



Appeal Decisions

Site visits made on 22 and 24 April 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/A1910/C/20/3264483 ("Appeal A")

**Land West of Runway, Bovingdon Airfield, Chesham Road, Bovingdon
HP3 0GH**

- 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 WF Markets Ltd against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 6 November 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, material change of use of the land from agriculture, to use as a car park associated with the adjacent market site; with associated operational development forming the laying of hard core on the land.*
- The requirements of the notice are (1) to cease the use of the land for parking vehicles associated with the adjacent market; (2) to remove from the land, all hard core/material from the areas shown with blue hatching on the attached plan; and (3) to restore the land (where the hard core and materials in Step 2 have been removed) to its condition and natural level before the breach of planning control took place.
- The period for compliance with the requirements is one day in respect of step (1), one month in respect of step (2) and three months in respect of step (3).
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is allowed and the enforcement notice is quashed.

Appeal Ref: APP/A1910/W/20/3254243 ("Appeal B")

**Land at Bovingdon Airfield, Chesham Road, Bovingdon, Hemel Hempstead
HP3 5RR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Wendy Fair Markets against the decision of Dacorum Borough Council.
- The application Ref 20/00339/ROC, dated 14 February 2020, was refused by notice dated 15 May 2020.
- The application sought planning permission for the relocation of market from east/west runway to north-west/south-east runway, reconfiguration of associated car parking areas, installation of office and toilets, and formation of landscaping (including new bund) without complying with conditions attached to planning permission ref 4/01889/14/MFA dated 23 April 2015.
- The conditions in dispute are No 1: *Only the area outlined in blue on approved plan '4308' shall be used for market trading;* No 2: *Only the area hatched in red, hatched in brown or outlined in pink, as shown on approved plan '4308', shall be used for the parking of vehicles associated with the use hereby permitted;* and No 19: *The*

development hereby permitted shall be carried out in accordance with the following approved plans: 4308.

- The reasons given for condition No 1 and 2 are *In order to minimise the impact of the development upon traffic and the amenity of residents in the vicinity and for the avoidance of doubt in accordance with Policy CS12 of the Dacorum Borough Core Strategy (September 2013) and Saved Policy 51 of the Dacorum Borough Local Plan (1991 – 2011) and for condition No 19 the reason given is For the avoidance of doubt and in the interests of proper planning.*

Summary Decision: the appeal is allowed and planning permission is granted subject to conditions.

Application for costs

1. An application for costs was made by the appellant against the Council in respect of Appeal A. This application is the subject of a separate Decision.

Preliminary Matters

2. The appeals each concern adjacent sites on land at the former WW2 airfield at Bovington. Although the appellant's name is respectively given on each appeal as 'WF Markets Ltd' and 'Wendy Fair Markets', I understand both appeals to involve the same appellant (whose address is the same in each case). There is also some commonality in the Council's reasons for refusing planning permission and for issuing the enforcement notice, with each decision concerning traffic and parking arrangements albeit each with a different focus. Hence both appeals are considered in this single decision letter.
3. Perhaps owing to the size of the overall airfield, a number of postcodes have been applied to the appeal sites in the documentation. The addresses given above are taken respectively from the appellant's appeal form concerning Appeal A and the application form as made to the Council in Appeal B.
4. A pre-arranged site visit to assist my decision took place on Thursday 22 April 2021 in the company of representatives of the Council and of the appellant. Additionally I undertook an unannounced visit to the site on Saturday 24 April 2021, arriving shortly before 0900, in order to observe the market in operation including its car parking arrangements and traffic flows into and out of the land. The market had recently re-opened following a prolonged period of closure due (I understand) to Covid-19 and was subject to some associated restrictions, such as advisory limits to family visitors and signed advice to shoppers to complete their trips as quickly as possible. Thus the market was by no means 'in full flow' at the time of my observations and I have had regard to all the correspondence in the case concerning its operations in busier times.
5. I sought further information from the Council and from the appellant by a note of 30 April 2021 concerning Appeal B, seeking clarification as to plans and to the iterations of the Traffic Management Plan ("TMP") and setting out a timetable for the exchange of any further comments including from other interested parties. A detailed response was subsequently received from the appellant but nothing further.
6. Thus I have proceeded on the basis that the plan '4308' referenced in the existing permission is that supplied to me under cover of the appellant's e.mail correspondence of 20 April 2021 at 1624. The plan itself is un-numbered but states it was produced on 15 January 2015 and was date-stamped by the

Council on 26 January 2015. Despite the lack of numbering I shall refer to it as 'plan 4308'.

