act of development. Nevertheless, it is clear that the proposed development has commenced and I have dealt with Appeal B on that basis.
4. Reference has been made to the emerging Solihull Local Plan Review (eSLR) in the evidence before me. However, I have been supplied with little evidence on the specific current status of this document and I have not been supplied with copies of it and as such I can only give it limited weight.

The Notice – Appeal A

5. The appellant has questioned the expediency of the Council's decision to take enforcement action taking into account paragraph 58 of the National Planning Policy Framework (the Framework). However, this matter falls outside my jurisdiction in determining Appeal A, and therefore it is not a matter for consideration through that appeal.
6. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. The appellant has raised a number of issues which he considers are defects or errors within the enforcement notice. Both parties were given the chance to comment on the corrections described below.

7. The appellant has stated that he considers that the 'land' is not defined within requirement i) of the enforcement notice and that it is open to misinterpretation. The land to which the notice relates is defined within section 2 of the enforcement notice and this states the address of the property and that *'hereinafter referred to as "the land", and edged red on the attached plan'*.
8. Requirement i) requires the use of the land to cease and I consider that the reference to *'the land'* means the land edged red on the attached plan as stated within section 2. However, to ensure that there is no misinterpretation I intend to add the wording *',edged red on the attached plan,'* after the word *'land'* in requirement i). To ensure that all other references to *'the land'* within the requirements are also not open to misinterpretation I intend to; delete the wording *'from the land as shown on the area hatched green on the enclosed plan'* from requirement iv) and replace it with the wording *'on the area hatched green on the attached plan';* add the wording *',edged red on the attached plan,'* after the word *'land'* in requirement v); add the wording *',edged red on the attached plan,'* after the word *'land'* in requirement vii). I consider that I can carry out these corrections without injustice to either main party.
9. The appellant considers that the wording of requirements i) and ii) means that the parking of vehicles and trailers associated with the lawful use of the land and that the use of the vehicle workshop in general would be required to cease. To ensure that there is clarity I intend to correct the notice by deleting the wording *'lorries, trailers and associated vehicles'* from requirement i) and replace it with *'vehicles and trailers associated with the use as a transport depot'*. I also intend to delete the wording of requirement ii) and replace it with *'Cease the maintenance and repair of vehicles associated with the transport depot use within the vehicle workshop, in the location annotated on the attached plan as vehicle workshop'*. I consider that I can carry out these corrections without injustice to either main party.
10. To ensure that requirement vi) relates solely to works associated with the transport depot use I intend to insert the wording *'associated with the transport depot use'* after the word *'WCs'* in requirement vi).
11. I consider that the wording of requirement v) should reflect the wording of the alleged breach iii). Therefore, I intend to add the wording *'as annotated on the attached plan'* after the word *'bund'* in requirement v). To ensure that the wording of requirement iii) matches that of the description of the alleged breach I intend to replace the word *'enclosed'* in requirement iii) and replace it with the word *'attached'*. I consider that I can carry out these corrections without injustice to either main party.
12. The requirements of the enforcement notice are limited by sections 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.
13. Requirement iv) requires the hardstanding to be taken up and removed from the land as shown on the area hatched green and to cover this land in top-soil to match adjoining levels and re-seed with grass. However, other than aerial photographs there is little to indicate that covering the land in top-soil to match the adjoining levels and reseeding it with grass would restore the area hatched green to its previous condition. As such, I intend to delete the wording *'Cover*

this land in top-soil to match adjoining levels and re-seed with grass' and replace it with 'Restore the area hatched green to its previous condition prior to the breach of planning control' in requirement iv). I consider that I can carry out these corrections without injustice to the main parties.

14. Notwithstanding all of the above, the notice has a logical structure. If read in a straightforward way, and not forensically, the alleged breach is expressed in a manner and form that is understandable. The requirements relate directly back to the material change of use and its associated operational development and there are periods for compliance. My conclusion is that the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal and make corrections where they have shown to be justified. I address the appellant's additional concerns with the notice within the grounds of appeal below.
15. For the reasons given above, I conclude that the enforcement notice is valid and that no injustice would be caused by correcting the errors and misdescriptions in accordance with my powers under section 176(1)(a) of the 1990 Act.

The ground (e) appeal – Appeal A

16. Section 172(2) of the 1990 Act requires an enforcement notice to be served on the owner and the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
17. The land affected by the enforcement notice includes the majority of the access road to Woodhouse Farm from Catherine-de-Barnes Lane. It appears that Birmingham Dogs Home own a small part of the access road near to its junction with that lane. There is no dispute that Birmingham Dogs Home have not been served with the enforcement notice. The Council have stated that in its opinion Birmingham Dogs Home is not materially affected by the enforcement notice.
18. I acknowledge that the requirements of the enforcement notice do not appear to materially affect Birmingham Dogs Home. However, Birmingham Dogs Home owns part of the land affected by the enforcement notice. Nevertheless, I can correct the plan attached to the enforcement notice, using the powers available in section 176(1)(a) of the 1990 Act, to delete the small part of the access road owned by Birmingham Dogs Home. I consider that I can carry out this correction without injustice to either main party.
19. The appeal on ground (e) therefore fails.

