The Planning Inspectorate

Appeal Decisions

Inquiry Held on 10-13 September 2024 & 17-20 September 2024

Site visit made on 10 September 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 11 October 2024

Appeal A Ref: APP/N0410/C/23/3336002
Land lying to the West of Lake End Road (Formerly known as Orchard Herbs), Dorney, Buckinghamshire, SL4 6QS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Christopher Ball against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice, numbered ES/23/00431 /COU, was issued on 29 November 2023.
- The breach of planning control as alleged in the notice is, without planning permission, a material change of use of the Land to a mixed use, comprising:
  • Open storage
  • The storage and distribution of aggregates
  • The preparation, storage and distribution of readymix concrete
  • The stationing of a static caravan for residential occupation
  • Vehicle breaking and repairs
  • The storage and distribution of scaffolding and associated equipment
  • The siting of racking
  • The siting of metal containers
  • The siting of concrete batching plant
  • The siting of associated paraphernalia, materials, equipment brought onto the Land in connection with this unauthorised use of the Land

  And

  To facilitate the unauthorised use, the carrying out of operational development comprising
  • The laying of hardstanding and roadways
  • The erection of aggregate storage bays
  • The erection of concrete batching plants and associated equipment.

- The requirements of the notice are:

  1. Cease the use of the Land for open storage
  2. Cease the use of the Land for the storage and distribution of aggregates
  3. Remove all aggregates and associated equipment from the Land
  4. Cease the use of the Land for the preparation, storage and distribution of readymix concrete
  5. Remove all readymix concrete and associated equipment from the Land
  6. Cease the use of the Land for the siting of a static caravan
  7. Disconnect and remove the static caravan, from the Land
  8. Cease the use of the Land for vehicle breaking and repairs
  9. Cease the use of the Land for the storage and distribution of scaffolding and

associated equipment
10. Remove all scaffolding and associated equipment from the Land
11. Remove the racking from the Land
12. Remove the metal containers, from the Land
13. Rip up and remove the hardstanding and roadways from the Land
14. Rip up and remove the aggregate storage bays from the Land
15. Remove the concrete batching plant from the Land
16. Remove from the Land all paraphernalia, items, equipment and vehicles, brought onto the Land in connection with this unauthorised use of the Land
17.Remove all materials and debris resulting from complying with steps 1-16 of this Notice, from the Land.

- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/N0410/X/22/3304031
Land to the West of Lake End Road (Formerly known as Orchard Herbs), Dorney, Buckinghamshire, SL4 6QS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Christopher Ball against Buckinghamshire Council.
- The application (Ref: PL/20/3452/EU) is dated 21 December 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is: Use as a builders yard and storage of commercial vehicles, equipment and building materials.

Summary Decisions: Appeal A is dismissed and the Enforcement Notice upheld subject to a correction and variations as set out in the Formal Decision below. Appeal B is dismissed.

Application for costs

1. At the Inquiry an application for costs was made by Buckinghamshire Council against Mr Christopher Ball. This application is the subject of a separate Decision.

Procedural Matters

2. All evidence at the Inquiry was given under oath by way of affirmation.

3. I made a total of four site visits in connection with these appeals. On 9 September 2024, I made an unaccompanied site visit specifically to view from the public highway the designated heritage assets in the vicinity of the site. This included the four listed buildings identified by the Council, and walking around the Dorney and Huntercombe Conservation Areas. I made an accompanied site visit of the appeal site itself on 10 September 2024. I then made an unaccompanied site visit on 19 September 2024 at which I viewed the appeal site (or towards the appeal site, as the case may be) from the viewpoints identified by the parties, with the exception of those viewpoints to which I was unable to gain access or from which it was not safe to do so (as indicated at the Inquiry). Finally, on the morning of 20 September 2024 I

spent approximately one hour (unaccompanied) standing on the Lake End Road overbridge observing and listening to activity on the appeal site.

4. At the Inquiry, I made a preliminary ruling in relation to the appeal on ground (e), at which time I outlined only a brief summary of my reasons why that ground of appeal failed. My full reasons in relation to this ground of appeal are set out below.

5. The appellant had initially indicated that he intended to call Mr Baljinder Kahlon and Mr Manmeet Singh to give evidence primarily in relation to the appeal on ground (e). In the event, neither appeared at the Inquiry. I will therefore have regard to the evidence in their written statements albeit, because that evidence was not given under oath and was not tested through cross-examination, I attach lesser weight to that evidence.

The Enforcement Notice

6. I note that the requirements of the notice do not include a requirement to restore the land to its condition before the alleged breach of planning control occurred. The corollary is that compliance with the notice would be achieved by, amongst other things, ceasing the use alleged in the notice and removing the operational development that facilitated that use. There would be no requirement to undertake any works in relation to the land itself. I raised this at the Inquiry, but the Council declared that it was content with the notice as drafted. I have therefore taken no further action in this regard.

Appeal A: the appeal on ground (e)

7. The ground of appeal is that copies of the enforcement were not served as required by section 172 of the 1990 Act. In summary, Section 172 of the 1990 Act requires that the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land.

8. The requirements for the service of a notice are set out at section 329 of the 1990 Act. Insofar as relevant to this appeal, section 329 provides that:

(1) Any notice or other document required or authorised to be served or given under this Act may be served or given either

(a) by delivering it to the person on whom it is to be served or to whom it is to be given

(b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address

(c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office

and

(2) *Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if*

(a) it is addressed to him either by name or by the description of "the owner" or, as the case may be, "the occupier" of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c)

(b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and— (i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or (ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.

9. In this case, there are four separate issues under this ground of appeal. These may be summarised as:

(i) Whether the Council was required to carry out reasonable inquiries before relying upon the provisions in section 329(2)(b)(ii) that allow service by affixation

(ii) Whether the Council carried out reasonable inquiries

(iii) Whether the EN was affixed conspicuously to an object on the premises, and

(iv) Whether, if there has been a failure to serve any occupier, that occupier has suffered substantial prejudice.