7. The version of the TMP to which I shall have final regard is that said to be dated November 2020, but acknowledged to have been corrected since, (namely paragraph 5.2) and supplied to me under cover of the appellant's correspondence to the Inspectorate of 7 May 2021 at 1622 and copied to the Council.

Main Issues

8. Appeal A constitutes an appeal against an enforcement notice issued by the Council directed at the use of a field adjoining the runway, the so-called 'radar field', for use as overspill car parking for the adjacent market. The principal issue for consideration is whether express planning permission is required, with the appellants contending that the use is temporary in nature such that it benefits from permitted development rights. If permission is required, a further issue is whether the steps imposed by the notice exceed what is required to achieve the purpose of the notice to remedy the (alleged) breach of planning control. No deemed application for planning permission has been made in Appeal A and thus the merits of the development alleged in the notice, which was issued primarily for reasons relating to its impact on the Green Belt, are not for consideration in Appeal A.
9. Appeal B however is concerned with the merits of permitting an expansion to the area of the airfield that may be occupied by the market stalls, taking over what in plan 4308 is identified as the part of the NW-SE runway constituting a disabled car park. The main issue for consideration is the effect of this proposal (which I observed is retrospective) on the traffic network and road safety. The proposal also includes the use of additional land within that application site for overflow car parking. A further issue which is not unrelated to the impacts on traffic is the effects of the development on public safety and the living conditions of neighbouring residents. No Green Belt concerns are raised by the Council in respect of Appeal B.

Reasons

Appeal A

The appeal on ground (c)

10. The lawful use of the Radar Field is for agriculture, and the notice alleges an unauthorised material change of use of the land from that use to use as a car park associated with the adjacent market site, together with the associated laying of hard core. The appellants contend that the site reverts to its lawful agricultural use between its car parking uses, but do not contend that the matters alleged in the notice have not occurred: there is no appeal on ground (b). Rather the issue between the parties is whether the site has been put to a permanent change of use, or alternatively whether any permitted development rights to make a temporary use, or uses, of the land for car parking have been exceeded thus amounting to development without planning permission.
11. I am referred to Class B of Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order'). Article 3 of the Order grants planning permission for certain classes of development subject to a number of exceptions none of which are said to apply

here. Exclusions are also made from the permission conferred by Class B, again none of which are said to apply here; the land is not said to be within the curtilage of a building, for example.

12. First, as to whether the use alleged is a permanent change, the Council suggest that the land was not reverting to its lawful agricultural use between the Saturdays when it was put to use as an overflow car parking area. The Court of Appeal¹ has accepted that the retention of physical features referable to the land's temporary use might in some cases be relevant, but only where they make it difficult or impossible for the site to revert realistically to its normal use in between the occasions when the land was used for the new use. I find that to be far from the case here. The Council's photographs show some laying of hard core at the entrance and exit to the site, and rutting of the land by vehicle tyres, but not of such a significant scale as to preclude the resumption of the lawful agricultural use of the land between the Saturday car parking uses. Thus I do not consider that the change of use was a permanent one at the time of issuing the notice, but that the change took place temporarily on each occasion that the site was used for car parking.
13. The question then is whether the permission conferred by the Order to make temporary changes of use for any purpose not excluded had been exceeded. The Council's position is that the use of the land for parking in association with the adjacent market means that the permission conferred by the Order is limited to 14 days in any year rather than the 28 days conferred for most other uses.
14. The primary use alleged in the notice, which is not disputed, is 'use as a car park', albeit 'associated with the adjacent market site'. The Council do not allege that the site is in itself used for the purposes of the holding of a market (whether by the setting up of market stalls on it or by ancillary activities such as car parking). This being the case, I do not find that the use alleged in the notice is precluded from taking place for more than 14 days a year by the terms of Class B, which states that the permission conferred is for 'the use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of the holding of a market'. As use 'for the purposes of the holding of a market' is not alleged, I do not consider that the '14-day rule' applies to the use alleged in the notice.
15. Access to the appeal site is obtained through the adjacent site which benefits from a planning permission for use as a weekly market, but is a distinct field and the appellants explain that the occupancy arrangements of the appeal site are very different from those obtaining to the permitted market site. Although the Council point to the association between the car parking use and the market, it is not alleged that the planning unit has changed (whether temporarily or otherwise) and hence the parking is not claimed to be ancillary to a primary market use of the adjoining site but merely 'associated' with it.
16. There is some dispute between the parties as to how many days for which the appeal site had been used as a car park in the 2020 calendar year at the time the notice was issued. The Council stated in correspondence that the land had been used since 'at least August 2020' and subsequently that, according to a complainant who had not been monitoring the use, the site had been used at