The ground (b) and (c) appeals – Appeal A

20. These grounds entitle the appellant to argue that, in respect of any breach of planning control which may be constituted by the matters stated in the enforcement notice, those matters have not occurred (ground (b)) and/or those matters (if they occurred) do not constitute a breach of planning control (ground (c)).
21. In relation to ground (b) the appellant argues that the allegation is not properly described in terms of the previous or from use in section i) of paragraph 3. He

states that part of the area edged red was previously used by a grounds management company that was granted planning permission in 1999¹ (the 1999 permission) and that the alleged breach in relation to section i) does not constitute a 'material change of use' of the land edged red, but affects only a small portion (the extended yard). In addition, he states that the parking of lorries, trailers and associated vehicles in connection with the agricultural and/or use in connection with the grounds management company use is lawful. He also states that in relation to section ii) of paragraph 3 that the vehicle workshop is a lawful use and no material change of use of that building has occurred.

22. The allegation specified at i) is clearly against the transport depot use that is taking place at the site. It is well accepted that an enforcement notice has no effect against a lawful use/s if that is reverted to and it/they do not have to be described. Moreover there is no requirement for the enforcement notice to specify the previous or from use within the description of the alleged breach.
23. It is apparent based on the evidence before me that the alleged breach relates to a sui-generis, transport depot use, its associated offices and operational development, its associated vehicle maintenance workshop and the parking of vehicles also associated with the transport depot. The unit of occupation associated with the transport depot use includes the vehicle workshop, the pre-existing yard, prior to the alleged use occurring, and the extended yard area. The transport depot is sited adjacent to other buildings and uses that are based at Woodhouse Farm. The majority of those other uses also appear to share the use of the access drive. Nevertheless, the erection of palisade fencing/gates and the earth bunding means that the transport depot occupies a distinct part of the overall Woodhouse Farm site that is largely physically separate to the remainder of that overall site.
24. I acknowledge that the owner of the overall Woodhouse Farm site may utilise the vehicle workshop for the maintenance/repair of agricultural vehicles and he may store and park items such as agricultural machinery within the pre-existing/extended yard area. I observed that there was a small amount of storage including some items of machinery and materials adjacent to the vehicle workshop on the day of my site visit. However, there is little evidence before me to indicate that this has been occurring to any significant or material extent. I consider it much more probable that any use/s in these respects that has occurred is limited and amounts to no more than an incidental use/s to the primary use as a transport depot.
25. There is no dispute that the former occupier of the pre-existing yard and vehicle workshop, the grounds management company, no longer uses or occupies the site. Furthermore, the evidence before me indicates that the main use of the vehicle workshop is to facilitate the maintenance/repair of the fleet of vehicles associated with the transport depot.
26. To ensure that the description of the alleged breach accurately reflects the development that has occurred I intend to delete sections i) and ii) of the description of the alleged breach and replace it with 'i) *The unauthorised material change of use of the land, edged red on the attached plan, to a transport depot use including the parking of vehicles and trailers associated with the transport depot use, the maintenance and repair of vehicles associated*

¹ Ref No: PL/1999/01219/FUL

with the transport depot use within the vehicle workshop, the building annotated on the attached plan as vehicle workshop, and the stationing of a portacabin, container and two WCs associated with the transport depot use.' I also intend to renumber section iii) of the description as number ii). The parties were given the chance to comment on these corrections and I consider that no injustice would be caused by them. The appeal on ground (b) succeeds to that extent.

27. The appellant considers that the parking of trailers and vehicles within the pre-existing yard, the stationing of a portacabin and container and the use of the vehicle workshop are lawful due to the 1999 permission. He also considers that the use of the building and the pre-existing yard areas does not constitute a material change of use.
28. The 1999 permission granted planning permission for '*change of use of agricultural building to machinery and vehicles storage and conversion of agricultural building to form 3 No offices*'. The appellant has submitted a copy of the decision notice and an extract from the Council's website to indicate the application site for that decision. Nevertheless, the extract from the Council's website indicates that the 1999 permission relates to a large amount, including a number of buildings, of the Woodhouse Farm site.
29. Condition 2 of the 1999 permission states that '*The use hereby approved shall be confined to that of vehicle and machinery storage in connection with a landscape contractors business and offices and for no other purpose, notwithstanding any provisions of the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order)*'. It is not clear from the details before me whether the agricultural building/s cited within the description of development are the same or 2 different agricultural buildings. However, there is no dispute that the vehicle workshop has been used to store machinery and vehicles in connection with the use by Glendale Countryside, a landscape contractor. As stated above, the landscape contractor has ceased use of the site.
30. There is little to indicate that any vehicle and machinery storage within the vehicle workshop or on the pre-existing yard area, at the date of the enforcement notice, was in connection with a landscape contractors' business. As such, it is not permitted by the 1999 permission due to condition 2 of that permission. The stationing of portacabins on the pre-existing yard by the landscape contractor appears to have facilitated an ancillary office use. Nevertheless, the portacabin and container stationed on the appeal site are located in different positions and they are not within the pre-existing yard. Furthermore, the alleged breach of planning control and the requirements of the enforcement notice do not relate to office or storage use. The evidence before me in relation to the 1999 permission does not indicate that at that time planning permission was granted for vehicle repairs/maintenance within the vehicle workshop or the parking of commercial vehicles on the pre-existing yard.
31. Consequently, the evidence before me does not demonstrate that the parking of vehicles and trailers associated with the transport depot use within the pre-existing yard, the stationing of a portacabin and container and the use of the

