



Appeal Decisions

Site visit made on 4 August 2023

by Jean Russell MA MRTPI

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

Decision date: 27 September 2023

Appeal A: APP/B3030/C/22/3312427

Land to the West of Southern Barn, Manor Farm, Gainsborough Road, Langford, NG23 7RW

- Appeal A is made by Mr Peter O'Carroll under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Newark & Sherwood District Council.
- The enforcement notice, ref 22/00181/ENFB, was issued on 3 November 2022.
- The breach of planning control as alleged in the notice is, without planning permission:
 - a) The laying of crushed stone/aggregates to create a hard surface [and]
 - b) The change of use of the land from agriculture to storage (Use Class B8)
- The requirements of the notice are to:
 - A. Remove all materials (including, but not limited to, crushed stone and construction waste) from the land that have been laid to form the hard surface.
 - B. Cease using the land for storage (B8).
- The periods for compliance with the requirements are 56 days in respect of step A and 57 days in respect of step B.
- Appeal A is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: Appeal A is dismissed, and the enforcement notice is upheld with corrections and variations as set out in the Decision.

Appeal B: APP/B3030/W/22/3312435

Manor Farm, Southern Barn, Gainsborough Road, Langford, Nottinghamshire, NG23 7RW

- Appeal B is made by Mr Peter O'Carroll o/b Emerald Aero Engineering Ltd under section 78 of the Town and Country Planning Act 1990 against the decision of Newark and Sherwood District Council to refuse to grant planning permission.
- The planning application, ref 22/01530/FUL, was dated 3 August 2022 and refused by notice dated 2 November 2022.
- The development proposed is '...permeable surfacing comprising layer of loose hardcore and change of use of section of former agricultural land to storage for trailers'.

Summary of Decision: Appeal B is dismissed.

PRELIMINARY MATTERS

The Appeal Sites and their Surroundings

1. Manor Farm includes an enclave of former agricultural buildings that lie to the south of Langford Old Hall and were refurbished and changed into use as dwellings during the 1990s. The appellant lives in Southern Barn which, as the name suggests, is at the south end of the enclave.
2. The converted dwellings are accessed by a 'shared drive' from the A1133 to the east. The shared drive forks at the end so that there is a 'private drive' to

Southern Barn. It leads past a garage to a yard and then garden in front or to the south of Southern Barn.

3. There is a field to the west of and at a lower level to Southern Barn and the yard. The yard and field are connected by an access at the end of a short line of trees and shrubs. Both appeals concern the northern part of this field, but there are differences in the site boundaries.
4. The 'enforcement site' for Appeal A is shown edged in red on an aerial photograph attached to the enforcement notice. It shows the land as a square plot which is bound by the trees to the east, the river Fleet to the west and another residential property to the north. The southern boundary is drawn across the field past the access.
5. The 'planning site' for Appeal B is edged in red on the location plan submitted with the application. It includes a smaller part of the field, but also the whole access plus the private drive and connecting route across the yard.



APPEAL A: THE ENFORCEMENT NOTICE

6. Under s176(1) of the Town and Country Planning Act 1990 (TCPA90), an Inspector may correct any error, defect or misdescription in an enforcement notice provided that will cause no injustice to the appellant or the Council. If injustice would be caused, the notice will be not correctable or invalid.
7. A notice is null if it is so defective on its face that it does not amount to an enforcement notice in law at all, and the question as to whether corrections would cause injustice cannot arise. That might be the case if the notice is hopelessly ambiguous and uncertain, or its contents do not include what is required under s173 of the TCPA90 and the Town and Country Planning (Enforcement Notices and Appeals) Regulations 2002. The appellant argues that the notice is null essentially because of ambiguity in the attached plan.
8. The plan or rather aerial photograph is annotated to say '...this plan and the outline of your Land hatched shows the general position, not the exact line of the boundaries. It may be subject to distortions in scale'. Plans may indeed be distorted from being copied or printed; I understand why Council wishes to discourage arguments about whether plans or the lines drawn on them are accurate to the nearest millimetre.
9. However, S173(10) and Regulation 4(c) are clear that an enforcement notice shall specify 'the precise boundaries of the land to which the notice relates'. It is not enough for a notice to merely show the 'general position' of the land to which it relates. I also have a more minor quibble in that the plan is not in fact 'hatched' as stated in the text.
10. That said, Regulation 4(c) does not state that any notice must include a plan, and it does not prescribe the form that any plan must take. The aerial photograph is undated, but it shows the site in the context of reasonably permanent landscape features such as Southern Barn and the line of the Fleet. I also find that the red lines are strong and clear, not roughly drawn as the appellant suggests.

11. The enforcement site is described in paragraph 2 of the notice as being 'land to the west of Southern Barn'. There is no dispute that that address is correct. Reading paragraph 2 and the photograph together, the notice specifies the precise boundaries of the land. For that reason, and since the appellant is well aware of where the site is, I conclude that the notice complies with s173(10) and Regulation 4(c), and it is not null.
12. Thus, Appeal A falls to be considered on the grounds pleaded. Grounds (b), (c) and (d) are known as 'legal' grounds of appeal. Planning merits are not relevant to these grounds. The onus is on the appellant to make his case on the balance of probabilities. His evidence should be accepted so long as it is sufficiently precise and unambiguous and there is no evidence to contradict his version of events or make that less than probable.

APPEAL A ON GROUND (B)

13. Ground (b) is that the matters stated in the notice as constituting a breach of planning control have not occurred. In other words, the question is whether the alleged development was in fact carried out. The appellant pleads ground (b) only in relation to the alleged change of use; he does not dispute that some crushed stone/aggregates was laid to create a hard surface.

Has Storage Use Occurred?

14. The appellant's express case for ground (b), as set out in his statement of case for Appeal A, was that any change of use was not 'material' and did not require planning permission. Whether that submission is probably right is actually a question for ground (c) and I address it below. However, the appellant also raised a true ground (b) question in claiming that the site is not used for storage, but for the parking of two trailers and a telehandler.
15. The appellant runs an aircraft consultancy business. He works mostly from home to source and supply aviation equipment and products, but he also sometimes works on airfields to supervise the physical dismantling of aircraft plus recycling of parts. He previously raised with the Council and his neighbours the possibility of storing aircraft parts in containers on the site, but he is now emphatic that the containers have never been here¹ and 'it is no part of [his] case that he is seeking to use the land for storage of containers'².
16. There is indeed no evidence that containers have ever been brought to the site. However, land may be in use for storage whether that is facilitated by the stationing of containers or not. The notice only alleges that there has been change of use 'to storage (Use Class B8)', with 'B8' meaning 'use for storage or as a distribution centre' as set out in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987. The notice does not say and cannot be read as implying that there are containers on the site.
17. The application subject to Appeal B pre-dates the notice, and it was made for planning permission for a 'retrospective...change of use...to storage for trailers'. That, together with the actual presence on the land of two trailers and a telehandler, is sufficient explanation as to why 'it appeared' to the

¹ They are currently kept elsewhere, some 12 miles away.