(i) and (ii) Reasonable Inquiries

10. As with many things, context is everything. In this case, the appeal site is a large site in a mixed use with multiple occupiers. There has also historically been a significant churn of occupiers. Those occupiers do not park or store items in a fixed location, but use whatever space they can find. In many cases, vehicles are unliveried. Occupiers use of, and visitors to, the site also fluctuate, such that their occupation may not be apparent from visits to the site on any given day. It is true that the appellant has never prevented or restricted access to the site by Council officers. Nevertheless, all the actions that the Council took to ascertain who the occupiers were at the time that the notice was served must be viewed in the above context.

11. Where the company names of occupiers were displayed, the Council served copies on their registered addresses in accordance with section 329(1)(d) of the 1990 Act. In order to try and identify the names of other occupiers, the Council served a section 330 Notice on the registered owners of the appeal site, which include the appellant. The service of a section 330 Notice[1] is one of the statutory tools at the disposal of a local planning authority that is seeking

[1] Together with a Planning Contravention Notice (PCN).

to make reasonable inquiries about the nature of a use taking place on land, or the occupiers of that land. The section 330 Notice requested the name and address of all occupiers of the land as well as any other person known to use the land.

12. The section 330 Notice was sent to the owner's registered address at Burnham Street following a Land Registry search. No response was ever received to the section 330 Notice. The appellant claims this is because he no longer resided at that address and never received it. However, it is the responsibility of the registered proprietor to keep his address up to date. There is some question whether the section 330 Notice was served using the latest information at the Council's disposal. Nevertheless, the appellant accepted that he had not updated his address with the Land Registry, or made any alternative arrangements for the collection of post from his Burnham Street address. The appellant did, however, confirm that he would visit that address personally on a sporadic basis.

13. Furthermore, in addition to sending the section 330 Notice to the Appellant's registered address, the Council also emailed a copy of it to the appellant. In that regard, Mr Ball claimed that this email address was not one that he monitored and that all of his business emails are dealt with by his daughter on a different email address. However, that was shown through evidence to be incorrect. I concur with the Council that it would be very odd if Mr Ball's daughter did not tell him about important correspondence such as a section 330 Notice. It is therefore more likely than not that Mr Ball was aware of the section 330 Notice and what it meant.

14. In addition, Mrs Penney explained in her evidence the other steps which she took to try and identify relevant occupiers. This identified two additional occupiers, who were then served with a copy of the notice. Furthermore, following receipt of the appeal and after observing that further unauthorised development had taken place on the site, the Council sent a letter to the appellant's solicitor requesting details of the companies that were said not to have been served. No response was ever received to that request. This lack of response puts to the sword the appellant's suggestion that his solicitor should have been contacted prior to the notice being served.

15. Having regard to the above, and in the context set out above, it is difficult to identify what else the Council could have done to identity occupiers on the site before relying (in part) upon the provisions in section 329(2)(b)(ii) of the 1990 Act that allow service by affixation. It is also fair to say that the non-responsiveness of the appellant and/or those advising him did not assist the Council in that respect. I am therefore satisfied that the Council did undertake reasonable inquiries, and that any further inquiries undertaken would have been extremely unlikely to produce any different results.

Service by affixation

16. Given my conclusion that the Council undertake reasonable inquiry, it is not strictly necessary for me to go on to determine when service on occupiers by affixation is permitted. Nevertheless, in the interest of completeness, I shall do so anyway.

17. Section 172(2) of the 1990 Act provides that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it

relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

18. In the context of an enforcement notice, the requirement at section 329(2) of the 1990 Act is to serve the notice on the owner, the occupier, and any other person having an interest who does not fall into either of the first two categories. Where an enforcement notice is required to be served on any person as an occupier of the premises, there is no requirement for their name to have been ascertained after reasonable inquiry.

19. Section 329(2) provides that:

Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if

(a) it is addressed to him either by name or by the description of "the owner" or, as the case may be, "the occupier" of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or (

b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and—(i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or (ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.

20. The salient provision, it seems to me, is that at (b) where it states that it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance. In this case, copies of the notice were placed inside envelopes affixed at various points around the site. All envelopes were stamped "IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY" in red ink.

21. Copies of the notice addressed to all "owners/occupiers" were affixed to the fence post at the entrance to the site. This is a conspicuous location within the site. One witness, Mr Mansfield, recalled seeing the notices in this location but said that he did not read them because they were not addressed to him. He was, however, unable to explain how he knew whether they were addressed to him without reading them. Mr Ball also recalled having seen these notices at the entrance.

22. Copies addressed to "The Occupier/s, Land West of Lake End Road (Formerly Orchard Herbs), Dorney, Buckinghamshire, SL4 6QS" were affixed next to the communal office shared by occupiers of the site. This office is clearly visible when driving into the site, as well as being used as shared office space by some occupiers. It is also a conspicuous location within the site.

23. A copy of the notice was also affixed to the door handle of the static caravan occupied by Mr Pietrasik. Given that Mr Pietrasik is the only occupier of that caravan, it is wholly inexplicable why he did not open the envelope and read the contents.

24. It should therefore have been abundantly clear to anyone who looked at these envelopes in situ that they were marked in such a manner as being plainly identifiable as a communication of importance. Indeed, I fail to see how it could have been made any clearer. In that respect, the affixation of these envelopes was fully in accordance with section 329(2)(b) of the 1990 Act. The Council cannot then be held responsible if persons spotting the notice, such as Mr Mansfield and Mr Pietrasik, did not take the trouble to read them.