- vehicle workshop for repairs/maintenance are permitted by the 1999 permission.
32. I acknowledge that the evidence before me indicates that the use of part of the appeal site by Glendale Countryside appears to have occurred on a continuous basis from 1999 to 2018. Planning permission is not always required for a change of use from one use to another. The issue is whether the change of use is material in planning terms by comparing the former with the new use. As set out in Planning Practice Guidance (PPG) there is no statutory definition of 'material change of use'. However, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case².
33. The planning unit is an accepted tool for determining the most appropriate area against which to assess the materiality of change. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes.
34. The vehicle workshop and pre-existing yard were used between 1999 and 2018 by Glendale Countryside, a landscape contractor/grounds management company. The evidence before me relating to its use of the site states that staff arrived at the site, parked their vehicles, collected and loaded plant/machinery onto vehicles and left to work off site, returning later to off-load from their vehicles before leaving the site. The administration side of the business was operated from 2 portacabin offices and vehicle repairs/maintenance were carried out within the vehicle workshop. A vehicle operating licence for 8 vehicles was held by Glendale Grounds Management Limited at Woodhouse Farm in 2015. There were no conditions on the 1999 permission controlling the hours of operation or the number of vehicles/machinery to be stored in connection with the landscape contractors business.
35. A series of aerial photographs dating from 2001 to 2018 provide snapshots in time as to the appearance of the site but they do not enable a judgement to be made about the particular nature of the business being carried on. They nevertheless provide some indication that the pre-existing yard was used to store various items and to park vehicles including commercial vehicles. Based on those photographs it appears that throughout that time there was no physical separation from the remainder of the Woodhouse Farm site. Moreover, it appears that the storage of materials and the parking of commercial vehicles associated with the use by Glendale Countryside may have occurred on land to the north of the appeal site.
36. Based on the evidence before me, the primary use of the site occupied by Glendale Countryside appears to have been a sui generis use involving the parking of commercial vehicles and the storage of machinery and materials associated with a landscape contractor's business. The use of the portacabins for administration tasks and the use of the vehicle workshop for repairs to the vehicles/machinery, on the balance of probability, appear to have been ancillary to that primary use. Therefore, between 1999 and 2018 part of the appeal site, the vehicle workshop and the pre-existing yard, formed part of a

² Planning Practice Guidance: When is permission required? Paragraph: 011 Reference ID: 13-011-20140306

planning unit occupied by Glendale Countryside. The full extent of that planning unit has not been demonstrated within the evidence before me. Nevertheless, it is clear that at that time the current extended yard area formed part of a field in agricultural use.

37. As stated above, the site occupied by the appellant's transport depot is now, in the main, physically separate from the overall Woodhouse Farm site. The palisade fencing and gates restrict access to the north and west of the appeal site and visually reinforce the separation of the appeal site. Furthermore, the functional links to the agricultural use of the overall site via the storage of machinery and other items and the repair of farm machinery/vehicles are more likely than not limited in extent. Even though the use of the access road is shared with Woodhouse Farm based on my observations and the evidence before me, the planning unit is the unit of occupation by the transport depot which is the vehicle workshop and the pre-existing yard and the extended yard areas. This is a new planning unit formed in relation to the occupation and use by the appellant's company.
38. The primary use of that planning unit is as a transport depot which is a sui generis use. On this site this includes an area where commercial vehicles are parked until they are needed for the transportation of goods to and from other premises. An office use located within a portacabin accommodates the Company's Director, Transport Manager, logistics operators and accounts. The evidence before me also indicates that the company's fleet of commercial vehicles are maintained and repaired within the vehicle workshop.
39. The office use serves as the overall headquarters for the company and the vehicle repair/maintenance use facilitates the whole fleet of commercial vehicles. However, the evidence before me indicates that the other sites are only satellite facilities for the parking of vehicles only and that the majority of commercial vehicles operated by the company are based at the appeal site. As such, on the balance of probability, the office and vehicle repair/maintenance uses are part and parcel of the transport depot use on the appeal site and ancillary to that use rather than primary uses in their own regard. The staff working at and from the transport depot park their own vehicles on the yard areas whilst they are at work. The parking of those vehicles is ancillary to the transport depot use.
40. I acknowledge that when used by Glendale Countryside the vehicle workshop was used for the repair of commercial vehicles/machinery ancillary to the parking and storage of commercial vehicles/machinery associated with a landscape contractor's business. Furthermore, the appellant has stated that the operator's licence held by that previous occupier meant that it could operate 8 vehicles from the site which could include a number of Heavy Goods Vehicles (HGVs). In addition the landscape contractor's business could operate 24 hours a day and staff arrived at the site to collect vehicles/machinery and mainly worked off site. There were also portacabins stationed on the pre-existing yard that were used as ancillary offices.
41. Nevertheless, other than the statement from the owner of Woodhouse Farm there is little evidence to indicate that that company operated 24 hours a day on a regular basis. Moreover, other than the aerial photographs there is little evidence to indicate the type and number of commercial vehicles that were regularly operated as part of the previous use.