² Paragraph 4 of the appellant's email dated 29 August 2023.

Council that there had been a change to a B8 storage use³. However, it is still necessary for me to consider whether a storage use has in fact occurred on the balance of probabilities.

18. Under s56(2) of the TCPA90, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. S56(4) provides that 'material operation' means, amongst other things, any change in the use of any land which constitutes material development. The Council is probably right that the alleged hard surface was created to facilitate some change of use, but it still cannot be assumed that storage was the (only) use which actually began.
19. Taken as a whole, the appellant's evidence is not precise and unambiguous as to what the use of the land is. His representations include:
 - 'The site is used for parking two trailers and a telehandler'⁴.
 - '...the laying of a hard surface...for the storage of equipment...'⁵
 - '...this use of land for the storage of vehicles has continued...the site has been used consistently for parking'⁶
 - '...the land has been used for stationing vehicles and/or trailers...'⁷
 - '[The planning application was made] to give the appellant comfort that he could continue to store his trailers on the site'⁸.
 - 'We have reviewed the Council's suggested conditions...[and agree to condition 4] as reworded below: "The area of hardstanding shall be used only for the parking of vehicles or equipment..."'⁹.
20. The appellant also stated in his final comments, with regard to paragraph 3.24 of his Appeal A statement quoted above, that 'the word "storage" could just as easily have been replaced with "parking"...' I agree, insofar as it is not unusual for anyone to conflate parking and storage when comes to vehicles. However, the uses are not strictly the same.
21. It has been held that 'parking' occurs as a normal part of the everyday use of vehicles, with 'everyday' in this context not necessarily meaning literally every day. For example, buses are parked at a depot overnight as an integral part of their normal daily operation. A family car is parked on a drive as a normal incident of its use for everyday domestic trips. However, vehicles are 'stored' if and when they are off the road. Vehicles may be stored, for example, in the factory yard before they are shipped out for sale.
22. The appellant states that he uses the trailers and telehandler for 'day-to-day management of the land' and tending sheep around Southern Barn. He also uses them 'occasionally' for transporting items needed on airfields. On that

³ Under s172(1)(a) of the TCPA90, a local planning authority may issue a notice where 'it appears to them that there has been a breach of planning control...'

⁴ Paragraph 2.4 of the appellant's statement of case for Appeal A

⁵ Paragraph 3.13 of the appellant's statement of case for Appeal A

⁶ Paragraphs 3.24 and 3.25 of the appellant's statement of case for Appeal A

⁷ Paragraph 4.4 of the appellant's statement of case for Appeal A

⁸ Paragraph 1.7 of the appellant's statement of case for Appeal B; the Council also referred to the planning application cover letter stating that the appellant sought to regularise the storage of trailers and a telehandler.

⁹ Paragraphs 29 and 33 of the appellant's final comments on both appeals

basis, I accept that the trailers are probably parked on the site as normal incidents of their everyday use both on and off the appellant's property.

23. However, industrial vehicles such as telehandlers are usually considered to be stored at their base; the same applies to plant, machinery and equipment. The appellant's neighbours say that the telehandler was removed from the land in 2023, and it was certainly not there on the day of my visit, although the appellant himself was. I find it probable that, when the telehandler was on the land, it was being stored rather than parked as a normal part of everyday use by the appellant¹⁰.
24. I wrote to the appellant and the Council on 24 August 2023 to seek their views as to whether the site is used for storage, parking or both. The Council replied that storage is 'the current use', but also that 'the use is a composite use of both the parking of vehicles and storage use...[although] it is difficult to measure the degree of each use...' I regret that the Council could not be clearer, not least because it is unnecessary to 'measure the degree' of each component when deciding whether land is probably in a mixed use or not.
25. However, the onus of proof is not on the Council. In his response to my 24 August email, the appellant reiterated that the site is only used for parking, but in opposition to the storage of containers. I conclude that the appellant has shown on the balance of probabilities that the site has been used for parking, but not that a storage use did not occur. It appears probable that, by 3 November 2022, the use of the site for parking and storage had occurred.
26. The next question for ground (b), which I also put to the parties in my 24 August email, is whether the notice can be corrected to allege a mixed use, and to require cessation of the same, without causing injustice.

Would Correcting the Notice Cause Injustice?

27. The appellant suggested that I cannot correct the notice for several reasons, with the first being that alleging a 'new use' of land 'without affording the appellant the right to make representations on that point' would 'inevitably cause injustice'. I would agree, except that the express purpose of my email was precisely to give the parties an opportunity to make such representations.
28. Secondly, the appellant suggests that correcting the notice would lead to uncertainty as to what is and is not permissible on this site. I disagree. In their statement, the Council agreed with the appellant that 'the parking of a small number of commercial vehicles over time has not amounted to a material change of use', but that would be unlikely to estop the Council from changing their minds and enforcing against parking in the future. Correcting the notice is the route to certainty because it will allow me to determine the ensuing grounds of Appeal A and the lawful uses of the planning unit.
29. Thirdly, the appellant suggests that correcting the notice would cause injustice because he would need to adduce different evidence. However, he has already made his case with regard to parking and storage uses interchangeably. His evidence as it stands is equally applicable to either or a mix of those uses, and correcting the notice will not prejudice his prospects on any grounds. I

¹⁰ I also note representations that materials such as sleepers have been stored on the land although, thinking ahead to ground (c), it is not clear for what purpose the sleepers were there.

agree with the Council that there would be no injustice 'to either party given the nature of the arguments that have already been presented'.