25. Section 329(2)(b)(ii) of the 1990 Act, which Mrs Penney confirmed was being relied on by the Council in this case, provides that where a notice is required to be served on a person having an interest in the premises by display, it shall be taken to be served if "it" is affixed conspicuously to some object on those premises. The appellant contends that the 'it' in that sentence means the notice. The appellant further contends that placing the notice in an envelope inside a clear wallet hung on objects (such as a fence) does not have the required degree of permanence to be "affixed" and to effect good service. The appellant contends that the notice itself needs to be visible and sufficiently displayed so that it may be read by many people.

26. I do not read section 329(2)(b)(ii) of the 1990 Act to mean that the wording of the notice must be visible when it is conspicuously affixed to some object on the site. To do so would lead to a number of practical problems. For example, in this case the notice runs to some 15 pages (including the important explanatory notes setting out how to appeal, etc). It clearly would not be practical to affix 15 pages in see-through plastic wallets in such a position where they could be read.

27. It is therefore sufficient in my view that a full copy of the notice is provided in an envelope that is clearly marked in such a way that it conveys the importance of the communication. This is exactly what the Council did. Indeed, if Parliament had intended that the notice be displayed in full in such a way that the actual wording of the notice is visible, it would have been a simple matter to set that out as a requirement in the legislation. But section 329(2)(b)(ii) of the 1990 Act is entirely silent on that.

28. There is a further key consideration in this case insofar as the Council also affixed a Site Notice to the fence in close proximity to the envelopes containing copies of the enforcement notice. That Site Notice was addressed to "all owners/occupiers and interested parties of the affected land". It warned them that an Enforcement Notice had been issued, provided the reference number, full details of the breach of planning control that was alleged, and the date when it would come into effect if no appeal was made. A copy of the enforcement notice was also attached to this site notice, and it advised how further copies could be obtained from the Council. No such requests were made.

29. The Site Notice made it clear that the communication affected the property. There could have no doubt to anyone reading the Site Notice that this was a communication of importance.

30. I concur with the appellant that the 'notice' needs to be affixed so it can be read by multiple persons. It is axiomatic that if the first occupier to come across the envelope removes it then there is nothing left for subsequent occupiers to see. It also follows that the 'notice' is no longer either 'conspicuous' nor "affixed".

31. There is, however, a limit to which the Council can take reasonable steps to ensure to ensure that a copy is available for every occupier, particularly on a site such as this. To take this argument to its logical conclusion, the Council would have had to leave a copy of the 'notice' for every potential occupier of the site. But this would mean that the Council would have had to have known exactly how many occupiers there were on the site. This in turn would mean that the Council would have to know the details of those occupiers, in which case a copy of the notice on those occupiers could have been served (and no doubt would have been served) on those occupiers individually.

32. In the alternative, the Council would have to visit the site on every day before the notice took effect in order to check whether the envelope had been removed and, if so, then replace it with a fresh copy. Clearly, that is not a practical proposition.

33. There is also, it seems to me, an element of responsibility on the part of the occupiers of the site in this regard. It is reasonable to conclude that the first occupier to look at the envelope was aware that there are other occupiers on the site. The Council cannot be held responsible if that first occupier then removes that envelope and does not replace it, thereby depriving the other occupiers on the site the opportunity to discover its contents.

34. In this case, where despite having made reasonable inquiries, it is not reasonable to have expected the Council to 'guesstimate' how many occupiers remained unidentified. I accept that it may have been prudent for the Council to have provided more than just two envelopes addressed 'the occupier' generally. But I come back to the presence of the Site Notice as being key in making the existence of the notice more widely known and for that reason do not consider that provided just two envelopes for occupiers generally was fatal to the service of the notice as required by section 172 of the 1990 Act.

Whether, if there has been a failure to serve any occupier, that occupier has suffered substantial prejudice.

35. Section 176(5) of the 1990 Act provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been *substantially* prejudiced by the failure to serve him (emphasis added). For the reasons set out above, I find that the notice was served correctly in accordance with section 172 of the 1990 Act. I will nonetheless briefly consider here whether any occupier has been substantially prejudiced by a failure to serve the notice on them.

36. The appellant identifies six occupiers who say they were not served but should have been, given their status as occupiers (some of which had an interest in the land). One of these is Mr Pietrasik. In his case, an envelope addressed to the occupier was affixed to the door handle of his caravan. Mr Pietrasik said he never opens an envelope without his name on it but it must have been obvious that the envelope affixed to the caravan was meant for him. It could not have been intended for anyone else: he is the only occupier of the caravan. Consequently, notwithstanding Mr Pietrasik's reticence to open that envelope, I am satisfied that he was properly served with a copy of the notice.

37. Of the remaining five occupiers, patently every one became aware of this appeal in due course. In addition to giving evidence in relation to ground (e), Mr Wilkes gave evidence on ground (c) and ground (a). Similarly, Mr Holloway gave evidence in relation to ground (d). Apart from in relation to ground (e), none of the others made representations on any ground of appeal. It would have been entirely open to them to do so, either as a witness called on behalf of the appellant or through representations in their own right.

38. Furthermore, the occupiers moved onto this site in breach of an extant enforcement notice (upheld on appeal in April 2010 – APP/N0410/C/07/2050412), without taking any advice on whether their occupation would be lawful or amount to a criminal offence. None of the occupiers in question have any real security of tenure beyond a notice period of 3 months. Given the very limited security of tenure, it is hardly surprising that none of the occupiers have sought to invest their own money in advice or an appeal.

39. With the exception of an appeal on ground (f), the appeal that has been submitted by Mr Ball is made on every ground of appeal set in section 174(2) of the 1990 Act. It is difficult to envisage what additional points of substance the occupiers would have brought to those grounds of appeal. Even if they had sought to appeal on ground (f), their tenure is limited to three months, which is half the length of the current compliance period stated in the notice.