42. Whereas, the fleet of commercial vehicles based at the appeal site includes a range of vans, 7.5 and 17 tonne vehicles with/without tail lifts and articulated HGVs. The company has an operator's licence for 23 HGVs at the appeal site and they also operate 6 vans from this site. 8-10 commercial vehicles leave the site on a Monday and generally do not return until Friday and 13-15 commercial vehicles regularly operate on a daily basis from the site. There is limited overnight/weekend activity involving 1-2 vehicles. There are around 30 drivers, 6 office staff and 2 mechanics working in the vehicle workshop. Photographs on page 8 of the submitted Transport Statement illustrate the type and number of vehicles that have been parked within the appeal site.
43. There are similarities to the previous use of part of the appeal site by Glendale Countryside in the fact that; commercial vehicles are parked and repaired on that part of the appeal site; staff arrive at the site to; collect vehicles to work offsite; work within offices; or work within the vehicle workshop. I acknowledge that the submitted Transport Statement indicates that the traffic generated by the operation of the transport depot is not significant.
44. However, based on the evidence before me, it is more likely than not that the number of employees arriving and departing the appeal site and the type, size and number of commercial vehicles parked at and arriving/leaving that site on a regular basis has materially increased when compared to that associated with the previous use of, part of the appeal site, by Glendale Countryside. In addition, a new planning unit has been formed by the occupation of the appeal site by the transport depot use. That planning unit includes part of a field that was in agricultural use prior to the transport depot use. As such, on the balance of probability, the character of the use of that planning unit as a transport depot is materially different to the previous use/s of the appeal site.
45. I acknowledge that no significant planning impacts relating to noise and highway safety arising from the transport depot use have been identified by the Council. However, the findings on the other considerations strongly support a conclusion that a material change of use of the appeal site to a transport depot, a sui generis use, has occurred.
46. In conclusion, the 1999 permission did not authorise the parking, repair or maintenance of commercial vehicles and machinery associated with a transport depot use. The material change of use cited above amounted to development requiring planning permission and it has not been authorised by any other planning permission. It follows that a breach of planning control occurred. The appeal does not succeed on ground (c).

The ground (a) appeal and deemed planning application (Appeal A) and the Section 78 appeal (Appeal B)

Main Issues

47. Based on the evidence before me, I consider that the main issues are: -
- Whether the development constitutes inappropriate development in the Green Belt, having regard to the effect on the openness and purposes of the Green Belt, the development plan and the Framework;
 - The effect on the character and appearance of the area;

- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the development.

Reasons

48. The appeal site comprises an irregular shaped piece of land and the shared access drive from Catherine-de-Barnes Lane. Within the appeal site there is a former agricultural building that is annotated as vehicle workshop within the evidence before me. At the time of my site visit there was a portacabin and container stationed on the site. The yard areas are mainly hardsurfaced and the eastern boundary of the yard area is formed of an earth bund.

Whether the development constitutes inappropriate development in the Green Belt

49. Paragraph 146 of the Framework states that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include engineering operations; the re-use of buildings provided that the buildings are of permanent and substantial construction and material changes in the use of land.

50. Policy P17 of the Solihull Local Plan – Shaping a Sustainable Future – December 2013 (SLP) relates to countryside and Green Belt. With regard to the Green Belt the policy states, amongst other things, that the Council will not permit inappropriate development in the Green Belt, except in very special circumstances. It goes on to state that in addition to the national policy that a number of provisions shall apply to development in the Borough's Green Belt. These provisions include the following:

- The reasonable expansion of established businesses into the Green Belt will be allowed where the proposal would make a significant contribution to the local economy or employment, providing that appropriate mitigation can be secured.
- Where the re-use of buildings or land is proposed, the new use, and any associated use of land surrounding the building, should not conflict with, nor have a materially greater impact on, the openness of the Green Belt and the purposes of including land in it, and the form, bulk and general design of the buildings shall be in keeping with their surroundings.

Although this SLP policy is of some age it is broadly consistent with section 13 of the Framework. There is no specific policy relating to the Green Belt within the Hampton-in-Arden Neighbourhood Plan.

51. The development of the appeal site that is to be considered under both appeals constitutes a material change of use, the re-use of a building, operational development and engineering operations. However, the need for the re-use of a building, operational development and engineering operations arise directly from the material change of use. As such, I regard them as part and parcel of the change of use of the appeal site and have considered them on that basis.

52. The previous use of the pre-existing yard area and the vehicle workshop had a spatial and visual impact on the openness of the Green Belt through the parking, comings and goings of cars and commercial vehicles, the storage of

machinery and other items and the stationing of portacabins. The material change of use to a transport depot also has spatial and visual impacts from the parking, comings and goings of cars and commercial vehicles, the storage of machinery and other items and the stationing of a portacabin.

