



Appeal Decision

Hearing held on 11 January 2024

Site Visit made on 11 January 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 7th March 2024

Appeal Ref: APP/R0660/C/22/3297439

Land at Wood Platt Cottage, Chelford Road, Marthall, Knutsford WA16 8TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr T Bagley against an enforcement notice issued by Cheshire East Council (the LPA).
- The enforcement notice was issued on 23 March 2022.
- The breach of planning control as alleged in the notice is: without planning permission, the erection of a building, the formation of areas of hard standing, the erection of concrete walls, the siting of portacabins and a weighbridge.
- The requirements of the notice are:
 - a) Demolish the building shown in the approximate position cross hatched black on the attached plan marked "Plan B".
 - b) Remove the areas of hardstanding shown in the approximate position shaded in green on the attached plan marked "Plan B".
 - c) Demolish the concrete walls shown in the approximate position shaded in green on the attached plan marked "Plan B".
 - d) Remove the portacabins shown in the approximate position shaded in yellow on the attached plan marked "Plan B".
 - e) Remove the weighbridge shown in the approximate position shaded in pink on the attached plan marked "Plan B".
 - f) Remove all material and debris arising from compliance with (a), (b), (c), (d) and (e) from the land.
 - g) Reinstate the areas of land shaded in blue, green, yellow and pink on the attached plan marked "Plan B" in topsoil and reseed with grass.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

The Notice

1. Plan B attached to the Notice identifies with a black cross hatching the building which is alleged to have been erected. However, the hatching marks out the extent of a previous building. The LPA have therefore provided a revised plan which correctly identifies the building subject of the Notice. I am satisfied no injustice would arise to the appellant or the LPA were I to correct the Notice to attach the revised plan.

Appeal on ground (b)

2. An appeal on ground (b) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters have not occurred.
3. The appellant's case on ground (b) relates solely to the alleged siting of 'portacabins'. The Notice refers to the 'portacabins' which are sited in the yellow shaded area on the attached plan. The appellant argues that the use of the phrase 'portacabins' is a misuse of the trademark name Portakabin and that there were no Portakabin's on the Land at the time the notice was issued.
4. Nevertheless, the appellant does not state that they misunderstand what the Notice is directed against, only that they assume it refers to the two portable buildings and the container that were located in the yellow shaded area at the time the Notice was issued. The LPA indicates that is what the Notice was intended to be directed against. It says, the use of the term 'portacabins' was as a result of the appellant's use of the phrase in their response to the Planning Contravention Notice of 8 June 2021.
5. Ultimately, the parties agreed at the Hearing that I could correct the misdescription such that the alleged breach refers to 'two portable buildings and a container' instead of 'portacabins' and that I could do so without injustice to either the appellant or the LPA. I will correct the notice on that basis.
6. The appeal on ground (b) succeeds but only to the limited extent that the notice will be corrected.

Appeal on ground (c)

7. An appeal on ground (c) is made on the basis that the breach of planning control which may be constituted by the matters stated in the notice, does not constitute a breach of planning control.
8. The appellant confirmed at the Hearing that the appeal on ground (c) relates solely to the alleged erection of concrete walls. The walls are located in the southern part of the Land, forming both the southern boundary and bays for the storage of material. The appellant's case is essentially two-fold. Firstly, that the walls do not constitute development for the purposes of S55(1) of the Act and secondly, even if they did constitute development, they are granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
9. S55(1) of the Act defines development as, *inter alia*, the carrying out of building, engineering, mining or other operations. The parties agreed at the Hearing that, if the walls do constitute development, then they amount to building operations and not engineering, mining or other operations.
10. S55(1A) of the Act states that building operations includes (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. S336(1) of the Act defines a building as including any structure or erection, and any part of a building, as so defined but does not include plant or machinery comprised in a building. The courts have established that, if what has been done results in the erection of a building, as defined in S336, then the erection of it will have amounted to a building operation and thus development.