40. Moreover, even if a separate ground (a) appeal had been pursued by these occupiers, it would have been in the context of the appellant's ground (a) evidence which recognises that the wider use of the site is unacceptable and should not get planning permission. Any such appeal would potentially also have been inconsistent with the environmental mitigation that is proposed and relied upon by the appellant in order to obtain planning permission under his own ground (a) appeal. It is therefore self-evident that there would have been no reasonable prospect of such an appeal succeeding or being able to be implemented.

41. The appellant questions the time of year in which the notice was issued. The notice was issued on Wednesday 29 November 2023 and would have taken effect on Monday 1 January 2024 if an appeal was not made beforehand. The appellant patently managed to submit his appeal on time but considers that anyone proceeding from a 'cold start' would have found that more challenging. The appellant therefore considers that the Council could have contemplated a longer period before the notice took effect in order to reduce or eliminate any prejudice. But it did not do so. It set an effective deadline for an unidentified occupant(s) to make an appeal of New Years' Eve.

42. To an extent, the appellant has a point. Although the notice technically complied with statute in respect of timing, it put the appellant and others under undue pressure to submit their appeals. It would have been better for everyone concerned if the Council could have waited until the New Year to issue the notice. However, the appellant submitted his appeal on time and on practically every ground of appeal. Any occupier contemplating submitting an appeal could have done so with outline grounds of appeal had they chose to do so. But it is instructive that none of the other occupiers have shown any real inclination to submit an appeal in their own right. I am therefore satisfied that no party was prejudiced by the timing of the enforcement notice.

43. For all these reasons, I consider that none of the occupiers who say they were not served with a copy of the notice could be regarded as having been substantially prejudiced by any failure to serve them.

Conclusion on ground (e)

44. I consider that the Council did everything reasonably possible to identify the owners and occupiers of the site, as well as those having an interest in the land. Indeed, by affixing copies of the notice and the Site Notice at conspicuous places on the site the Council went beyond what it was required to do under statute.

45. I conclude that, on the balance of probability, copies of the enforcement were served as required by section 172 of the 1990 Act. I further conclude that even if that was not the case, none of the occupiers could be regarded as having been substantially prejudiced, such that the provision in Section 176(5) of the 1990 Act would apply.

Appeal A: the appeal on ground (b)

46. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.

47. The appeal on this ground was initially made in three respects: (i) that the preparation, storage and distribution of readymix concrete does not take place on the site (ii) that vehicle breaking does not take place on the site and (iii) that there is no concrete batching plant on the site. It is convenient to take these in reverse order.

48. The Council now recognises that the equipment it described as a concrete batching plant in the notice is in fact a hopper used for the storage of cement. I am satisfied that I can the correct and vary the notice in this respect without causing injustice.

49. Further exploration at the inquiry revealed that vehicle breaking does take place on the site. The notice therefore does not require any correction or variation in this respect.

50. This leaves the question as to whether that the preparation, storage and distribution of readymix concrete takes place on the site. The appellant accepts that the materials/ingredients for making (or preparing) concrete are stored on the appeal site. This includes piles of aggregate and cement dust in 'hoppers'. Those materials are then loaded onto vehicles (volumetric concrete mixers) and distributed from the site. What does not happen on site is the mixing or making of concrete: this happens in the vehicle once it has reached its destination.

51. In my view, the appellant's objection in this regard is pure semantics. The preparation, storage and then distribution of readymix concrete are all part of one continuous process. It starts with the storage of the materials required to make the concrete (the 'storage' element of the alleged breach of planning control). Those materials are then loaded into the vehicles (the 'preparation' element). The loaded vehicles depart from the site (the 'distribution' element).

All of these elements take place on or start from the appeal site. In my view, it matters not that concrete is only actually mixed when it arrives at its destination. What takes place on the appeal site is the preparation, storage and then distribution of readymix concrete (albeit not yet mixed but in constituent form). Accordingly, I see no reason to correct or vary the notice in this respect.

52. On the balance of probability, I conclude that with the exception of the incorrect description of a concrete batching plant, the matters stated in the notice have occurred. The appeal succeeds to that limited extent, and I will correct and vary the notice accordingly. The appeal otherwise fails.

Appeal A: the appeal on ground (c)

53. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal is this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

54. The appellant does not claim that the unauthorised mixed use which is alleged in the notice is not a breach of planning control. Instead, it is argued that there has been no breach of planning control regarding the area of land which formerly comprised the "Sweeney Yard" (hereafter 'the yard'). In her Decision dated 10 April 2010 (APP/N0410/C/07/2050412), the Inspector found that the yard had an established lawful use for "*the sorting and storage of materials removed from sites, for the storage of building materials and equipment, and for the parking of vehicles used in connection with a building/landscape contractor's business*". The appellant's position is that there is a right to revert the yard to this as the last lawful use.

55. Section 57(4) of the 1990 Act provides that "*where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which…it could lawfully have been used if that development had not been carried out*". This creates a right to revert to the last lawful use of the land, by expressly providing that planning permission is not required for that reversion which would otherwise constitute development requiring planning permission. However, that only applies to the use that immediately preceded the unauthorised use being enforced against. It does not permit reversion to the last lawful use that look place (however long ago), whether that use was lawful because it was immune from enforcement or the grant of planning permission[2].

56. A lawful existing use of land, whether it is immune from enforcement action or authorised by the grant of planning permission, can be lost through various subsequent or supervening events[3]. These include:

(a) further material changes in use, including material changes to the composition of mixed use.[4]

[2] *Young v SSE* [1983] 2 AC 66
[3] *Panton and Farmer v SSETR* (1999) 78 P&CR 186
[4] *Beach v SSTER* [2001] EWHC (Admin) 381

(b) changes to the site that result in a new chapter in the planning history that is incompatible with the continuance of the lawful existing use[5].