53. Nevertheless, the extension of the hardstanding that formed the pre-existing yard onto what was part of a field has appreciably increased the amount of hardstanding that was previously on the appeal site. Whilst in itself this has a limited spatial and visual impact on the openness of the Green Belt it has meant that cars and commercial vehicles are regularly parked on an area that was previously part of a field and relatively open. While I accept that the parking, coming and going of these vehicles is transitory, it also continues from day to day and is therefore relatively continuous. The spatial impact of parking these vehicles within the extended yard area has reduced the openness of the Green Belt as a matter of fact.
54. Moreover, I have found within the ground (c) appeal that it is more likely than not that the number of employees arriving and departing the appeal site and the type, size and number of commercial vehicles parked at and arriving/leaving that site on a regular basis has materially increased when compared to that associated with the previous use of part of the appeal site by Glendale Countryside. Therefore, on the balance of probability, there has been an associated increase in visual impact on the openness of the Green Belt.
55. I acknowledge that, based on my observations and the evidence before me that the spatial impact of the stationing of the portacabin and storage container associated with the transport depot appears to be similar to that of the portacabins that were on the pre-existing yard. Whilst, these items are currently stationed on the extended yard they could be required by planning condition to be relocated to the pre-existing yard. This would ensure that the spatial impact of these items on the openness of the Green Belt would be no greater when compared to the previous use of the pre-existing yard area.
56. The earth bund helps to screen views of the extended yard area when approaching Woodhouse Farm along the shared access drive. Nonetheless, the bulk and mass of the bund as a matter of fact has had a spatial and visual impact on the openness of the Green Belt. Furthermore, the palisade fencing and gates as partially solid, man-made features have reduced the openness of the Green Belt in visual and spatial terms. Whilst, the design of the fencing and gates allow views through them their overall height and length have a visual and spatial impact albeit to a limited degree.
57. The transport depot use of the vehicle workshop and yard areas is largely screened from the public highway and there are some buildings and associated land at Woodhouse Farm that appear to be used as a music school and offices. However, the transport depot use and its associated parking, storage and activity, the fencing, gates and earth bund are apparent from the shared access drive and nearby buildings and land. They are viewed from the shared access drive against the backdrop of the other buildings and uses at Woodhouse Farm. In addition, the M42 Motorway, the A45 and Birmingham Airport are within the surrounding area and additional highway infrastructure associated with improvements to Junction 6 of the M42 have begun to be constructed.

58. Nevertheless, the amount of open land surrounding the Woodhouse Farm complex that appears to be in agricultural or equestrian use gives the vicinity of the appeal site a rural character, even taking into account the additional transport infrastructure, the overall character should remain largely rural in nature. The previous use of the pre-existing yard and the vehicle workshop was largely urban in character, but the previous use of the extended yard area was as part of a field. Consequently, the material change of use has altered the character of part of the appeal site to one inherently more urban in nature. Therefore, it has also amounted to limited encroachment into the countryside.
59. The material change of use could be reversed, and the operational development and engineering operations associated with it removed without permanent damage to the openness of the Green Belt and the purposes of including land within the Green Belt. Nevertheless, the appellant has confirmed that he proposes that the use is permanent.
60. Taking into account all of the above, I consider that the material change of use, when considered as a whole, visually and spatially has a materially greater impact on the openness of the Green Belt than the previous use/s of the appeal site. As such, it appreciably harms and does not preserve the openness of the Green Belt. Moreover, it is in conflict with one of the purposes of including land within the Green Belt set out at paragraph 134 of the Framework. Against this background the material change of use to a transport depot is inappropriate development in the Green Belt with regards to paragraph 146 of the Framework.
61. In relation to the provisions within SLP Policy P17 the first provision cited above does not define what is to be considered as an '*established business*'. I also acknowledge that it does not state that a business has to be established at a specific location to be treated as an established business. Nevertheless, the justification for the policy, at paragraph 11.6.7 provides clarification in that it states '*A number of established businesses are located within or adjacent to the Green Belt in Solihull, such as Jaguar Land Rover and Whale Tankers. The reasonable expansion of such businesses into the Green Belt will be allowed where justified by a significant contribution to the local economy or employment.*'
62. This makes it clear that the businesses, cited within the provision, are located within or adjacent to the Green Belt in Solihull. Woodhouse Farm could be treated as an established business for the purposes of this provision. If the transport depot use is treated as farm diversification the material change of use would expand the business into the Green Belt. Nevertheless, even though the development makes a contribution to the local economy through the direct and indirect support identified below there is little to indicate that this can be treated as significant contribution to the local economy. In any case, this provision does not state that if it is met that the development would not be treated as inappropriate development. I will consider whether the development complies with this policy within the planning balance below.
63. Taking into account my findings above, the second provision in respect of the reuse of buildings or land would not be met.