¹ In *Ramsay v Secretary of State* [2002] JPL 1123

least 16 times on Saturdays since 18 July 2020. The use 'at least' 16 times on Saturdays would have meant use on every Saturday prior to the issue of the notice. This is rather ambiguous and I have not had the benefit of first-hand evidence.

17. The appellants contend that the site had been used on 12 occasions in 2020, starting on 18 July 2020. Again there is no first-hand evidence on the point although the Council's correspondence of 29 October 2020 drew an immediate response to say that the use was 'well within' the number of permitted days, and that there was no intention of exceeding the permission conferred by Part 4. The Council's reasons for issuing the notice did not refer to Part 4 rights, appearing to allege a permanent change, and their preceding correspondence reveals their concern to have been that the field was 'not reverted to agriculture between uses'. On balance I prefer the appellant's statement that the number of days' use in 2020 prior to issuing the notice did not exceed 14 as this matter would have been well within their knowledge, contrary to the Council who appear to rely on a complainant who says s/he has not been monitoring the use.
18. In any event, as it is not said by the Council to have exceeded 28 days, I find that the temporary uses of the appeal site for the purpose of car parking have occurred with the benefit of the permission conferred by the Order, and thus no breach of planning control had occurred at the time the notice was issued. Therefore the appeal on ground (c) succeeds in respect of the alleged material change of use.
19. As to the laying of hard core at the field entrance, the Council describe this as 'associated operational development' in the notice which is primarily directed at an alleged unauthorised material change of use. The hard core has since been removed from the site, but it is not denied that it existed at the time the notice was issued.
20. On this I also accept the appellant's case that the hard core was laid primarily in order to safeguard the underlying use of the land. The Council have not responded to this assertion. It is explained by the appellant that the hard core was laid not by them in order to assist the temporary parking use but by the landowner in order to safeguard the residual agricultural use. This being so, constituting as it did the provision of a hard surface reasonably necessary for agricultural purposes, it will also have constituted permitted development by reason of Part 6 of the Order.
21. Therefore the appeal on ground (c) succeeds in relation to both aspects of the allegation, and consequently the notice will be quashed. Hence I do not need to consider the appeal on ground (f).

Appeal B

Highways impacts

22. The proposal here is for the market stalls to occupy the whole of the NW-SE runway lying SE of the main runway. (By the 'main runway' I mean that on the SW-NE axis running from Chesham Road in the direction of Bourne End.) The part of the main runway south of the E-W runway is the principal car parking area for the market. A perimeter road runs around the south of the airfield connecting the SW base of the main runway to the SE end of the NW-SE