57. The starting point is the use which was found to be lawful by the Inspector in 2010. This related to the use of the yard by Mr Sweeney, and not the use by Mr M Ball, which the Inspector found not to be materially different. The accrued lawful use right found to have existed as a result of Mr Sweeney's use was summarised at paragraph 25 of the decision letter. It contained three elements:

a. for the sorting and storage of materials removed from sites;
b. for the storage of building materials and equipment; and
c. for the parking of vehicles used in connection with a building/landscape contractor's business.

58. Once the physical separation of the yard had been re-established in December 2007, Mr Ball used it as a builder's yard in connection with his construction and ground works business. His business was therefore not collecting waste materials from other construction sites unrelated to his business and then recovering or recycling that waste.

59. In 2012, Mr King took up occupation of the northern part of the yard. He describes his business as the crushing and screening of concrete and then reselling the resulting material. At around the same time (accounts in the evidence vary as to the precise date), a company known as POD Skips took up occupation of the southern part of the yard. The latter did not appear at the Inquiry and there is no evidence regarding the nature of their use of the yard. At this time, Mr Matthew Ball was also occupying part of the southern yard in connection with his business of storing vehicles and machinery, and bringing materials back to the site and the sorting the material into piles. In his Witness Statement, Mr Matthew Ball describes his use as that of a builder's yard but, as a matter of fact and degree, I am not convinced that is an accurate description. In my view, as a matter of fact and degree, the use described is more akin to a waste processing use.

60. Mr King explained that although there was already a division across the yard when he took up occupation, this was reinforced by the skip company. Shortly afterwards, POD Skips installed walls to sub-divide part of their area into four bays. These are plainly visible in an aerial photograph taken in 2013.

61. In the event, POD Skips were only present in the yard for around six months before vacating the site and being replaced by Mr Constable, who occupied the whole of the southern half of the yard. Mr Constable's business involved importing topsoil which was then sieved to produce a finer topsoil. This was then stored in the yard in large piles. At around the same time, Mr Matthew Ball relocated outside of the yard to another yard at West End Farm, Mortimer.

62. By 2014, the northern part of the yard was being used by Mr King to crush, screen, store and then re-sell or dispose of concrete from building sites. The southern part of the yard was used by Mr Constable to screen topsoil and other materials which were stored in large piles. These two uses were functionally

[5] *Jennings Motors Ltd v SSE* [1982] QB 541

similar, both involving the storage, sorting and onward sale of waste from building sites. However, the two uses were separated by the wall from which the four bays projected, and thus were physically separate. They were also occupied by different operators. Consequently, as a matter of fact and degree, the yard comprised two separate planning units at that time.

63. Also in 2014, the County Council served an enforcement notice alleging that a material change of use of the land to a mixed use for the importation, processing and transfer of waste materials. That notice was ultimately withdrawn because of a technical issue with the plans. Nevertheless, that does not alter the fact that officers considered that a material change in use had taken place at that time.

64. I do not accept that the only logical explanation for the failure of the County Council to pursue enforcement action is an acknowledgement that what was taking place at the yard not a material change of use from that found by the 2010 inspector and was lawful. One possible explanation might be that the incorporation of these wider planning unit then comprised a mixed use, which then became a District matter. The impending compulsory acquisition of the yard by Highways England may also have been a relevant factor. In any event, the fact that enforcement was not pursued at this time does not necessarily mean that no material change of use had taken place.

65. Mr Constable was soon replaced by Mr Barrett, who from 2015 used the southern unit for the removal of materials from building sites, and the crushing, sorting and recycling of screened aggregates and topsoil. Nonetheless, the situation remained unchanged, insofar as the yard still comprised two separate units.

66. In 2016, the use of the yard by Mr Barrett was investigated by the Council in regard to a potential breach of an enforcement notice issued in 2008. No action was taken as a result. The appellant considers that the only plausible explanation is that no breach of planning control was found and that the use was found to be lawful as not being a material change of use from that found to be lawful in the 2010 Decision. The reasons why the Council did not pursue enforcement action at that time are not recorded in the evidence but could be manyfold. But neither did the Council expressly state that planning permission was not required for the use being carried out by Mr Barrett at that time. Consequently, the evidence in this respect is inconclusive and accordingly I attach only limited weight to this point.

67. Section 336 of the 1990 Act defines "waste" as anything that is waste within the meaning of Article 3(1) of Directive 2008/98 ("the Waste Framework Directive" or "WFD") and is not excluded from that definition by Articles 2(1), (2) or (3). Article 3(1) of the WFD defines "waste" as "*any substance or object which the holder discards or intends or is required to discard*". It also defines " waste recovery" as any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Having regard to the definitions set out in section 336 of the 1990 Act and the WFD, I consider that as a matter of fact and degree the uses operated by Mr King, Mr Constable and Mr Barrett were all waste recovery uses.

68. When compared to the use found to be lawful by the Inspector in the 2010 decision, there are clearly some obvious differences between that use and the use(s) carried out by Mr King, Mr Constable and Mr Barrett. To begin with, the operations, equipment and plant on site are different. The latter use(s) involved large excavators, crushing and screening machines operating on site. The use of this plant would have different environmental consequences, such as the creation of noise and dust. The number of vehicular movements would also be different between the two uses, not least because of the vastly different volumes of materials stored on site but also due to the intrinsic mode of operation of the waste recovery uses requiring more lorry movement to import the raw material into the site and then export the refined material to where it was needed.

69. The visual and spatial effects of the two uses would also be different due to the very large piles of screened and unscreened materials associated with the waste recovery uses. This was later exacerbated by the encroachment of these waste recovery uses beyond the original area covered by the yard, with piles of materials spilling out to the west, south and east when the previously erected fence deteriorated in or around 2017.