Character and appearance

64. As stated above, the transport depot use of the vehicle workshop and yard areas is largely screened from the public highway, but that use and its associated parking, storage and activity, the fencing, gates and earth bund are apparent from the shared access drive and nearby buildings and land. I acknowledge that the development is viewed in the context of the other buildings and uses at Woodhouse Farm. Furthermore, there is transport infrastructure in the surrounding area and additional transport infrastructure is proposed and being constructed with the vicinity of the site.
65. Nevertheless, the character of the surrounding area is mainly rural in nature and even taking into account the additional transport infrastructure the overall character should remain largely rural in nature. As stated above, the material change of use when considered as a whole has altered the character of the appeal site to one inherently more urban in nature. Moreover, the appearance of the palisade fencing and gates are industrial in nature and the visual appearance of large commercial vehicles parked on the extended yard reinforces the urban character of the development.
66. A planning condition could require the portacabin and storage container to be moved onto the pre-existing yard and this would limit the visual impact of those parts of the development when compared to the portacabins that were stationed on the pre-existing yard area. Additional landscaping could be planted on the earth bund which would eventually assist in screening the parked vehicles when approaching the appeal site along the shared access drive from Catherine-de-Barnes Lane. However, they would not mitigate the overall visual impact of the development on the appearance of the area.
67. Overall, I consider the development causes/would cause moderate harm to the character and appearance of the area in the vicinity of the appeal site. In this respect the development does not accord with SLP Policy P15 which, amongst other things, expects development to conserve and enhance local character.

Other considerations

68. Paragraph 82 of the Framework states that planning decisions should recognise and address the specific locational requirements of different sectors. The appellant has stated that a site search was undertaken for 16 months before the transport depot was relocated from Tyseley to the appeal site. However, even though the appellant has stated that various properties were considered details of only 5 other sites have been provided. I note that no suitable site that met a number of requirements was identified other than the appeal site.
69. It appears that the appellant and many of his workforce live within the surrounding area and therefore it was desirable that a site was found in the Solihull area. A large amount of the deliveries undertaken by the transport depot appear to relate to Birmingham Airport, the National Exhibition Centre (NEC) and the supply chain of Jaguar Land Rover (JLR). One of the locational requirements of the site search was that the site had to be within a 30-minute drive of JLR. Nevertheless, it is not clear if that is the JLR manufacturing facility at Solihull or another one or more of the JLR facilities around and within the West Midlands.
70. I acknowledge that the extent of the Green Belt in this Council's area could restrict the number of alternative suitable sites and that SLP Policy P1 indicates that Solihull's key economic assets and growth drivers are located near the

M42 in the area between junctions 4 to 6 that forms the M42 Economic Gateway. This policy indicates that some expansion of the key economic assets identified within it may involve the release of Green Belt land. In addition, based on the evidence before me, it appears that the adoption of the eSLR and policies relating to the release of sites in the Green Belt have been delayed. As such, the release of additional Green Belt land to facilitate the further expansion of those key economic assets has not yet been agreed through the local plan process.

71. However, a 30-minute drive from the JLR facility at Solihull would cover a large area, including neighbouring local authorities, given the proximity of the motorway network to that facility. The sites considered by the appellant within his site search included some that are not within this Council's area.
72. Nevertheless, the evidence before me only relates to a small number of sites that were considered at that time and it is not clear if that reflects an overall lack of suitable sites that meet the locational requirements of the transport depot use. In addition, there is little evidence before me to indicate that there are currently no suitable alternative sites in this Council's or adjoining local authority areas that could meet those locational requirements. As such, I give this moderate weight.
73. I acknowledge that the Planning Statement in support of the Birmingham Dogs Home (BDH) development, that is adjacent to the shared access road, included evidence of the locational need in support of BDH and a search for sites. Whilst, that search covered a wider area their search could also not find a suitable site that was not within the Green Belt. Additionally, its reasons for moving from a City Centre site appear to be similar to that of the appellant's company. Nevertheless, the locational requirements of BDH are based on different criteria than that of the appellant's company. Moreover, I do not have the full details before me as to why the BDH development was allowed within the Green Belt. As such, I cannot be certain that it is similar to the case before me. In any case, I am required to determine the appeal on its individual merits.
74. The highway works to improve Junction 6 of the M42 Motorway will include a roundabout at the junction of the shared access drive with Catherine-de-Barnes Lane. This will provide access via a new dual carriageway onto the M42. This would ensure that the commercial vehicles associated with the transport depot would be able to quickly access the motorway network. As stated above a large proportion of the company's business is related to the key economic assets highlighted within SLP Policy P1. However, the company nor the appeal site are identified as key economic assets within that policy. Moreover, there is little evidence that those key economic assets would not be able to source other transport suppliers.
75. Nevertheless, I acknowledge that the company's business provides support to a number of the key economic assets identified within that policy and to the local and regional area. The evidence before me indicates that this has included around £1.6million in indirect support to the local economy. Moreover, the company pays business rates to the Council. In addition, SLP Policy P3 states, amongst other things, that the Council will encourage the retention of small and medium sized enterprises, and the creation of new ones, both in urban and rural areas subject to a number of criteria. I have found that the material

change of use causes/would cause moderate harm to the character and appearance of the area. Therefore, there would be no conflict with criteria ii. However, criteria iv is that the land or premises are not in the Green Belt or are compliant with Green Belt policy. I will consider whether the development is compliant with Green Belt policy within my findings on the planning balance below.