11. The appellant's case is that the walls are temporary structures which are frequently moved to accommodate the operational needs of the businesses. In *Cardiff Rating Authority*¹, and subsequently endorsed by the Court of Appeal in *Skerritts*², three primary factors were identified as decisive of what is a building. They are size, permanence and physical attachment.
12. At the Hearing, the appellant set out that the walls are constructed with individual blocks. Some blocks were brought onto the site having been purchased elsewhere, whilst some were made on site in moulds. Nonetheless, the walls were constructed on the Land, they were not brought onto the site in their completed form. They also cover a considerable area, extending along most of the southern boundary, whilst the bays project around half the length of the Land. The appellant says the bays have varied in height between 2m and 3m over time, although neither party was able to confirm their height at the date the Notice was issued. Nevertheless, the evidence points towards a structure of considerable size.
13. In terms of permanence, the appellant says that different size bays are needed depending on the material that is delivered, so they are continuously adjusted to facilitate the needs of the businesses. However, the appellant also indicated that they have been adjusted only about 10 times since their initial construction.
14. Moreover, the walls appear to be the same size and in the same location on the aerial photograph of 22 April 2020 and a year later on 22 April 2021. The LPA says this is the exact same arrangement as existed when the Notice was issued on 23 March 2022. Indeed, the bays appear to be in the same arrangement in the LPA's photographs dated 24 March 2022, the day after the Notice was issued.
15. Furthermore, I was able to see from my site visit that there were signs of vegetation growing on parts of the southern wall, indicating that they had been in place for some time.
16. Thus, whilst the appellant indicates that the blocks are capable of being easily moved to adjust the height and arrangement of the walls, the evidence before me suggests that any such movement has been immaterial and infrequent. Indeed, it seems to me that the walls are not intended to be anything other than a permanent feature and are located in a specific area of the Land to perform particular function.
17. I recognise that the walls are not laid on foundations and they are simply held in place by their own weight. I also recognise that the blocks are not joined or attached. However, the size and weight of the blocks is such that any foundation or conjoining of the blocks would be unnecessary. Thus, the lack of physical attachment to the ground is not determinative.
18. Indeed, I find, having regard to the relevant factors laid down by the courts, that the walls which have been erected on the Land amount to a building for the purposes of S336(1) of the Act. Consequently, the erection of the walls as alleged in the notice amounts to building operations and thus development for the purposes of S55(1) of the Act.

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385

² *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

19. Article 3(1) of the GPDO grants planning permission for those classes of development defined as 'permitted development' in Schedule 2. Class A of Part 2 of Schedule 2 states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. However, paragraph A.1(b) of Class A states that development is not permitted if the height of any wall or means of enclosure erected or constructed would exceed 2m above ground level.
20. The LPA's position is that the walls are a means of enclosure to facilitate the storage of materials. However, the GPDO does not place any limitation on the purpose of the walls or means of enclosure permitted by Class A of Part 2. The appellant accepts that the walls, in part are to enclose materials. Enclosure is in essence an area surrounded by a barrier. It seems to me that the walls insofar as they relate to the bays enclose an area of Land used for the storage of materials, whilst the part of the wall on the southern boundary of the Land is for the purpose of enclosing the Land from the area to the south. I am satisfied that the walls fall within the definition of permitted development under Class A of Part 2 of Schedule 2.
21. In terms of the height limitation, the appellant indicated that the walls have been at some point between 2m and 3m in height. However, what matters is the height of the walls at the time the Notice was issued. At the Hearing, the LPA indicated that, using the LPA's photographs taken at the time the notice was issued, the height of the walls was about 1.8m. Whilst precise measurements have not been provided, I agree with the LPA that a visual estimate of the walls from the photographs dated 24 March 2022 indicates the height was less than 2m. Furthermore, as aforementioned, the arrangement of the walls appears from the photographic evidence to have been consistent in the years before that.
22. Thus, on the balance of probabilities, the walls would not have failed the limitation under paragraph A.1(b) at the time the Notice was issued and would have been permitted development under Class A of Part 2 of Schedule 2. Consequently, at the time the notice was issued, the walls would have been granted planning permission by Article 3(1) of the GPDO and were not, therefore, a breach of planning control.
23. The appeal on ground (c) therefore succeeds in relation to the erection of the concrete walls. I shall correct the notice accordingly to omit the alleged erection of concrete walls from the breach of planning control and delete the requirement for their removal.