70. In this context, a considerable amount of Inquiry time was devoted to the interpretation of an aerial photograph taken in June 2018 which, the Council contended, shows the waste recovery uses spilling out beyond where the fence once stood. In particular, there was much debate as to whether what the Council contended was a pile of material could have been a depression in the ground and/or an area of damp ground.

71. No such depression is visible in the earlier photos. The site otherwise looks dry, which is consistent with the photograph being taken during the summer months. The 'pile of material' is on top of the previously grassed area to the west of the caravan. The appellant's contention that, if it was a pile of material, it would have blocked access to the caravan is not credible: I note that the caravan had one door located in one of the long axis of the caravan. That door could just have easily been located on the southern elevation of the caravan (as stationed at the time of the photograph) and therefore completely unaffected by the pile of material to the north of it.

72. Moreover, and to my mind the determinative factor, is that in the June 2018 aerial photograph the pile of material is identical in colour and appearance to the other material located elsewhere in Mr Barrett's yard. Taking the appellant's argument to its logical conclusion, it would then follow that if the appellant is correct in his assertion that the so-called pile of material is in fact a water-filled depression in the ground, then the whole of the Mr Barrett's yard would have been a water-filled depression on ground, including where it encroaches onto the steep embankment of Lake End Road (on its original alignment). That obviously cannot be, and was not, the case.

73. Similarly, I do not attach any credence to the appellant's suggestion that the fence that disintegrated in or around 2017 was replaced be heras fencing. I recognise that heras fencing would not be visible in aerial photographs. Although a number of witnesses referred to this heras fencing in giving their oral evidence, none of the witness statements made any reference to this fencing, simply referring to the access track. Moreover, given the volume of the piles of material, heras fencing would not have lasted very long and would

not have contained that material. It would therefore not have been practical or served any sensible purpose. Consequently, I consider it more likely than not that no heras fencing was in place or, if it was, it was quickly removed to facilitate the spreading out of the piles of material.

74. Consequently, on the balance of probability, I am satisfied that the waste recovery use of the yard (and therefore the planning unit) did encroach beyond the area defined by the Inspector in the 2010 Decision and recorded on the plan attached to that Decision. The expansion of the planning unit would not, of itself, necessarily require planning permission. The salient point is that, as a matter of fact and degree, the waste recovery uses operated by Mr King, Mr Constable and Mr Barrett resulted in a definable change in the character of the use of that planning unit. This resulted in a material change of use taking place, and it was this material change of use that required planning permission.

75. In addition, I am mindful that the uses operated by operated by Mr King, Mr Constable and Mr Barrett did not feature some of the elements of the use found to have been lawful in the 2010 Decision. Although these uses clearly involved the sorting and storage of materials removed from sites, they did not involve for the storage of building materials (bricks, roof tiles, timber, etc) and equipment (ladders, scaffolding, dumpers, excavators, etc) to any significant degree. Moreover, the use found to be lawful in the 2010 was very specific insofar as it included the parking of vehicles used *in connection with a building/landscape contractor's business* (emphasis added). The uses operated by Mr King, Mr Constable and Mr Barrett were clearly not that of building or landscape contractors. The parking of vehicles on the site was therefore for an entirely different purpose to that found to be lawful in the 2010 Decision.

76. Looked at in the round, the uses operated by Mr King, Mr Constable and Mr Barrett were very different to that found to be lawful in the 2010 Decision. They were of a very different character to the lawful use. This reinforces my conclusion that there was a material change of use at that time.

77. The aerial photograph taken in June 2018 also shows that, by that time, HGV storage was taking place on the central part of the wider site. With the original fence around the yard having by this time disintegrated, the yard and the western part of the site were divided only by an access track. Both Mr King and Mr Barrett used this track to access their respective parts of the yard. However, there is no evidence before me to suggest that occupiers of the eastern part of the site could not use that track: no barriers or gates are visible that would prevent such use. I therefore consider that, as a matter of fact and degree, this access track did not physically separate the uses taking place on the yard and the eastern part of the wider site.

78. Neither was there any real functional separation between these parts of the site. The waste recovery uses were generally taking place on the eastern part of the site, with the HGV parking generally taking place on the western part. However, the expansion of the waste recovery uses in a westerly direction blurred this separation. Consequently, as a matter of fact and degree, by 2017/2018 the site has become one single planning unit.

79. In or around January 2020, Highways England took occupation of the site, including the entirety of the land which had comprised the yard. This created a new planning unit, which was fenced off and then used as a temporary works compound while works were undertaken to replace the Lake End Road

Overbridge and realign Lake End Road. The occupation of the site by Highways England was with the benefit of temporary planning consent and as such by itself was not a "supervening event" leading to the loss of any accrued lawful use.

80. When Highways England vacated the compound in or around April 2022, it was let to Mr Wilkes. He then sub-let it to UB Corporation Ltd who, Mr Wilkes was led to believe, intended to use it as a storage facility for airport parking. In the event the compound was used as airport parking from at least the 26 May 2022 until after the Temporary Stop Notice was served by the Council on 11 August 2022, a period of some two and a half months. The photographic evidence shows that the scale of this use was clearly more than *de minimis* and the period of time during which the use was taking place comfortably exceeded the period of 28 days permitted by Class B, Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as a temporary use of land.

81. The area of land used for this airport parking constituted a separate unit of occupation. The photographic evidence shows that area was physically separated from the rest of the site by fencing and gates. The use was functionally separate from the other uses taking place on the site (including the HGV parking). It is Mr Ball's own evidence that customers arriving at the site outside of working hours would be directed to park their vehicles on other parts of the site. But, even if they sometimes did, the evidence would suggest that this would have represented only a fraction of the total number of cars parked in association with this use. I therefore consider that, as a matter of fact and degree, the use for airport parking constituted a separate planning unit.