76. The company also provides employment and training for around 50 staff of which approximately 36 are based at the appeal site and 4 of the staff are on apprenticeships. These employees also contribute to supporting local retail, businesses and services through their spending. The positive economic contribution made by the business is consistent with paragraph 80 of the Framework which states, amongst other things, that significant weight should be placed on the need to support economic growth and productivity.
77. I accept that if the Company had to cease trading or even reduce the scale of its business due to it having to relocate from the appeal site that this would have direct impacts on the appellant and those employees. The Human Rights Act 1998 (HR Act) enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR). There has been reference made to Article 1 of the First Protocol of the ECHR, as enshrined in the HR Act, which concerns enjoyment and deprivation of possessions, Article 8 which states that everyone has the right to respect for his private and family life, his home and correspondence and Article 14 which relates to the prohibition of discrimination. These are qualified rights, whereby interference may be justified in the public interest, but it must be determined that such an action is proportionate. There is little evidence before me as to how Article 14 is relevant to these appeals. The proportionality or otherwise of any justified interference will be assessed in relation to Articles 1 and 8 within the planning balance below.
78. I consider that the above considerations have significant weight, collectively, in support of the development.
79. The development has involved the re-use of previously developed land, but the extended yard area was previously undeveloped. Therefore, this limits the weight that this gives in its support and I give it modest weight.
80. SLP Policy P17 states, amongst other things, that development involving farm-based diversification will normally be permitted in order to support farm enterprises and the management of land, providing it does not harm the Green Belt. However, I have found that the development has appreciably harmed the openness of the Green Belt and it is in conflict with one of the purposes of including land within the Green Belt. Therefore, as farm diversification the development does not comply with SLP Policy P17.
81. Nevertheless, Woodhouse Farm has diversified with the introduction of offices, the music school and other uses adjacent to the appeal site. The compulsory purchase of land owned by the farm for the highway works for the Junction 6 M42 Motorway improvements would appear to have reduced the amount of agricultural land available to the owner of the farm. The operation of the transport depot use provides financial support to the farm through rental payments and it also appears to have provided additional benefits to the farm such as enhanced security, the use of the vehicle workshop and additional areas for parking/storage. The reuse of the vehicle workshop and the pre-

existing yard also supports the development of under-utilised land and buildings. Section 11 of the Framework relates to making effective use of land. However, as stated above part of the appeal site was undeveloped land. I consider that this can be given modest weight in favour of the development.

82. The appellant also considers that the relocation of the transport depot serves to reduce greenhouse gas emissions by reducing actual miles travelled between his base and customers and to reduce the opportunity for air pollution through the reduction in time spent with vehicle engine's idling whilst caught in City Centre congestion. However, other than that statement there is little evidence before me to indicate the amount/s that these potential reductions would entail. As a result, I give this matter little weight.
83. The appellant has also stated that the Green Belt in this location is heavily compromised by significant strategic infrastructure, commercial, retail and housing development and additional planned infrastructure will further change it. Moreover, it is stated that the development would not undermine the overall nature of the 'Meriden Gap' and I acknowledge were it in fact to do so, that would be a severe harm to one of the purposes of the Green Belt. But the absence of such a form of severe harm cannot reduce the harm by reason of inappropriateness or the harm I have identified to the openness of the Green Belt. As such, these matters cannot provide positive support in favour of the development.
84. In addition, the Council has not identified any harm in relation to highway safety, the free flow of the road network, the living conditions of the occupiers of nearby dwellings, flood risk, drainage, biodiversity and nature conservation. However, the lack of harm in these respects does not weigh for or against the development.

Other matters

85. The development of the appeal site has affected part of an agricultural field. SPL Policy P17 states, amongst other things that the Council will safeguard the "best and most versatile" agricultural land in the Borough and encourage the use of the remaining land for farming. The glossary to the Framework defines best and most versatile agricultural land as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The appellant has stated that the part of the field that has been affected by the development is classified as grade 3b in the ALC. The Council have not specifically disputed that fact. As such, the evidence before me does not indicate that the development involved best and most versatile land.

Planning balance

86. At paragraph 143, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. I acknowledge that other considerations do not have to be rare or uncommon to be special.
87. I have found that the development appreciably harms and does not preserve the openness of the Green Belt, that it is in conflict with one of the purposes of

including land within the Green Belt and that it is inappropriate development. I attach substantial weight to that harm. I have also found that the development results in moderate harm to the character and appearance of the area. I attach modest weight to the harm arising from this additional matter.

88. Against the totality of this harm there are other considerations which I have set out above and carry weight in support of the development. I have also borne in mind the effect upon the appellant and his employees and the interference with their rights and those of others should the business have to cease or reduce in size. I am satisfied that the legitimate aim of conforming with planning policy and safeguarding the Green Belt from inappropriate development cannot be achieved by any means which are less interfering with the appellant's rights under Articles 1 and 8 of the HR Act. The interference with enjoyment of possessions, home and private life is proportionate and necessary in the circumstances and would not result in a violation of their rights. Whether the time period for compliance with the requirements of the notice are reasonable is dealt with under the ground (g) appeal.
89. For the reasons given above, I find that the other considerations do not, either individually or cumulatively, clearly outweigh the totality of the harm to the Green Belt and the other harm identified above. Consequently, the very special circumstances necessary to justify the development do not exist. Furthermore, the development conflicts with SLP Policies P3, P15 and P17. With regard to paragraph 213 of the Framework these policies are broadly consistent with the Framework and the conflict with them has full weight. The development is contrary to the development plan as a whole and material considerations do not indicate that the appeals should be determined other than in accordance with the development plan.