- runway and leading to land used as further car parking beyond, including land outside the application 'red line' site to the west of the prison that adjoins the airfield to the east as well as some land to the SE of the perimeter road, close to one of the entrances to the market stalls area, that at the time of my visits was allocated as disabled parking.
23. Additionally the proposal seeks to lift the restriction on where cars may be parked within the application site, presently restricted by plan 4308 to the main runway, perimeter road, and land to the SE of the NW-SE runway.
24. The existing permission of 23 April 2015 ('the 2015 permission') imposed certain requirements as to traffic arrangements. Access to the site was to be taken from the SW end of the main runway. Egress was to be taken from the southern perimeter road opposite Whelpley Ash Farm. A traffic management plan preventing shoppers from using the Molyneux Avenue entrance was to be submitted and implemented as approved. Approval was given on 20 June 2018 to the details required by this condition No 13, as well as to details pursuant to conditions 8 and 9, thus satisfying all the requirements of the permission to seek the subsequent approval of details.
25. No general traffic management requirements were imposed as part of the 2015 permission, and the appellant contends that the local highway authority ('LHA') has not commented on previous applications. Detailed comments were provided by the LHA to the instant application on 20 March 2020 recommending that permission be refused in the absence of a traffic management plan providing assurance that the mitigation measures proposed would be sufficient to minimise and control traffic impacts beyond the site.
26. Although said to have been occupying the full extent of the NW-SE runway since after Christmas 2015, the permitted area for the market stalls presently extends to around 2/3 of this, with the proposal to increase the permitted area to that actually used. The main difference in the proposed car parking arrangements is to formalise the use of the infill 'triangle' of land as an additional parking area. The capacity of the market and parking areas are stated differently across the documents in the appeal, but the proposal results in approximately 21,000 sq m of retail floor area and 3,600 parking spaces.
27. The LHA's consultation response recognised that the market has taken place for many years but at times has resulted in significant congestion on the local road network, and the Council's report referred to empirical evidence of significant congestion on the local road network since the market has been in operation since 2015. The LHA considered that the development proposals in the instant application do not serve to intensify the market, and neither they nor the Council have explained why the current proposals should serve to make matters worse, and indeed that is not a contention raised by the Council's first reason for refusing permission. The reason appears to set out a case for betterment: it is not averred that the development proposed will have any adverse impacts on the traffic situation; merely that the TMP provides insufficient assurance of minimising and controlling traffic impacts beyond the site which are said to be already problematic under the current permission.
28. The LHA's consultation response indicated that, subject to the submission of a comprehensive Traffic Management Plan ('TMP'), it would reasonably agree to the variations sought, and recognised that the application presents opportunities to improve matters. Shortcomings in the TMP then identified by

- the LHA concerned site arrangements, circulatory routes, sign posting, arrangements for pedestrians, contraflow working, responsibility for/ownership of the TMP, the use and training of traffic marshals, signage on the public highway, the lack of a review element to the TMP and the possibility of vehicles tracking mud onto the local road network.
29. Overall I consider that these matters are adequately addressed in the November 2020 (amended 7 May 2021) version of the TMP. The TMP explains that due to the market being a once-a-week operation and various other users being on site at different times, the practicality and layout of the exact site can change week by week. Nonetheless it is accompanied by a masterplan, drawing K37538/A1/01 A, showing the parking areas to be utilised on standard, shoulder and peak operating days. These are distinguished in the TMP itself as respectively the days on which fewer than 1500, more than 1500 and more than 2000 vehicles are expected to be parked at peak accumulation.
30. The masterplan drawing proposes to utilise for parking some land outside the application site, but the appellant's contention (7 May 2021 at 1622) that such areas can be utilised under permitted development rights or by the establishment of lawful use rights was unchallenged by the Council in this appeal. A negatively-worded condition can be imposed to address this. The plan shows the direction of vehicles to be taken on the main runway and a 2m wide pedestrian walkway in the centre. From my observations on site on Saturday 24 April the traffic was being competently marshalled so as to ensure safe pedestrian accesses to the market stalls area. No circulatory routes are shown for other areas, including the proposed overflow, but the TMP sets out the need for a flexible approach that may be dependent on other site users.
31. The TMP sets out that offsite signage will be deployed during the busier (shoulder and peak) operating days, and I saw what appeared to be a permanent sign on the Chesham Road/Molyneaux Avenue junction directing market traffic away from Molyneaux Avenue. Within the site, clear large directional arrows signs are to be used to ensure that traffic joins the correct lane. The appellant has confirmed that a commitment to communicate the anticipated operating days (and their categorisation as standard, shoulder or peak) to the Council at the start of each year will be acceptable and this can be made the subject of a planning condition.
32. The TMP provides that Turfmesh coverage is to be installed on the grassed overflow parking areas in advance of the anticipated peak operating days and removed afterwards, and it is noted that the market already has quantities of reinforcements in stock and in use. A number of local residents have questioned the suitability of the proposed overflow car parking area for the use, and the LHA have expressed concerns as to mud on the highway being a possible result in the absence of the use of ground mesh when seasonally appropriate. I consider that this matter may similarly be controlled by a planning condition requiring notification to the Council.
33. Appendix 2 to the TMP sets out a detailed Steward Training Manual, to include the requirement for stewards to acquaint themselves with the Supervisor at the beginning of each shift, with a commitment in the TMP itself to provide training to all new stewards. Specific health and safety policy ownership is taken in the Steward Training Manual by the Managing Director of Wendy Fair Markets, thus providing a contact for stakeholders as sought by the LHA. Although there is no

generalised review element of the TMP, there is a commitment to review after each day of operation and to make relevant amendments including any further guidance or training needed for stewards.