30. I am conscious that the appellant could not at this stage appeal the notice on ground (a), as he might have wished to do had the allegation been a change to a mixed use from the outset. But, since the notice was issued within eight weeks of the refusal of the planning application, I doubt that appellant could have pleaded ground (a) anyway¹¹. He has referred to parking as well as storage in his representations for Appeal B and so I can and shall consider the merits of either and both uses there.
31. I also find that correcting the requirements of the notice, so that parking as well as storage must be ceased, would not make the notice more onerous in substance. Putting aside semantics, the appellant has 'stationed' two trailers and a telehandler on the site. He knows he has done that, and he knows that the Council wants that to stop. It would not cause injustice to correct the notice to describe that activity precisely, especially when I can and shall revisit whether the requirements (as corrected) are excessive via ground (f).

Conclusion on Ground (b)

32. I conclude that, on the balance of probabilities, the land to the west of Southern Barn has been used for parking as claimed, but as well as and not instead of storage. The notice can be corrected without causing any injustice so that it relates to a change of use to a mixed use for parking and storage. To that limited extent, Appeal A succeeds on ground (b).

APPEAL A ON GROUND (C)

33. An appeal on ground (c) is that what is alleged does not constitute a breach of planning control. The appellant considers that planning permission is not required or is already granted in respect for both the use and hard surface.

The Change of Use

34. Under s57(1) and s55(1) of the TCPA90, planning permission is required for 'development' which includes the making of any material change in the use of land. The appellant submits that the change of use to parking and/or storage was not 'material' and does not therefore require planning permission.
35. A change of use is material where it gives rise to some significant difference in the character of the activities taking place as a matter of fact and degree. The first step in considering materiality is to ascertain the correct planning unit and its past and present 'primary' uses. 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.
36. In this case, I am unsure of the boundaries of the unit of occupation, since there are discrepancies between the plans submitted with Appeal B and the Title Plan¹². Either way, however, I agree with the appellant that the 'appeal site forms part of a wider planning unit comprising the dwelling [Southern

¹¹ S174(2A) of the TCPA90

¹² The Land Registry title plan suggests that the appellant owns Southern Barn and the yard and garden, the field to the west in which the site lies, plus a relatively narrow parcel of land to the south and east of the dwelling and the private and shared drives. The planning location plan suggests that the appellant does not own the shared drive, but he does own fields to the south of the drive and east of the dwelling as far as the A1133.

Barn] and its curtilage, agricultural land, (primarily used for grazing sheep), and small-scale equestrian uses'. It has not in fact been shown that the keeping of horses is lawful but again that does not matter for these appeals.

37. The appellant says that the parking (and/or storage) of three vehicles on a small part of the planning unit cannot be sufficient to cause a material change of use. As noted above, the Council agreed with the appellant that 'the parking of a small number of commercial vehicles over time has not amounted to a material change of use'. However, whether any change of use is material does not necessarily depend on the relative scale of the use. Scale is only one factor when considering the significance of any change.
38. The evidence before me suggests that the parking and storage uses have probably changed the character of the activities on the land to a significant degree. The trailers and telehandler are parked or stored in what was a field, and the uses were probably facilitated by the laying of what is not that small a hard surface¹³. Unlike domestic vehicles, the trailers and telehandler are commercial in appearance; unlike farm vehicles, they are driven off the appellant's property to airfields.
39. However, the appellant also contests that the change of use was not material on the basis that the parking and/or storage use is ancillary or 'incidental' to the lawful primary uses. An incidental use must (a) be different but (b) functionally related to the primary use or uses (c) in a way that is normally found and not simply based on the personal choice of the user. The use of land for parking and/or storage is often incidental to a primary residential, agricultural or equestrian use¹⁴. But it is equally possible for parking and/or storage to be or become primary uses of any planning unit in their own right.
40. Under s55(2)(d), the use of land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development that requires planning permission. However, I agree with the appellant that the appeal field is not within the curtilage of Southern Barn¹⁵ and the trailer and telehandler are not domestic vehicles anyway. Thus, I shall focus on whether the parking and/or storage uses were carried out for purposes incidental to agriculture or the keeping of horses.
41. The appellant says there is 'no commercial use of the equipment at the property' and I accept that he does not dismantle aircraft or carry out 'large scale movement of industrial machinery' here. But he does run his business from home. He made the planning application on behalf of the company and in respect of 'former agricultural land', and he has not shown that using the trailers or telehandler for his 'day-to-day management of the land' probably amounts to an agricultural or equestrian activity. He has not described how he uses the vehicles in connection with tending sheep, and I saw that the yard is used for parking horse boxes alongside domestic vehicles.
42. I agree with the appellant that the alleged change of use has not resulted in the creation of a new planning unit because the site remains physically

¹³ The planning site is described as being 0.1ha, that is, approximately 1000m².

¹⁴ For example, the parking of a car or the storage of a caravan within the curtilage of a dwellinghouse is normally incidental to the residential use. The same applies to the parking or storage of vehicles or machinery on a farmyard or land about stables.

¹⁵ The term 'curtilage' denotes, in short, an area of land that is intimately connected with a building. Curtilage does not have the same meaning as planning unit, and the two may or may not be the same on the ground. I would expect – without prejudice – that the curtilage of Southern Barn is limited to the yard and garden.

connected to the rest of the field and the yard. He has not shown, however, that the parking and/or storage use is incidental to any lawful use of the planning unit. I find it probable that the trailers and telehandlers are parked and stored on the site for the convenience of the appellant's business. And that is understandable but not enough to make the uses – separately or together – ordinarily incidental to the agriculture.

43. On the balance of probabilities, the appellant has introduced new primary uses of parking and storage to the existing mix of uses within the planning unit, and thereby caused a material change to the character of the activities on the land. That being the case, it would have been open to the Council to issue the notice in respect of the whole planning unit, but equally it was not wrong for them to confine enforcement action to the area where the parking and storage uses take place.
44. The appellant does not claim that planning permission is already granted for a material change of use of the site to storage, parking or a mix of those uses. There is probably a breach of planning control as alleged.

The Hard Surface

Development

45. The appellant's case here is that planning permission is granted for the alleged creation of the hard surface. Before I turn to that question, however, I shall address whether permission is even required, given the appellant's case for ground (d) that only part of the hard surface is new.
46. 'Development' as defined under s55(1) includes the carrying out of engineering operations, meaning works with some element of pre-planning which would generally, though not necessarily, be supervised by a person with engineering knowledge. When considering whether there has been 'development', I shall have regard to the principle that operations to extend and/or alter an existing structure may be so significant, as a matter of fact and degree, that the whole of what results is at risk of enforcement action.
47. The 'new' part of the hard surface is shown on the drawing 2005026-002 submitted with Appeal B as hatched in pink. The plan is consistent with an aerial photograph dated '2007' which shows what is probably a hard surface broadly the same size as that existing minus the 'pink' area. A local resident suggests that the grass in the field had simply been scorched after a bonfire, but the land does not look burned in the 2007 photograph. I accept that there was probably some hard core as the appellant claims¹⁶.
48. That does not help him, however, because his next aerial photograph, dated 2009, shows the hard surface as becoming overgrown¹⁷. The land looks essentially green in the appellant's aerial photographs dated 2015, 2018 and 2021, and in those submitted by the Council that are dated 26 May 2012 and 7 August 2020. There may have been no works to remove the hard surface between 2007 and 2021, however, the structure appears to have been left to blend into the landscape through nature being allowed to take course.