Conclusion – ground (a) appeal and deemed planning application – Appeal A

90. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the deemed application.

Conclusion – section 78 appeal - Appeal B

91. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

The ground (f) appeal – Appeal A

92. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
93. The notice does not specify which of the two purposes it seeks to achieve. Nonetheless, in requiring the cessation of the use and removal of all of the operational development that the Council states are associated with that use it is evident that the Council seeks to remedy the breach.
94. An enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute

development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.

95. The appellant considers that the requirement to remove the portacabin on the land is excessive as portacabins were stationed on the land in association with the use by Glendale Countryside and that it has been demonstrated that they were on the site from at least 2001 and thereby exceed the four-year limitation for taking enforcement action.
96. I acknowledge that the portacabin could be relocated to be within the pre-existing yard area and that portacabins were stationed on the land previously. However, there is little evidence before me to indicate that the portacabin required to be removed was installed in association with a lawful use of the appeal site. On the balance of probability, I consider that it is more likely than not that the portacabin was stationed on the extended yard area to facilitate the ancillary office use that forms part of the transport depot use and as such it is integral to that use. Consequently, the requirement to remove it is not excessive.
97. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

The ground (g) appeal – Appeal A

98. This ground is that the period for compliance falls short of what should reasonably be allowed. This involves consideration of what the recipient of the enforcement notice will have to do in practice to carry out the remedial steps and consequently how much time should be allowed for that purpose. There is also a need to ensure the period is proportionate taking full account of the human rights considerations. A balance needs to be struck between the public interest in ensuring the notice is complied with expeditiously and the private interests of the appellant.
99. The appellant considers that the period of 3 months is unrealistic, and significantly too short a timescale and would seriously jeopardise the sustainability of the business. As such, he considers that a period of 2 years is essential.
100. Since the appeal has also been made on ground (a) it is reasonable for the appellant to assume success on that and await the outcome of the appeal. Hence, the time that has elapsed prior to this appeal decision should not be taken into account.
101. There is no dispute that the physical works required to meet the requirements of the notice could be reasonably undertaken within 3 months. Nevertheless, the search for a suitable alternative site took around 16 months prior to the appellant's company relocating to the appeal site. However, there is little specific evidence before me to indicate that, at the current time, the appellant's company would not be able to source and/or finance an alternative site that would meet its locational requirements within a shorter time period. Nonetheless, the appellant would need to find that alternative site and ensure that all necessary permissions and licences were in place prior to its relocation. Whilst, I acknowledge that the Covid-19 pandemic and the 'lockdown' response

to it could make it more difficult to find an alternative site the Government's 'roadmap' out of lockdown appears to be on course.

102. Balancing the competing considerations and taking into account the current situation with the pandemic, I conclude that the compliance period should be extended. A period of 12 months is reasonable and proportionate in order to allow the appellant to find an alternative site, gain all the necessary permissions/licences and comply with the requirements, whilst ensuring the harms identified above do not continue for longer than necessary.

103. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Formal Decisions

Appeal A

104. It is directed that the enforcement notice is corrected and varied by:

- Deleting the wording of sections i) and ii) of the description of the alleged breach and replace it with '*i) The unauthorised material change of use of the land, edged red on the attached plan, to a transport depot use including the parking of vehicles and trailers associated with the transport depot use, the maintenance and repair of vehicles associated with the transport depot use within the vehicle workshop, the building annotated on the attached plan as vehicle workshop, and the stationing of a portacabin, container and two WCs associated with the transport depot use.*'
- Renumbering section iii) of the description of the alleged breach by the deletion of '*iii)*' and its replacement with '*ii)*'.
- Adding the wording '*edged red on the attached plan,*' after the word '*land*' in requirement i).
- Deleting the wording '*lorries, trailers and associated vehicles*' from requirement i) and replace it with '*vehicles and trailers associated with the use as a transport depot*'.
- Deleting the wording of requirement ii) and replace it with '*Cease the maintenance and repair of vehicles associated with the transport depot use within the vehicle workshop, in the location annotated on the attached plan as vehicle workshop*'.
- Replacing the word '*enclosed*' in requirement iii) and replace it with the word '*attached*'.
- Deleting the wording '*from the land as shown on the area hatched green on the enclosed plan*' in requirement iv) and replace it with the wording '*on the area hatched green on the attached plan*'.
- Deleting the wording '*Cover this land in top-soil to match adjoining levels and re-seed with grass*' and replace it with '*Restore the area hatched green to its previous condition prior to the breach of planning control*' in requirement iv).

- Adding the wording '*as annotated on the attached plan*' after the word '*bund*' in requirement v).
- Adding the wording '*,edged red on the attached plan,*' after the word '*land*' in requirement v).
- Inserting the wording '*associated with the transport depot use*' after the word '*WCs*' in requirement vi).
- Adding the wording '*,edged red on the attached plan,*' after the word '*land*' in requirement vii).
- the deletion of 3 months and the substitution of 12 months as the time for compliance.
- the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

Subject to the corrections and variations the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal B

105. The appeal is dismissed.

D. Boffin

INSPECTOR

Scale: Not to Scale