34. Although the proposed variations include an expansion of the permitted market trading area, I am mindful of the LHA's consideration that the proposals do not serve to intensify the market. I have no evidence before me as to the extent to which an expansion of the permitted trading area would be likely to result in increased visitor journeys. The LHA accepts that the cumulative impacts on the road network are not severe, in the context of national policy (paragraph 109 of the National Planning Policy Framework), save in the case of 6 trading days which appear to relate to the Christmas period during which the LHA do not commonly assess development impacts and acknowledge that it is inappropriate to do so.
35. Such impacts already exist to affect the road network, and the Council have not demonstrated how if at all they relate to the expanded trading area for which retrospective permission is sought when compared with the existing permitted trading area. The parish council suggest that an increase in the trading area along with an increase in the parking area will inevitably lead to more visitors and exacerbate the problem further. Whilst I accept in general terms that an expansion of the market and available parking is likely to lead to more visitors, the anticipated effects are not quantified. The appellants say that their busiest ever day was in 2003 and that previous consents (prior to the relocation of the market) allowed for a larger trading area than presently exists, with no apparent interest from the LHA.
36. The parish council also note that the traffic-related impacts on the village were lessened in 2020, and attribute this partly to the use of an overflow car parking area to accommodate vehicles (the area which is the subject of Appeal A). Whilst neighbouring representations raise traffic volumes *per se* as a significant concern, a number of local residents have made a similar point to the parish council's, suggesting that the local gridlock arises from the lack of sufficient parking on the site to meet visitor demand. Thus the provision of an expanded car parking area within the airfield site may be expected to result in improved traffic flows in the area.
37. The existing permission contains no meaningful traffic management measures save for requirements and prohibitions relating to the use of particular access points. In the absence of any evidence, I am not satisfied that the expansion of the trading area has itself resulted in a significant increase in market-related traffic. Taken together, therefore, the expansion of the permitted car parking area to serve the market coupled with the enforceable provisions of the TMP requiring proper traffic management and marshalling to enable safe and efficient parking at the site would, in my judgement, considerably ameliorate the situation rather than harmfully exacerbate it. Therefore, subject to requiring adherence to the TMP and associated matters by condition, I am unable to support the Council's first reason for refusal on the grounds of adverse highways impacts. I am unable to discern any conflict with the Core Strategy policies CS8 and CS9 and note that the LHA do not assert there to be any such conflict. The LHA do nonetheless assert conflict with their Local Transport Plan 4 Policy 12 which concerns the LHA's network management duty and the intention to reduce traffic congestion and minimise network disruption. For the reasons I have set out I do not consider that the proposal here will add

to congestion but rather will ameliorate it by the provision of a much expanded car parking capacity and meaningful measures to manage the traffic at the site.

Public safety and neighbouring living conditions

38. Core Strategy Policy CS12(c) is cited in the Council's second reason for refusal relating to safety and living conditions. That aspect of policy CS12 is concerned with avoiding disturbance to surrounding properties rather than public safety, although security is raised as a consideration in paragraph (g) of the policy. The policy is however directed at the quality of site design rather than off-site impacts as are the concern here; the Council raises no concerns about the quality of the site design itself which is expressly stated to be acceptable.
39. The principal concerns raised (apart from traffic congestion) concern litter accumulation and some anti-social behaviour, coupled with off-site parking along the roadside. Again these concerns relate to the existing situation and there is no evidence as to the extent to which such matters are expected to be exacerbated as a result of a permitted extension to the market trading area. The problems appear largely to stem from the traffic delays which, as I have noted above, are acknowledged by some local residents to be a consequence of the current level of parking provision on the site which the application seeks to expand.
40. Nonetheless again I accept in general terms that an expansion of the market and available parking is likely to lead to more visitors, with some potential for such problems to arise. A number of off-site powers are available to the police and other statutory authorities, as have been exercised here, but the parish council have urged me to consider expanding the scope of the existing Litter Management Plan ('LMP') to cover land outside of the airfield site.
41. I am unable to insist on a LMP covering land outside the site which is not within the appellant's control, but I do accept that the existing LMP may require revisiting in the light of the expanded trading area to address the waste capacity at the site and to allow consideration of whether the cleaning operations should be brought forward from the following day, which is a concern stated by local residents as allowing litter to escape from the site prior to the cleaning taking place.
42. Subject to that, I do not find the development to conflict in this regard with the local policy cited by the Council or with the development plan for the area.