Appeal on ground (d)

24. An appeal on ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
25. S171B(1) of the Act states that, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

26. The appellant's case relates solely to the alleged formation of areas of hardstanding.
27. There was considerable discussion regarding the hardstanding at the Hearing. The appellant's case initially was that there had been hardstanding on the Land in some form since 2010. In contrast the LPA argued that there was insufficient evidence of any hardstanding on the Land at any time before the present hardstanding was laid.
28. Nevertheless, both parties accepted that a new top layer of concrete hardstanding had been laid on top of the previous surface of the Land. The LPA set out at the Hearing that, since it considers there was insufficient evidence of any previous hardstanding, that the Notice is solely directed against the layer of concrete hardstanding which now exists and it requires only the removal of that layer of concrete.
29. The appellant subsequently accepted the LPA's position and agrees that a fair reading of the Notice indicates it is directed only against the concrete hardstanding and not against any previous subsurface which the appellant says exists. The parties accepted that the Notice ought to be corrected to refer to the concrete hardstanding to make that clear. They agreed that doing so would not result in injustice to the appellant or the LPA. I see no reason to conclude otherwise.
30. The corollary of that is that the appellant accepts that the majority concrete hardstanding was not substantially complete on or before 23 March 2018 and thus for the most part, the appeal on ground (d) fails.
31. They do argue, however, that a small area of concrete hardstanding around the building on the west of the Land was substantially complete by 27 July 2017.
32. However, the earliest photographic evidence of the concrete hardstanding around the building to the west is that dated 19 April 2018. In any event, it appears to me that the concrete hardstanding subject of the Notice has been carried out as a single operation. Indeed, the aerial photography and the submissions of the parties at the Hearing indicated that the hardstanding was done incrementally from that time. Whilst there may have been gaps in time between the laying of the parts of the hardstanding, I am satisfied that the evidence indicates the laying of the concrete hardstanding across the Land as shown on the plan attached to the Notice was a single operation. That single operation was not, as accepted by the appellant, substantially complete four or more years before the enforcement notice was issued.
33. The appeal on ground (d) therefore fails.

The appeal on ground (a)

34. Where an appeal on ground (a) is made, an application for planning permission is deemed to have been made in respect of the matters stated in the enforcement notice as constituting a breach of planning control. It is open to me to grant planning permission only for the matters stated in the notice, as corrected, whether in whole or in part.

Main Issues

35. The main issues are:

- whether the development is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect of the development on the openness of the Green Belt; and,
- if the development is inappropriate, whether any harm be reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development?

36. The Land lies within the Green Belt. Paragraph 151 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy PG3 of the Cheshire East Local Plan Strategy 2010-2030 (2017) (the LP) states that the construction of new buildings is inappropriate development in the Green Belt and that planning permission will not be granted for inappropriate development except in very special circumstances.
37. Paragraph 154 of the Framework likewise sets out that the construction of new buildings is inappropriate development. Exceptions to this are set out thereafter. Paragraph 154(d) sets out that the replacement of a building, provided the building is in the same use and not materially larger than the one it replaces, is not inappropriate development. LP Policy PG3 contains the same exception.
38. Policy RUR13 of the Cheshire East Local Plan Site Allocations and Development Policies Document (2022) (the DPD) states that the replacement of existing buildings in the Green Belt will only be permitted where the replacement building is not materially larger than the existing building and would not unduly harm the rural character of the countryside. It goes on to state that increases in overall building height and development extending notably beyond the existing footprint in particular have the potential to be materially larger.
39. The appellant argues that the building which forms part of the breach falls within paragraph 154(d) and is therefore not inappropriate development.
40. The building is said to have replaced one which previously existed on that part of the Land. Photographs provided show a brick building with a dual pitched roof previously in place. Additional images show the new building being constructed around the outside of the previous building prior to its demolition.
41. The previous building was said to be in use as an office. The current building is said to be in use as office and welfare facilities. However, the LPA points towards a previously refused planning application³ for a change of use of the building from an agricultural building to an office and argues the previous building thus had a lawful agricultural use.
42. In any event, setting aside the use, it is indicated that the new building is around 42% larger than the old building in terms of footprint. Moreover, it is