¹⁶ A local resident also suggests that 'rubble' was only present on the field in the past when the appellant demolished a lean-to attached to Southern Barn, but he did not live here in 2007.

¹⁷ I understand that the original hard surface, like that existing, was formed of loose hard core so that grass or weeds could grow through it.

49. An aerial photograph likely to have been taken in 2022¹⁸ shows that the hard surface was once again clearly visible and by now enlarged. The Council suggests that the appellant laid crushed stone and aggregate to create the 'pink' area and on top of – perhaps to reinforce – the 'original' surface. A photograph from a local resident shows the site down to soil; they describe aggregates being brought in and the carrying out of a 'cut and fill' operation.
50. The appellant suggests that the Council's 'assertion' is 'unfounded', but he also admits to bringing in 'additional hard core...to top up an existing layer...which had become overgrown'. On that basis, I find that some pre-planning was probably required and undertaken before the works were carried out. I do not know if the operations were supervised by anyone with engineering knowledge but that does not matter because the laying of a hard surface for parking or storage use would generally be so supervised.
51. I conclude that the appellant has not shown, on the balance of probabilities, that the laying of crushed stone and aggregates to create a hard surface did not amount to development. Such development probably occurred so that the whole hard surface requires planning permission. It cannot be disaggregated into the 'pink' and 'original' areas.

Permitted Development

52. The appellant suggests that the hard surface is 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Planning permission is granted by Article 3(1) and Part 6, Class A of Schedule 2 to the GPDO for the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more...any engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.
53. I have noted that the planning application subject to Appeal B was made in respect of 'former agricultural land'. But even if I agree for the sake of argument that the field in which the site lies is 'agricultural land comprised in an agricultural unit' for the purposes of the GPDO¹⁹, the appellant has not shown how or why the hard surface might be 'reasonably necessary' for his agricultural activity of tending sheep.
54. Since the appellant has not demonstrated that the parking and/or storage uses of the hard surface are ordinarily incidental to agriculture, I cannot conclude that the structure is reasonably necessary for farming. On the balance of probabilities, the laying of crushed stone and aggregates to form a hard surface on the site is not permitted development under Article 3(1) and Part 6, Class A of Schedule 2 to the GPDO. It is not necessary to consider whether there would be compliance with the limitations and conditions imposed by the GPDO on that permission.
55. For the avoidance of doubt, the appellant does not claim that the hard surface is already subject to an express grant of permission, or that it is PD under any other part or class of Schedule 2 to the GPDO. Since it is undisputed that the site is not within the 'curtilage' of Southern Barn, the works are not permitted

¹⁸ The final aerial photograph in Appendix 7 to the appellant's statement of case is undated, but it is entitled 'now' and the statement itself is dated December 2022.

¹⁹ The agricultural unit and planning unit need not be the same.

under Class F of Part 1. The site is not within the curtilage of any lawful business premises, and so the hard surface is not PD under Class E to Part 7.

Conclusion for Appeal A on Ground (c)

56. I conclude, on the balance of probabilities, that a material change of use has taken place which requires but does not have planning permission. Likewise, the laying of crushed stone and aggregates to create a hard surface was probably development without planning permission. There has been a breach of planning control as alleged and Appeal A must fail on ground (c).

APPEAL A ON GROUND (D)

57. Ground (d) is that, is that at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters. Again, the appellant pleads ground (d) in respect of the use and hard surface, and here I shall consider the latter first.
58. S171B(1) of the TCPA90 provides that, no enforcement action may be taken in respect of engineering operations on land after the end of the period of four years beginning with the date on which the operations were substantially completed. For the hard surface to be 'immune' from enforcement action, it would need to have been substantially completed by 3 November 2018, four years before the notice was issued, on the balance of probabilities.
59. It is clearly likely that the works to top up and extend the hard surface were carried out between the taking of the '2021' and 'now' aerial photographs appended to the appellant's December 2022 statement. The only discrepancy on dates between the evidence of the appellant and his neighbours relates to whether the works were carried out in March or May 2022. It follows that the hard surface was probably not substantially completed by 3 November 2018.
60. Under s171B(3), no enforcement action may be taken after the end of the period of ten years beginning with the date of a breach of planning control consisting of a material change of use of land. The parking and storage use must, probably, have been introduced by no later than 3 November 2012 and also carried out for a continuous ten-year period by the date of the notice.
61. The aerial photographs taken in 2007, 2009, 2012, 2015, 2018, 2020 and 2021 probably show vehicles on the site, consistent with the 'original' (overgrown) hard surface still being there. I accept that parking and storage uses were carried out on the site prior to 2022. However, the appellant has not shown that parking and/or storage were then carried out as primary uses on the site for any ten-year period without substantial interruption.
62. Thus, the appellant has not demonstrated that, on the date that the notice was issued, it was late on the balance of probabilities for the Council to take enforcement action against the alleged engineering operations or material change of use. Appeal A fails on ground (d).

APPEAL A ON GROUND (F)

63. Ground (f) is that the steps required by the notice to be taken, or the activities required to be ceased, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters or, as the case may be, to remedy any injury to amenity caused by any such breach.