82. Moreover, the airport parking use represented a definable change in the character of the use found to be lawful in the 2010 Decision. It also represented a definable change in the character of the use when compared to the waste recovery uses operated by Mr King, Mr Constable and Mr Barrett. Consequently, the airport parking use constituted a material, change of use of the land.

83. Following the cessation of the airport parking use, the evidence shows that the former Highways England compound was once again incorporated into the wider planning unit. At this time, the site was in a mixed use albeit a materially different use from the previous use, in that in contained no waste uses, but now included vehicle breaking and uses associated with the preparation, storage and distribution of readymix concrete. In addition, the use of the site later included the storage and distribution of scaffolding and associated equipment.

84. This resulted in another definable change in the character of the use: for example, the presence of the hoppers to store the cement dust and the vehicular movements associated with that use, as well as storage of the scaffolding. There was therefore another material change of the use that required planning permission at this time.

85. In summary, the evidence shows that on the balance of probability there have been a sequence of material changes in use and changes in the planning unit following the 2010 Decision, each of which resulted in a new chapter in the planning history. These intervening uses resulted in the loss of the lawful use rights of the yard which were found in the 2010 Decision to have accrued by

2003. I therefore conclude that the appellant cannot now rely on section 57(4) of the 1990 Act to revert to that use. Accordingly, the appeal on ground (c) fails.

Appeal A: the appeal on ground (d)

86. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.

87. In his Witness Statement, Mr Winn stated that he had occupied a caravan on the site from around 2004 until 2022. However, in giving his oral evidence at the Inquiry, Mr Winn appeared confused as to where this caravan was actually situated on the site. It also appeared to me that Mr Winn may have been confusing his occupation of the caravan with his occasional occupation of a portacabin that was also sited on the land. Consequently, Mr Winn's evidence lacked precision and was ambiguous, to the extent that I am unable to place any reliance upon it.

88. In the two years or so prior to the notice being issue, the caravan was occupied by Mr Pietrasik. He explained that his family lives in Poland and that he goes home for one or two weeks every month. This raises questions as to whether the occupation of the caravan by Mr Pietrasik can be regarded as being continuous.

89. It is also striking that the appeal on this ground was not supported by any documentary evidence to corroborate the evidence given by Mr Winn and Mr Pietrasik. In the absence of that evidence, I am unable to reach any firm conclusions on the occupation of the caravan, particularly in relation as to whether Mr Pietrasik's occupation can be regarded as being continuous.

90. Finally in this context, the evidence suggest that the occupation of the caravan was ancillary or incidental to the uses taking place on the site rather than a separate use. For example, Mr Winn explains that Mr Ball "wanted me to act as a nightwatchman" and Mr Pietrasik also describes his role as including to "act as a nightwatchman". Consequently, whilst the aerial photographs show that the caravan has been ever-present on the site since at least 2004, the evidence shows that it was always part-and-parcel of the wider use of the site and never as a separate planning unit.

91. I find that the evidence produced by the appellant is not sufficient to discharge the burden of proof that falls upon him on this ground appeal. I therefore conclude that, on the date that the notice was issued, the Council was in a position to take enforcement action in respect of the matters stated in the notice.

Appeal A: the appeal on ground (a) and the deemed planning application

92. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

The appeal on ground (a): preliminary matters

93. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. Several points flow from this.

94. The appeal on the ground (a) now relates to only part of the land to which the notice relates, broadly equivalent to the area occupied by Highways England between 2020 and 2022. The appellant accepts that, irrespective of any decision that I may reach in relation to the appeal on ground (a), the notice will take effect in relation to the remainder of the land to which the notice relates.

95. It follows from the wording of section 177(1) that the deemed planning application can only relate to the matters stated in the notice. The enforcement notice alleges a mixed use of the land. It is settled case law that the components of a mixed use are not capable of being de-coupled. It therefore follows that, even though the area to which the appeal on ground (a) now relates is now much reduced, its scope includes all the components of the mixed use at the time the notice was issued.

96. In that context, I am mindful that further development and changes have taken place on the appeal site since the enforcement notice was issued. I am also mindful that the western part of the site has been largely cleared of the HGVs that were stored there at the time the notice was issued. I have therefore relied on a combination of the written and photographic evidence, as well as my site visits, to assess this appeal on ground (a) insofar as it relates to mixed use of the site taking place on date on which the notice was issued.

97. The appellant concedes that if the appeal on ground (c) fails, then there is no fallback position open to him in relation to the use of the yard found to be lawful in the 2010 Decision. I have found that the appeal on ground (c) fails, and consequently I have had no regard to the fallback position.

The appeal on ground (a): reasons

98. The appeal site is within the Green Belt. The appellant does not dispute that the breach of planning control stated in the notice constitutes inappropriate development for the purposes of the National Planning Policy Framework (Framework).

99. The development plan for the area in part comprises the South Bucks District Local Plan (Local Plan), adopted in March 1999. In relation to development within the Green Belt, the Local Plan includes policies GB1 and GB4. The former states that, within the Green Belt, planning permission will not be granted for development other than for the change of use of existing buildings or land or the construction of new buildings or extensions to existing buildings. The policy then sets out a list of development types that could be acceptable including (g) other uses of land and essential facilities for them which would not compromise the purposes of including land in the Green Belt and which would permanently retain its open and undeveloped character. Policy GB4 states that new employment generating opportunities will not be permitted in the Green Belt

100. Both policies are predicated on the previous guidance set out in PPG2, which was published in 1995 and therefore before the publication in 2012 of the first

iteration of the Framework. Neither countenance any non plan-led development in the Green Belt, even in very special circumstances. As such, they must be considered out of date in that respect.