³ LPA Ref: 17/4275M

said to be around 1m higher. On that basis, I consider the replacement building to be materially larger than the previous one.

43. The appellant argues that, in considering the test of paragraph 154(d), I should take account of a second building on the Land which has since been demolished. A workshop building existed on the Land and was removed in April 2021. It is said to have had a floor area of 295m². Thus, with a floor area of 125m² the building subject of the Notice is a considerable reduction in footprint compared to the combined 368m² of the previous building and the workshop.
44. However, the workshop building was not solely in use for office facilities. It was said at the Hearing that it contained a workshop with some welfare facilities. It also provided an archive and there was some manufacturing carried out within it. Nonetheless, the amount of each use taking place with the building has not been provided.
45. As such, whilst there was some element of the same office use, as a matter of fact and degree, the new building is not in the same use as the workshop building. Consequently, I find that the erection of the building alleged in the Notice was not a replacement of the workshop building, rather it only replaced the previous office building.
46. As a result, I find the erection of a building which forms part of the breach does not fall within the exception set out in paragraph 154(d) of the Framework and is, therefore, inappropriate development in the Green Belt.
47. In terms of the laying of areas of concrete hardstanding, the appellant argues that it constitutes an engineering operation and thus, falls to be considered as an exception to inappropriate development under paragraph 155(b) of the Framework. It states that engineering operations are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
48. Paragraph 142 of the Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Openness as a concept has both a spatial and a visual aspect. The absence of visual intrusion does not in itself mean there is no impact on openness. On the other hand, this does not mean that openness has no visual dimension. Several factors are capable of being relevant and how to take them into account is a matter of planning judgement.
49. There is a dispute between the parties as to whether there was hardstanding on the Land prior to the laying of the concrete hardstanding. The appellant argues that a surface of crushed stone and hardcore had been in place since 2010 and the concrete hardstanding was laid on top of it.
50. However, even if that is the case, the previous surface of the Land was a much more informal and sparse arrangement, in contrast to the significant expanse of solid, grey concrete which has been laid across around 0.76ha of the Land. Whilst it cannot be seen from medium to long range views given its lack of height, the concrete hardstanding appears at short range to be a substantial intrusion of urban form within the Green Belt. In spatial terms, it covers a considerable expanse of Land with a surface of significant permanence in

character and which harmfully reduces openness. As a result, the laying of the concrete hardstanding does not preserve the openness of the Green Belt. It does not, therefore, fall within the exception of paragraph 155(b) of the Framework and is, thus, inappropriate development.

51. In terms of the siting of the two portable buildings and container and the weighbridge, the appellant accepts that they are inappropriate development in the Green Belt.
52. I conclude, therefore, that the development in its entirety constitutes inappropriate development in the Green Belt. As such, it conflicts with LP Policy PG3 and DPD Policy RUR13, as well as the Framework. In accordance with paragraph 153 of the Framework, I afford substantial weight to the harm arising to the Green Belt by reason of inappropriateness.