64. The appellant's case for ground (f) essentially rehearses grounds (b), (c) and (d): he suggests that the requirements of the notice are excessive because there has been no (material) change of use, the hard surface is permitted by the GPDO, and the use and hard surface are both immune from enforcement action. I have concluded otherwise.
65. Since the notice requires that the alleged use is ceased and hard surface is removed, the purpose of the notice must be to remedy the breach of planning control. For that reason and since the appellant did not plead ground (a) – albeit not by choice – I cannot consider whether the requirements of the notice are excessive in terms of planning merits or amenity.
66. I have found that the breach of planning control in respect of the hard surface consisted in the carrying out of engineering operations to top up and extend the 'original' area without planning permission. It follows that varying the notice so that it requires the removal only of the 'pink' area, as the appellant proposed, would not remedy the breach.
67. The appellant has not put forward any other lesser steps that might achieve the purpose of the notice. However, the breach would be remedied if the notice is varied to require the removal of the hard surface 'so as to restore the land to its condition before the development took place'. That might mean the appellant does not have to remove the very base layer of hard core, but he is the one best placed to know what the previous condition of the land was.
68. I shall also vary the second requirement of the notice to require the cessation of parking as well as storage except insofar as either or both uses are carried out for purposes incidental to agriculture. Without that variation, the second requirement would exceed what is necessary to remedy the breach because a notice cannot purport to restrict the exercise of lawful use rights²⁰.
69. I conclude that it is not excessive for the notice to require that the hard surface is removed, or the mixed use is ceased but subject to variations in wording. Appeal A succeeds to a limited extent on ground (f).

APPEAL A ON GROUND (G) AND CONCLUSION ON APPEAL A

70. Ground (g) is that any period specified in the notice for compliance with the requirements falls short of what is reasonable. The appellant seeks six months to comply with the requirement to remove the hard surface.
71. The Council did not word the notice – as they could have done – to specify in reasonable detail how the hard surface should be removed. It would cause injustice to the appellant for me to now prescribe any methodology and I have no evidence before me as what would be appropriate anyway. Thus, it is a stretch for the appellant to suggest that the removal of the hard surface would require or amount to 'an extensive engineering operation'.
72. However, the site is close to a Scheduled Ancient Monument as discussed below. The land has high archaeological potential and it is desirable that removal of the hard surface does not result in disturbance of any remains. A reasonable period for compliance with the first requirement would give the

²⁰ While residential use is another lawful use of the planning unit, the site is not said to be in the curtilage of the dwellinghouse, and so the notice should refer simply to agriculture here.

appellant time, and thus the choice, to investigate and implement an archaeologically sensitive method of removing the hard core.

73. I also consider, although the appellant did not raise this question, that the time given to remove the hard surface must be reasonable with regard to the uses that the surface is put to. The notice as it stands requires that the hard surface is removed before the unauthorised use is ceased, but the sequence of events would be the other way around. If it is reasonable for the appellant to have 57 days to cease the use, he should have that time for that purpose plus reasonable time to remove the hard surface afterwards, bearing in mind also the winter months ahead of this decision letter.
74. Since I am correcting the notice to require cessation of parking as well as storage, I must note that parking is a continuing use, whereas there are no storage containers, and the telehandler may still be elsewhere. The appellant uses his yard for parking incidental to the lawful uses of the planning unit, but I have found that vehicles are on the site for a different purpose.
75. For these reasons, I shall vary the notice to give nine months for compliance with both requirements. That would be a reasonable period, in my view, for the appellant to look for alternative parking and storage arrangements while investigating methods for removing the hard surface, to move the business vehicles elsewhere, and to restore the site to its previous condition.
76. Thus, Appeal A succeeds on ground (g), but dismissed overall. I shall uphold the enforcement notice with corrections and variations.

APPEAL B: THE PLANNING APPEAL

The Development subject to Appeal B

77. My remit here is to decide whether to grant planning permission for the proposed development with regard to current planning policy and the merits of the development. That I have upheld the enforcement notice does not prejudice my consideration of Appeal B.
78. The appellant's planning and enforcement statements are consistent in that both stress the absence of any containers and suggest that incidental parking is the existing use. In his final comments, the appellant said that he 'not seeking a change of use of the land from agriculture to storage as, upon receiving legal advice...he is not of the view this is necessary'. However, he has not withdrawn Appeal B, and so it is necessary for me to consider whether to grant permission for the development proposed.
79. The description of development remains '...storage of trailers' but the proposed site plan 20005026-002 shows 'parked machinery', namely the two trailers and telehandler on the land. I consider that the appellant is seeking to regularise his 'stationing' of vehicles, however the use might be strictly described. I shall determine Appeal B on the basis that permission is sought for the existing mixed use of the site for parking and storage. Doing so would not prejudice any party because their evidence is applicable to either or both uses. Consistent with my earlier point that parking and storage uses are often confused, their planning impacts in this case are similar.
80. It would be possible for me to make a 'split decision' and permit the mixed use, or either component of the mixed use, or the hard surface alone. I shall

also consider this appeal on the basis that the appellant's 'fallback position' is use of the site for agriculture. That might involve the incidental parking or storage of farm vehicles, but not on the hard surface. The GPDO does not grant retrospective permission and so the hard surface would not become PD by being used for agricultural purposes in the future.

Main Issues

81. I consider that the main planning issues are:

- Whether the proposed use of land for the parking and/or storage of trailers is acceptable in principle in this location.
- The effect of the mixed use and hard surface on the character and appearance of the site and the surrounding rural area.
- The effect of the mixed use on the living conditions of adjoining occupiers.
- Whether the mixed use and hard surface give rise to an unacceptable risk of flooding or cause such an unacceptable risk elsewhere.
- The effect of the mixed use on highway safety and
- The effect of the mixed use and hard surface on the setting of the Langford Medieval Village Scheduled Ancient Monument, and on the setting of the grade II* listed building, Langford Old Hall.

Planning Policy

82. The development plan includes the Newark and Sherwood Amended Core Strategy (the CS) and the Allocations and Development Management Development Plan Document (the DPD). I shall also have regard to the Newark and Sherwood Landscape Character Assessment supplementary planning document (the LCA), and to the National Planning Policy Framework (the Framework) plus Planning Practice Guidance (the PPG).
83. On 5 September 2023, the Secretary of State for Levelling Up, Housing and Communities made a Written Ministerial Statement outlining amendments to the Framework. The amendments concern onshore wind energy developments and do not bear on this appeal.

Reasons

The Use in this Location

84. The planning site is outside of any settlement as designated by the CS, and so it is within the open countryside for planning policy purposes. CS Spatial Policy 3 seeks, amongst other matters, to support the rural economy and protect the countryside. To those ends, development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting.
85. DPD Policy DM8 provides that agricultural and forestry developments where the need is explained; proposals to diversify the economic activity of rural businesses; and small-scale employment development that can demonstrate a need for a rural location may all be permitted in the open countryside. The Framework likewise supports the development and diversification of agricultural land and other land-based rural businesses.