Other matters

Green Belt

43. The site lies within the Metropolitan Green Belt but although contending it is inappropriate development the Council do not assert any harm to the Green Belt. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances, a question not expressly addressed by the Council.
44. The present proposal constitutes an application for planning permission, but section 73 of the Act provides that on such an application the only question for consideration is the conditions to which planning permission should be granted. It is not an opportunity to revisit the principle of the development itself. On that basis I do not consider that the proposal amounts to one relating to

inappropriate development, because permission for the development itself has already been settled. Thus I do not need to consider the effects on the openness of the Green Belt or whether very special circumstances exist.

Fire Hydrants

45. The County Council's 'Land & Movement Planning Unit' have sought the provision of fire hydrants to be secured by a planning obligation. The absence of a planning obligation does not form any part of the Council's case (said to be 'not applicable' in the officer's report) and the suggestion has not been pursued on appeal. As the development proposed is effectively to vary an existing permission, it is not obvious why the provision of fire hydrants should now be necessary to make the development acceptable and there are no proposals to change any water scheme for the site. In the circumstances I do not consider that the request is justified.

Air Traffic Safeguarding

46. The NATS Safeguarding Office request a planning condition prohibiting the erection of any structure exceeding 5m above ground level without prior approval requiring consultation with NATS. Whilst it may be unlikely that any structure exceeding 5m would not require permission in its own right, it is nonetheless possible and thus I accept that a planning condition is necessary to protect the operation of the Bovingdon Airfield Aeronautical Beacon operated by NATS. However I shall not expressly require the Council to consult NATS because that would potentially be to fetter their discretion on the matter.

Planning Conditions

47. I have referred above to the requirement for conditions to secure the aeronautical beacon, to require a further Litter Management Plan to be submitted for approval, to notify the Council of the calendar of anticipated operating days, and to notify the Council too of when it is intended to install any ground mesh on the overflow parking area. The TMP itself anticipates using ground mesh on peak days but, given the LHA's concerns about mud on the highway resulting from field parking, I consider this necessary for shoulder operating days too and shall impose a condition accordingly.
48. The Council have suggested two further conditions. One provides for the approval of a Traffic Management Plan to be submitted to the Council following the grant of permission. For the reasons given above I consider the (amended) November 2020 TMP to be adequate in overcoming objections to the development and thus I will impose a condition requiring that TMP to be adhered to rather than requiring subsequent approval by the Council of a further iteration.
49. Because the TMP relates to some land outside the application site (although all apparently under the control of the appellants, as shown by drawing 2002-01, the 'Lease Plan', appended to the TMP) it is necessary for the relevant planning condition to be negatively worded; that is, to prohibit the carrying on of the development unless the TMP is adhered to.
50. The second proposed condition suggested by the Council relates to the approved plans which is uncontroversial and I shall impose it, together with a specific provision limiting the market stalls area to that shown edged in cyan on plan 2002-03.

51. The conditions specifically in dispute in this appeal are No.s 1, 2 and 19 on the 2015 permission. Having reviewed the remaining conditions they are all capable of restatement and reimposition, where necessary by reference to the appeal plans 2002-03 and 2002-04 rather than the previous plan 4308, save for condition no. 8 that relates to the landscaping works. Those works having been previously approved and completed (and with no ongoing requirements attached to the relevant condition), there is no need to reimpose that condition.

Conclusions and Formal Decisions

Appeal A

52. For the reasons given above I conclude that Appeal A should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the remaining ground, ground (f), does not fall to be considered.
53. The Appeal A appeal is allowed, and the enforcement notice is quashed.