Openness

53. As set out above, the building subject of the Notice is materially larger than the one it replaced. Whilst the appellant argues that the effect of the building on Green Belt openness should consider the baseline of the previous office building and the workshop, I have found above that the new building is not a replacement building for the workshop. Indeed, the workshop building was removed in April 2021 having been damaged by fire, around a year before the new building was substantially complete and was in a different use. It follows that I cannot consider the workshop in the comparative effect on openness of the new building.
54. As a result, I find that, the building has a detrimental impact on Green Belt openness, in that it covers a part of the Land which was previously free from buildings of such scale. Consequently, whilst the building is of a simple and traditional design, it nevertheless has a harmful effect on both the visual and spatial aspect of openness, in that it is reduced.
55. I have considered the effect of the hardstanding on Green Belt openness above and found that it too is harmful to openness.
56. In respect of the two portable buildings, container and weighbridge, the appellant argues that whilst there is some spatial impact, there is little visual impact given their scale. However, they too have introduced elements of built form where previously, little existed. Whilst, the visual impact of the weighbridge is reduced due to its position low to the ground, the portable buildings and container are of considerable bulk and scale. Whilst they cannot be seen in longer distance views due to the presence of other buildings, equipment and vegetation, they nevertheless result in a distinctly urban, industrial presence into the landscape when combined with the weighbridge. Likewise, in addition to the weighbridge, in spatial terms, Green Belt openness has been noticeable reduced by all those aspects of the development.
57. The appellant states that, if permission is granted for the office building, they are willing to remove the portable buildings subject of the Enforcement Notice, suggesting it can be secured by way of Unilateral Undertaking. However, there is no such undertaking before me. I have also considered whether to grant permission in part for the office building, and uphold the Notice in respect of the portable buildings, ensuring their removal. However, whilst the effect on

openness would be reduced, the building in isolation would remain harmful to the openness of the Green Belt.

58. I conclude, therefore, that the development will result in harm to Green Belt openness, in conflict with LP Policy PG3 and the Framework.

Other Considerations

59. Paragraph 153 of the Framework is clear that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
60. The appellant indicates that the businesses which operate from the Land make a significant contribution to the local economy. It was said at the Hearing that the businesses sustain somewhere in the region of up to 50 full time jobs. The businesses include the manufacture of concrete and tarmac which is said to be in high demand in the region and thus supports a supply chain through the construction industry. These are significant benefits in favour of the businesses which operate on site.
61. Nevertheless, the weight to be attached to those benefits is somewhat reduced. At the Hearing, the appellant confirmed that, whilst it may in practice be more difficult to operate, and there is a risk of not being able to hire suitable staff, the businesses would not necessarily cease to operate if the hardstanding was removed. Likewise, if the office building was removed, the appellant could potentially run the administrative side of the businesses elsewhere, albeit that would be practically more difficult. Moreover, it was stated that the removal of the portable buildings and container would not unduly affect the operation of the business whilst the removal of the weighbridge would not be significant as there are other methods of weighing material. Finally, it was said that, whilst the removal of the walls would have impacts in terms of how materials are stored, it would not necessarily prevent materials from being stored together.
62. As a result, whilst the businesses which operate from the site provide significant economic benefits, there is limited evidence before me which indicates those businesses would fully cease to operate in the event the notice is upheld. Nonetheless, I accept in practical terms, the business would be more difficult to operate without the development and it is probable that would impact on their economic performance. On that basis, I afford moderate weight in favour of the economic benefits of the development.
63. In their submissions on ground (f) the appellant has suggested a fallback position that the two portable buildings, container and weighbridge could be used for agricultural purposes. However, whilst that would be less harmful than the development subject of the notice, little evidence of it being anything more than merely a theoretical prospect is before me. That is thus a consideration to which I afford very little weight.

Very Special Circumstances

64. In favour of the development, I afford moderate weight to the economic benefits and very little weight to the fallback position of agricultural use of the portable buildings, container and weighbridge. On the other hand, I afford substantial weight to the Green Belt harm which arises by reason of inappropriateness in accordance with paragraph 153 of the Framework. I also

attach substantial weight to the harm which arises to the openness of the Green Belt.