86. In considering whether the change of use to parking and/or storage amounts to an 'agricultural development' for the purposes of Appeal B, I do not apply the 'reasonably necessary' test set out in relation to Appeal A on ground (c). I do not need to consider whether the land is comprised in an agricultural unit. However, there is no escaping the evidence that the trailers and telehandler are 'stationed' on the 'former agricultural land' for the consultancy business.
87. I understand why it is convenient for Mr O'Carroll to park and store these vehicles at home; it is where he mostly works, and the property includes extensive land to manage. However, that he happens to live in a house with farm and equestrian land attached does not make the uses agricultural²¹. What is proposed is the use of the site for the parking and storage of the business vehicles shown on plan 20005026-002; that is not an 'agricultural development' for the purposes of the development plan or the Framework. The uses do not represent diversification, since neither parking nor storage is carried out to generate farm or horse-related income.
88. The Framework generally seeks to enable 'the sustainable growth and expansion of all types of business in rural areas'. Even if I set aside the qualification that such expansion should be 'through conversion of existing buildings and well-designed new buildings', the consultancy business does not need to be based in the countryside. The trailers and telehandler do not need to be parked or stored in a rural area in order to be usable on airfields, and the uses do not create rural employment.
89. As noted above, the appellant suggests I could impose a condition that the parking use is ancillary or incidental to the domestic and/or agricultural uses of the planning unit. Whether or not the condition also refers to storage, it would in my view be unreasonable because it would negate the benefit of any permission granted on this application. The appellant did not make the planning application to carry out the lawful use of the land; the trailers and telehandler named on plan 20005026-002 are business vehicles.
90. I conclude that the change of use to parking and storage conflicts with CS Spatial Policy 3, DPD Policy DM8 and the Framework, and is therefore unacceptable in principle in this countryside location.

Character and Appearance

91. The appeal site is within the Winthorpe Village Farmlands 'policy zone' (ESPZ04), which in turn is within the 'East Nottinghamshire Sandlands Regional Character Area' (the RCA) as described in the LCA²². The LCA states that ESPZ04 has the 'village farmlands (without plantations)' landscape type and is characterised by 'a flat and gently undulating arable landscape' with 'medium to large scale arable fields'.
92. The appellant is not an arable farmer, but the LCA states that this policy zone also includes 'a number of pastoral fields within historic field patterns of smaller scale...in the vicinity of settlements and isolated farm houses...species-rich hedgerows...with occasional post and rail fencing where horsey culture exists'. That description could have been written about the land around Langford Old Hall including the appellant's property.

²¹ My finding that the parking and/or storage uses are not incidental to the use of the dwellinghouse also holds, and residential development falls outside of what is permitted by CS Spatial Policy 8 and DPD Policy DM8 anyway.

²² Although I have also seen references to the RCA as 'East Nottinghamshire Farmlands'.

93. I agree with the Council and local residents that the hard surface formed of crushed stone and aggregates, including construction waste, gives the planning site an industrial and unsightly appearance. I disagree with the appellant's view that the development has not altered the established field pattern of the area; that is exactly what has happened, perhaps not through the loss of field boundary hedgerow, but through encroachment into a field. The pasture is disrupted and damaged by the hard surface.
94. I also consider that the landscape harm caused by the laying of the hard surface would be likely to subsist. The structure is roughly formed so that, by the date of my site visit, it was becoming overgrown again, just as the original surface did after 2007. However, if I grant permission for the development, it would be unreasonable to impose a condition preventing the future maintenance or repair of the hard surface.
95. The effect of the change of use, meanwhile, will be that business vehicles may be stationed on the site permanently. Parked or stored, I would expect the trailers and telehandler to be there most days and at most times. For that reason and given the commercial appearance of the trailers as well as telehandler, I find that the mixed use is likely to appear more intrusive within the appeal field than parking and/or storage that is incidental to agriculture.
96. I also consider that the parking and/or storage uses would increase vehicular movements not only on the site but also on the private and shared drives. The result, particularly if the trailers or telehandler are brought back from an airfield after daylight hours, would be additional noise and/or light pollution that detracts from the tranquillity of this rural area. The fallback position does not justify that harm because allowing this appeal would not prevent or necessarily reduce agricultural or equestrian parking or storage.
97. I take the appellant's point that the site is close to an existing yard where vehicles and items may be parked and/or stored lawfully; the site is also close to buildings. However, the same will be the case for many agricultural fields and so the argument cannot justify the encroachment into the countryside that has occurred. Just as the lawful uses would not justify a grant of permission for the business parking and/or storage, that there is some pre-existing hard core in the field is not a good reason to allow the laying of more.
98. I also accept that the hard surface cannot be seen from any public vantage point, and vehicles stationed on it are not unacceptably conspicuous to any passers-by on the A1133 or Holmes Lane. The LCA notes that Policy Zone ESPZ04 is 'a diverse area of varied land use', of moderate condition and moderate sensitivity, with leisure and industrial developments 'typical of urban fringe locations'. Nonetheless, it also seeks actions within ESPZ04 to conserve existing pastoral fields, but the development has done the opposite.
99. It would be possible to grant permission for parking and storage subject to a condition to restrict the number, size and types of vehicles. However, notwithstanding plan 20005026-002, it would be unreasonable to limit the use to the parking and/or storage of the two trailers and telehandler, because the hard surface is large enough to accommodate more medium-sized vehicles or other business items with manoeuvring space. But even if that is wrong, the use as it has been carried out detracts unacceptably from the landscape.

100. I conclude that the mixed use and hard surface cause unacceptable harm to the character and appearance of the site and the surrounding rural area, and the harm could not be adequately mitigated by imposing conditions. The development conflicts with CS Core Policy 13, which requires that development is consistent with the landscape conservation aims for the relevant policy zone set out in the LCA, and it conflicts with the LCA itself.
101. The development also conflicts with CS Spatial Policy 3 and Core Policies 9 and 13, which seek to protect the countryside and enhance the landscape by ensuring that development does not have a detrimental impact on the character of the location or its landscape setting and is of an appropriate form to its context. It conflicts with DPD Policy DM5 and the Framework, which expect that rural business development is sensitive to its surroundings, and that development generally should reflect the rich local distinctiveness of the landscape and be sympathetic to local character.