Appeal B

54. For the reasons given above I conclude that the appeal against the Council's refusal to grant planning permission without complying with conditions to which a previous planning permission was granted should succeed. Accordingly I allow the appeal and hereby grant planning permission for the relocation of market from east/west runway to north-west/south-east runway, reconfiguration of associated car parking area, installation of office and toilets, and formation of landscaping (including new bund) without complying with conditions attached to planning permission ref 4/01889/14/MFA dated 23 April 2015 subject to the following conditions:
- (1) Only the area outlined in cyan on approved plan 2002-03 dated February 2020 shall be used for market trading.
 - (2) The use hereby permitted shall only take place on one day per week and between the hours of 0900 and 1600 and there shall be four clear days between any two consecutive market days with the exception of Bank Holiday Mondays when trading shall also be permitted between the hours of 0900 and 1600.
 - (3) The only structures which shall be brought onto the site shall be market stalls, toilets, traffic lane markers and the market office.
 - (4) The market stalls shall be stripped of boards, awnings and covers at the close of each market and their boards, awnings and covers shall be removed from the site until the morning of the next market.
 - (5) The only structures which may be left on the site between market days are the frames of the market stalls which shall be stored within the area outlined in cyan on the approved plan 2002-03 and the office building and toilets located adjacent to the market area.
 - (6) If the market ceases to operate all stalls and other structures shall be removed from the site within 28 days of such cessation.

- (7) Within two months of the date of this decision a Litter Management Plan shall have been submitted to the Local Planning Authority for approval. The Litter Management Plan shall include full details of measures to capture litter within the site, the timeframes for the clearance of litter from the site, and the timetable for implementing the measures proposed. The approved Litter Management Plan (which approval may encompass amendments made by the Local Planning Authority) shall then be implemented fully in accordance with the approved timetable and adhered to thereafter.
- (8) No public address, amplification or broadcast systems shall be used at any time in connection with the conducting of the market.
- (9) Access to the site in connection with the use hereby permitted shall not be other than via the entrance at the south-western end of the north-east/south-west runway as shown on approved drawing 2002-03.
- (10) Egress from the market, other than for market staff and market traders, shall not be other than via the access opposite Whelpley Ash Farm as shown on approved drawing 2002-03.
- (11) Within two months of the date of this decision a Molyneaux Avenue Traffic Management Plan shall have been submitted to the Local Planning Authority. The Molyneaux Avenue Traffic Management Plan shall include full details of measures to prevent all visitors to the site, other than market staff and market traders, from using the Molyneaux Avenue egress and the timeframes for implementing the measures proposed. The approved Molyneaux Avenue Traffic Management Plan shall then be implemented fully in accordance with the approved timeframe and adhered to thereafter.
- (12) No market traders or associated traffic shall arrive at the site prior to 0600 on the day of the market.
- (13) All market traders and associated traffic shall leave the site by 1800 on the day of the market.
- (14) Notwithstanding the provisions of Part 4, Class B of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 there shall be no temporary use of the land other than those specifically granted by the Local Planning Authority.
- (15) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.
- (16) No external lighting shall be installed or erected in association with the use hereby permitted unless full details of the external lighting shall have been submitted to and approved in writing by the Local Planning Authority.

- (17) The development hereby permitted shall be carried out in accordance with the following approved plans:
- 2002-03 dated February 2020 (1:2500 at A2)
- 2002-04 dated February 2020 (1:1500 at A4)
- (18) No structure shall be erected above 5m AGL unless prior written approval has been granted by the Local Planning Authority.
- (19) The use hereby permitted shall not be carried on without adherence to the provisions of the Traffic Management Plan (43329 – Bovingdon Market Traffic Management Plan, CTS Traffic + Transportation – Ian Millership) dated November 2020 (and as amended 7 May 2021) including its appendices.
- (20) Within two months of the date of this decision, and on each anniversary thereof for the duration of the use hereby permitted, the developer shall furnish the Local Planning Authority with a calendar of proposed market days for the ensuing 12 months, to include for each day whether it is proposed to operate to Operating Plan A, B or C as defined in section 4 of the Traffic Management Plan.
- (21) Within two months of the date of this decision, and on each anniversary thereof for the duration of the use hereby permitted, the developer shall furnish the Local Planning Authority with the dates during the ensuing 12 months during which it is proposed to lay ground mesh material over any part of the site and upon which it is proposed to remove the same. Such dates, in respect of land not laid to hardstanding which it is proposed to use for car parking, shall include all those during which the market is anticipated to operate to Operating Plan B or C as defined in section 4 of the Traffic Management Plan and the ground mesh shall be laid on such days.

Laura Renaudon

INSPECTOR