65. Consequently, I conclude that the harm arising to the Green Belt, by reason of inappropriateness and harm to openness, is not clearly outweighed by other considerations.
66. As a result, the very special circumstances necessary to justify the development do not exist. I conclude, therefore, that the development conflicts with LP Policy PG3 and DPD Policy RUR13, as well as the Framework. As a result, the development conflicts with the development plan taken as a whole.

Alternative

67. In their appeal on ground (f) the appellant argues that it is excessive to require the removal of the portable buildings, container and weighbridge since they could be utilised for agricultural use. Whilst not suggested by the appellant, the same, in practice, could be argued for the building and the hardstanding. The corollary of that is, since buildings for agriculture are not inappropriate development in the Green Belt in accordance with paragraph 154 of the Framework and by definition, do not harm openness, the entire development would be acceptable in planning terms if used solely for agriculture.
68. It is thus open to me to grant planning permission on the ground (a) appeal for the alternative. However, to be permitted, the alternative must be part of the matters stated to constitute a breach of planning control in the notice, or achievable through the imposition of a condition on the planning permission.
69. The erection of the building, the laying of hardstanding, the siting of two portable buildings, container and weighbridge, constitute the matters. The matters do not include their use for agriculture. Whilst not stated in the Notice, the submissions of the parties make clear that the development as a whole has been done to facilitate the part use of the Land for the manufacture of concrete and asphalt, not for agriculture. However, that use does not form part of the breach. It is therefore not open to me to require the associated use of the Land for concrete and asphalt manufacturing to cease.
70. Thus, the only way to grant planning permission for the alternative would be through the imposition of a condition requiring use of the development solely for agriculture. However, the condition could not simply restrict the use of the development only for agriculture, as the planning harm would not be overcome if the building operations remained but their use for agriculture never implemented. In practice, the appellant could retain the operational development without putting it to any use. A condition which positively requires the agricultural use of the operational development to be carried out would not meet the test of reasonableness laid down by paragraph 57 of the Framework since the use of the development for agriculture is no more than a theoretical prospect. No genuine proposal to utilise it as such is before me. Such a requirement by condition may therefore be unduly onerous on the appellant.
71. On that basis, I consider the alternative of using the development subject of the Notice for agriculture does not form part of the matters stated in the notice as constituting a breach of planning control. In any event, if that were the case, the planning harm could not be overcome by granting planning

permission for the development as there are no suitable conditions which could be imposed on it.

Conclusions

72. For the reasons given above I conclude that the appeal on ground (a) should not succeed and the deemed application for planning permission should be refused.

Appeal on ground (f)

73. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary. S173(4) of the Act sets out that the purpose of an enforcement notice can be: (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach.
74. The parties agreed at the Hearing that the purpose of the notice is to remedy the breach. Since the requirements essentially seek to restore the Land back to its condition before the breach took place, I see no reason to conclude otherwise. Indeed, the appellant accepted at the Hearing that the requirements to demolish the building and remove the hardstanding, provided the Notice was varied to make clear it was the concrete hardstanding to be removed, were not excessive. I will vary the Notice accordingly.
75. The requirement to demolish the concrete walls will be deleted as a result of the correction to the Notice to remove the walls from the breach due to the success of the ground (c) appeal in that respect.
76. To reflect the aforementioned correction to the breach, I will vary the Notice to amend requirement (d) to refer to two portable buildings and a container, instead of portacabins.
77. The appellant argues that the requirements to remove the portable buildings, container and weighbridge is excessive, since they could be used for agricultural use. The appellant indicates that they carry out some agricultural use on the Land and surrounding land within their ownership. However, as I have set out above, the use of the development for agriculture is not an obvious alternative that overcomes the planning harm. The requirement to remove the portable buildings, container and weighbridge are not excessive and no lesser steps than their removal would remedy the breach of planning control.
78. The appellant suggests it is excessive to remove debris arising from compliance with the requirement to remove the hardstanding, since it could be utilised within the previous hardstanding which exists on site. However, any use of the concrete hardstanding subject of the Notice within the Land would in effect constitute a breach of planning control and the requirement to remove debris arising from its removal does not go beyond what is necessary to restore the Land to its condition before the breach took place.
79. The parties also agreed at the Hearing that the requirement to reinstate parts of the Land in topsoil and reseed with grass was excessive, since the evidence suggests those areas of Land were not laid to grass prior to the breach taking place. I will vary the Notice to delete the requirement accordingly.