Living Conditions

102. The Council also refused permission on the basis that, due to the size of the storage area, the use and movement of industrial type machinery has the potential to result in unacceptable noise and disturbance likely to harm the residential amenity of neighbouring residents. The site is several metres from the nearest dwellinghouse, Wool Wharf, but it is extremely close to the back garden at that property.
103. The neighbouring occupiers could not reasonably expect complete peace within their garden. They should be accustomed to hearing farm vehicles on the appeal field and domestic vehicles around Manor Farm generally. However, allowing the parking and/or storage use would cause an increase in vehicular activity particularly close to the boundary fence, even if a condition could ensure that nothing is stationed except two trailers and a telehandler.
104. The manoeuvring of such vehicles on the site would cause loud engine noises that are likely to be audible from the adjoining garden. The telehandler has a reverse warning alarm, and there would be noise from the wheels of any vehicle being moved on the hard surface. In my view, the adjoining occupiers would experience unacceptable disturbance from the parking and/or storage use of the site, and that harm would be exacerbated if the glare of headlights and/or odour of diesel fumes also carry through or over the boundary.
105. The Council's Environmental Health officer had no objections to the proposed use so long as it would not involve vehicular maintenance or repair. However, I am not bound to agree because noise nuisance in environmental health terms is subject to different legislation. And I could not prevent the carrying out of vehicular maintenance or repair insofar as they might be reasonably incidental to the proposed primary parking and/or storage uses.
106. I conclude that permitting the mixed use would cause unacceptable harm to the living conditions of adjoining occupiers through noise and disturbance, in conflict with DPD Policy DM5 and the Framework, which expect development to create a high standard of, and no unacceptable reduction in amenity.

Flood Risk

107. The PPG explains that flood risk is a combination of the probability and potential consequences of flooding. Flood risk may arise from various sources,

and in this case the main source would be 'fluvial' or from the river Trent to the west. The PPG sets out that land in 'Flood Zone 2' (FZ2) has a medium or 0.1-1% annual probability of river flooding, while land in FZ3a has a high or 1% or greater annual probability of river flooding.²³

108. The parties disagree as to whether the site is entirely within FZ2 or partly within FZ3a as shown on Environment Agency (EA) flood maps. The Council has provided more detailed evidence in this regard and shown that even the planning site – which is smaller than the enforcement site – is partly within FZ3a. However, it makes little difference in this case because the following assessment would be the same even if the site was wholly in FZ2.
109. Annex 3 of the Framework defines 'car parks' as development that is 'less vulnerable' to flood risk; the proposed (parking and outdoor) storage use and hard surface must in my view be categorised the same. The PPG provides that 'less vulnerable' uses in FZ2 and FZ3a must be considered subject to the 'sequential test' set out in paragraph 162 of the Framework.
110. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Thus, the Framework provides that development should not be permitted if there are reasonably available and appropriate sites in areas with a lower risk of flooding. CS Core Policy 10 and DPD Policy DM5 also seek to steer development away from areas at higher risk of flooding by applying the sequential test that there must be no reasonably available sites in lower risk flood zones.
111. The Framework provides that the sequential test does not need to be applied to some minor developments including '...non-residential extensions...with a floorspace not in excess of 250 square metres'. The hard surface is not an extension, and the site at least is greater than 250m². The surface also cannot be described as a 'householder development' or, as set out in the PPG, an 'alteration...that does not increase the size of a building'. Thus, the appellant should have but has not provided evidence to show whether the creation of the hard surface could have been carried out in a lower risk flood zone.
112. However, the PPG also states that a pragmatic approach needs to be taken to the sequential test where the proposal involves a comparatively small extension to existing premises. While I note again that the hard surface is not an extension, this is a case in my view where pragmatism is required. The Framework exempts non-residential changes of use from a need to comply with the sequential test. It would be disproportionate to require evidence that the hard surface cannot be located within a lower risk flood zone when the same is not required for the parking and/or storage uses.
113. The PPG provides that the 'exception test' does not need to be applied to 'less vulnerable' development in FZ2 or FZ3a. The Framework does expect that a site-specific flood risk assessment (SSFRA) is provided for **all** proposed development in FZ2 as well as FZ3a, and that development is only allowed in areas at risk of flooding where it can be made safe for its lifetime without increasing flood risk elsewhere. I would be loath to describe the appellant's evidence as amounting to an SSFRA but again that is not a reason on its own for me to refuse to grant planning permission.

²³ 0.1% means 1 in 1000 years, while 1% means 1 in 100 years. The other flood zones are FZ1 where there is less than a 0.1% annual probability of river flooding, and FZ3b, which is functional floodplain.

114. Indeed, I consider that much of the information required of an SSFRA, as set out in Framework paragraph 167, will be not applicable or difficult to secure in this case. For example, a condition could be imposed to ensure that vehicles or other items are parked or stored within the part of the site that is in FZ2. I expect that the site could be 'quickly brought back into use without significant refurbishment' in the event of a flood.
115. The hard core is permeable, but I would not say it incorporates a sustainable drainage system. There is also insufficient evidence for me to decide whether ground levels were raised when the hard surface was created, as nearby occupiers suggest²⁴, and so I understand their concern that the use and surface could cause (contaminated) flood waters to run off the site to their property. It has not been shown that their fear is misplaced.
116. However, and again while this was not suggested by the parties, I consider that a condition could ensure that the development causes no unacceptable flood risk elsewhere. It would be reasonable and necessary, in my view, to require the submission and implementation of a scheme to ensure that the levels, topography and materials of the hard surface are such that water even in a 1:100-year flood event would drain towards the south and west, in which directions there are very few developments nearby.
117. On that basis, I conclude that the hard surface and its use for parking and storage would not be at unacceptable risk of flooding or serve to unacceptably increase flood risk elsewhere. The development does not conflict with CS Core Policy 10, DPD Policy DM5 or the Framework or PPG.

Highway Safety

118. The Council's objection, as raised by the Highways Authority, is that 'the submitted plans do not demonstrate a right of access to the public highway'. I can understand that concern insofar as the location plan shows the shared drive as being outside the appellant's land. However, the Title Plan confirms what is patently obvious: the appellant must be able to access his property via that sole route to the A1133. There may be a covenant to prevent business use of Southern Barn but that is not a planning matter.
119. I also consider that, even if the appellant were allowed to park and store business vehicles and machinery so as to use the hard surface to its capacity, the use would be unlikely to generate such an increase in traffic at any given time so as to cause an unacceptably increased risk of accident along the shared driveway or at its junction with the A1133.
120. The size of vehicles parked or stored could be limited, certainly to preclude the stationing of HGVs. The shared drive is narrow, but it has passing places which should remain adequate, as should the visibility splays at the junction, which I presume were found acceptable for domestic plus farm use when planning permission was granted for the barn conversions.
121. I regret that there has been at least one fatal road traffic accident at the junction of the shared drive and A1133, but there is no evidence that it was related to the parking and/or storage use of the site; indeed, I do not know whether the accident was related to any land use or occupier at Manor Farm.