80. The appeal on ground (f) succeeds in part but only to a very limited extent.

Appeal on ground (g)

81. An appeal on ground (g) is made on the basis that the time for compliance given in the Notice is too short. The Notice gives a period of six months for compliance with all steps. The appellant argues that a period in the region of 18 months would be more appropriate, on the basis that they will need to carry out a further site assessment for the relocation of the businesses and obtain planning permission for it.

82. However, as set out in the ground (a) appeal, the business could, in practice, continue to operate from the Land to some degree without the development subject of the Notice whilst the appellant seeks an alternative site. However, it is probable that there would be economic consequences to the businesses which operate on the Land if it were to do so. Given the positive economic benefits associated with the businesses, I consider a period of 12 months for compliance to be more reasonable. This would appropriately balance the need to allow the appellant time to source an alternative location to relocate the businesses without undue harm to its economic performance whilst also appropriately dealing with the planning harm with the necessary expediency. A period beyond 12 months as suggested by the appellant would be akin to a temporary planning permission and would not overcome the planning harm with the necessary expediency.

83. The appeal on ground (g) therefore succeeds to a limited extent.

FORMAL DECISION

84. It is directed that the enforcement notice be corrected by:

- The substitution of Plan B annexed to this decision for the Plan B attached to the enforcement Notice;
- Deleting the word "portacabins" from section 3 of the Notice and its substitution with the words, "two portable buildings and a container";
- Deleting the words, "the erection of concrete walls" from section 3 of the Notice;
- Inserting the word "concrete" between the words "of" and "hard" in section 3 of the Notice.

85. And varied by:

- Deleting the word "portacabins" from section 5(d) of the Notice and its substitution with the words, "two portable buildings and a container";
- Deleting the words "(c) demolish the concrete walls shown in the approximate position shaded in green on the attached plan marked "Plan B"." from section 5 of the Notice;
- Inserting the word "concrete" between the words "of" and "hardstanding" in section 5(b) of the Notice;
- Deleting the words "(g) Reinstate the areas of land shaded in blue, green, yellow and pink on the attached plan marked "Plan B" in topsoil and reseed with grass seed" from section 5 of the Notice; and,

- Deleting the words, "(a) 6 months, (b) 6 months, (c) 6 months, (d) 6 months, (e) 6 months, (f) 6 months and (g) 6 months" from section 6 of the Notice and their substitution with the words "12 months" as the time for compliance.

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

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Robson of Counsel
Lisa Woodrow
Tom Bagley
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Ben Wharfe

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FOR THE LOCAL PLANNING AUTHORITY:

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Borough Council
Cheshire East Borough Council
Cheshire East Borough Council
Cheshire East Borough Council

INTERESTED PERSONS:

Cllr Nick Speakman
Cllr Simon Saba

Ollerton Parish Council
Ollerton Parish Council

DOCUMENTS

- 1 Site Allocations DPD Policy RUR13
- 2 Site Allocations DPD Policy RUR10
- 3 LPA Final Comments
- 4 Appeal Notification Letter



Plan

This is the plan referred to in my decision dated:

by J Whitfield BA (Hons) DipTP MRTPI

Land at: Wood Platt Cottage, Chelford Road, Marthall, Knutsford WA16 8TB

Reference: APP/R0660/C/22/3297439

Scale: NTS



Land at Wood Platt Cottage, Chelford Road, Marthall, Knutsford, Cheshire, WA16 8TB