²⁴ The EA did not object to the planning application because their view was that the ground was not raised. The submitted plans did indeed show land levels but it is not clear what surveys they were informed by.

122. I conclude that the use of the land for parking and/or storage, as reasonably controlled by condition, would cause no unacceptable loss of highway safety. It would not conflict with CS Spatial Policy 7 or DPD Policy DM5, which require development to provide safe and convenient access; be appropriate for the highway network in terms of the volume and nature of traffic generated; and ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected. It would not conflict with the Framework, which also requires that development achieves safe and suitable access for all users.

The Scheduled Ancient Monument and Listed Building

123. The site lies close to the Langford Medieval Village Scheduled Ancient Monument (SAM), which includes the buried and earthwork remains of the abandoned areas of that settlement plus a moat and a sample of the associated medieval open field system. I shall treat the site as being within the 'setting' of the SAM and as having, in itself, high archaeological potential.
124. Langford Old Hall, a former hunting lodge and manor house, is a grade II* listed building. The Council did not refuse permission on the basis of harm to that 'heritage asset' and there is no clear evidence as to whether Southern Barn is listed as a curtilage building. The occupier of the Old Hall suggests, in contrast to the Council's Conservation Officer, that the site is not visible even from their upper floor windows. Nonetheless, I will proceed on the basis that site is within the setting of the grade II* listed building, and I will consider the impacts of the development on its significance as well as that of the SAM.
125. The Council's Archaeology Consultant advised, in accordance with CS Core Policy 14 and DPD Policy DM9, that where ground works proposed within or close to an area of significant archaeological remains, permission should only be granted subject to a condition requiring archaeological investigation and mitigation. However, that course of action is not possible where planning permission is sought on a retrospective basis. I understand the Council's reticence to approve the hard surface after the event of its formation, and I agree that the appellant has not shown that there was no unacceptable disturbance. But I am not sure how he could provide such evidence now.
126. I therefore attach significant weight to the view of the Council's Archaeology Consultant that the laying of the hard surface probably had 'relatively minor' impacts on the SAM 'as no intrusive ground works were undertaken'. The Council's Conservation Officer also suggests that, given the proximity of the site to the yard, neither the hard surface as it now is, nor the (storage) use causes unacceptable harm to the setting of the SAM or listed building, subject to a condition controlling the number and type of vehicles stationed.
127. As noted, I could impose such a condition so long as it allows for parking and storage as is reasonable for the business and site. Another condition could be imposed, in view of the potential for archaeological remains, to ensure that the Council approves the method of any future works to the hard surface in respect of drainage, maintenance or repair. On that basis, I agree with the heritage experts that a grant of permission for the use and hard surface would cause no unacceptable harm to the significance of the SAM or listed building.
128. It follows that the parking and/or storage use and the hard surface would conserve or preserve the setting of both heritage assets. A grant of permission would not conflict with CS Core Policy 14 or DPD Policy DM9, which

expect development to secure the continued conservation and protection of heritage assets. It would not conflict with the Framework which also requires decision-makers to give great weight to the conservation of heritage assets.

129. Another issue arises from that conclusion; if I dismiss Appeal B, the appellant will need to remove the hard surface as the enforcement notice requires, and that could result in archaeological remains being disturbed without any professional supervision, investigation or mitigation. Whereas, if I grant permission for the hard surface, the notice would cease to have effect insofar as it is inconsistent with that permission²⁵. Reducing risk to the significance of the SAM is a material consideration in favour of the hard surface, and I shall consider this further in the Conclusion below.

Other Matters

130. I have had regard to the representations from local residents, however, there is insufficient evidence for me to refuse permission on the basis of harm to wildlife or in respect of any other matter not already considered above.
131. I have also considered whether any benefits of the parking and/or storage uses would justify a grant of permission, irrespective of the fact that this is not an 'agricultural' or 'rural' business. The appellant has not demonstrated that the use gives rise to such economic, social or personal benefits as to outweigh my objections to the use as outlined above.

Conclusion on Appeal B

132. I conclude that the proposed parking and/or storage use is unacceptable in principle in this location and causes unacceptable harm to the living conditions of adjoining occupiers. The use and hard surface both cause unacceptable harm to the character and appearance of the site and surrounding area, and planning conditions could not overcome any of these objections.
133. Subject to conditions, however, the use and/or hard surface would not cause unacceptable harm in respect of flood risk, highway safety or designated heritage assets. Those findings are neutral in the planning balance, and so there is no case for a grant of permission for the proposed use of the site.
134. Permitting the hard surface alone would beneficially reduce the risk of disturbance to potentially significant archaeological remains, while ensuring that the harm caused by the use in terms living conditions in particular is avoided. However, there would still be harm to the character and appearance of the site and surrounding rural area.
135. The hard surface is causing landscape harm in the present, but its removal might not result in disturbance to archaeological remains given my variations to the notice and the fact that the site is not within the SAM. A grant of permission for the hard surface would not prevent the appellant from removing it anyway, as he might wish to do with the proposed use being refused. I conclude that the harm caused by the hard surface is not outweighed by the possible benefit of a grant of planning permission.

²⁵ S180 of the TCPA90.

136. I conclude on balance that the use and hard surface conflict with the development plan taken as a whole. It is necessary and proportionate to deny planning permission and dismiss Appeal B.

FORMAL DECISIONS

Appeal A: APP/B3030/C/22/3312427

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

- a) Deleting the words 'storage (Use Class B8)' from the text of sub-paragraph 3b) and substituting 'parking and storage'.
- b) Inserting the words 'so as to restore the land to its condition before the development took place' between 'surface' and the full stop in sub-paragraph 5A.
- c) Deleting sub-paragraph 5B in its entirety and substituting 'Cease the mixed use of parking and storage, by ceasing the parking use and the storage use, except insofar as either or both uses are incidental to the use of land for agriculture'.
- d) Deleting the text of paragraph 6 in its entirety and substituting "Nine (9) months after this notice takes effect."

138. Subject to the corrections and variations, the enforcement notice is upheld.

Appeal B: APP/B3030/W/22/3312435

139. Appeal B is dismissed.

Jean Russell

INSPECTOR