101. Nevertheless, the list of development types that could be acceptable in the Green Belt set out in Policy GB1 is very similar to those set out in the Framework. The only significant difference is the language used: Policy GB1 does not employ the terms 'inappropriate' and 'not inappropriate' used in the Framework. Apart from that, in practical terms the approach taken in Policy GB1 is very similar to that taken in the Framework. This brings the breach of planning control alleged in the notice squarely within the remit of policies GB1 and GB4 of the Local Plan, notwithstanding that they might be out of date in other respects.

102. Reference was made at the Inquiry to the consultation on the potential changes to the Framework announced in July 2024 and in particular to the concept of 'Grey Belts'[6]. However, both parties agree should be given no more than very limited weight. I see no reason to take a different view.

103. The Council has stated three substantive reasons for issuing the enforcement notice. Based on these and the evidence that I heard at the Inquiry, the main issues raised are:

- the effect on the openness of the Green Belt
- the purposes of the Green Belt
- the effect of the development, if any, on the character and appearance of the area
- whether the use prejudices conditions of highway safety, and
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Effect on the openness of the Green Belt

104. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect.

105. In spatial terms, some of the equipment used in relation to the preparation, storage and distribution of readymix concrete is bulky. This includes the hoppers used to store concrete dust (as well as, in some cases, the attendant portacabin) and the water towers. Similarly, the bays filled with sand, aggregate and other materials. The substantial structure erected to store scaffolding, fitted with a corrugated tin roof and wrapped in plastic sheeting, is particularly detrimental to the openness of the Green Belt in spatial terms. The multiple HGVs/lorry trailers also erode the openness of the Green Belt in spatial terms, both individually and cumulatively.

106. It also emerged in the discussion about what conditions might be appropriate should I be minded to allow the appeal on ground (a) that the

[6] Defined in Annex 2: Glossary of the consultation draft as land in the green belt comprising Previously Developed Land and any other parcels and/or areas of Green Belt land that make a limited contribution to the five Green Belt purposes.

appellant would accept the open storage of materials to be restricted to 6m in height. Consequently, if planning permission is granted, it could potentially permit storage of materials over a 4000sqm site up to 6m in height. This would seriously harm the openness of the Green Belt. Clearly, the imposition of conditions is a matter for me to consider and it does necessarily follow that such a condition would be imposed and that a lesser height limit imposed. Nevertheless, it does provide some indication of the potential harm to the openness of the Green Belt in spatial terms of the facilities required to support the use for which planning permission is sought.

107. In visual terms, all of the above-mentioned elements adversely affect the openness of the Green Belt to a greater or lesser degree. The structure erected to store scaffolding is, due to its size, height and appearance, particularly harmful in this respect, as are the hoppers used to store concrete dust. The proliferation of HGVs/trailer bodies is similarly harmful to the openness of the Green Belt in visual terms. The potential storage of materials over a 4000sqm site up to 6m in height would also cause significant harm to the openness of the Green Belt in visual terms.

108. I consider that the breach of planning control stated in the notice severely erodes the openness of the Green Belt in this location. The development is therefore contrary to Policy GB1(g) of the Local Plan in this respect.

The purposes of the Green Belt

109. Paragraph 143 of the Framework states that Green Belt serves five purposes:

a) to check the unrestricted sprawl of large built-up areas

b) to prevent neighbouring towns merging into one another

c) to assist in safeguarding the countryside from encroachment

d) to preserve the setting and special character of historic towns, and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

110. It is common ground between the parties that purposes d) and e) are not relevant in this case.

111. The last review of the Green Belt in Buckinghamshire was carried out in 2016. For the purposes of that review, the appeal site is located within General Area 98 (GA98) which, in overall terms, the review concluded performed strongly in relation the purposes of Green Belt as defined in the Framework. For that reason, amongst others, the review concluded that GA98 should continue to form part of the Green Belt.

112. The appeal site does not directly adjoin any large built-up areas. It therefore plays no role in checking the unrestricted sprawl of large built-up areas. There is consequently no conflict with purpose a) as defined in the Framework. Similarly, the appeal site is located some distance from the towns of Slough and Windsor/Eton Wick, such that the development on the appeal site would not cause neighbouring towns to merge into one another. There is consequently no conflict with purpose b) as defined in the Framework either.

113. These leaves purpose 3 as defined in the Framework, in relation to which the review in 2016 found that GA98 as a whole protects the openness and is least covered by development. In terms of the appeal site itself, the site is directly adjoined to the north by the M4 motorway and to the east by Lake End Road overbridge. These prevent any encroachment of the site itself to the north and east.

114. On the east side of Lake End Road, built development also extends up the M4 motorway. But not so on the west side of Lake End Road. On this side of the road, to the south and west of the appeal site is an extensive area of open countryside that, apart from a ribbon of houses fronting the north side of Ashford Lane, is generally devoid of built structures. Prior to the development subject to the enforcement notice taking place, the site itself was also open land that aerial photographs show being part of and contiguous with the open countryside to the south and west. The development of the appeal site has therefore encroached into the countryside, in conflict with purpose c) as set out in the Framework. This conflict must then be viewed in the context of the role played by GA98 as a whole in the protection of the Green Belt in Buckinghamshire, as set out in 2016 review. The development is also contrary to Policy GB1(g) of the Local Plan in this respect.

Character and appearance

115. The appeal site is located within the Dorney Floodplain Landscape Character Area (LCA), as defined in the South Bucks Landscape Character Assessment (October 2011). Within this LCA, the character of the landscape is that of a flat, low lying and open floodplain landscape. This allows for some long views and panoramic vistas. Tree cover is often sparse, with scattered trees and small pockets of woodland widely dispersed, commonly associated with water bodies and along field boundaries. The area is characterised by mixed farmland, predominantly in arable cultivation. Settlements are dispersed, with a strong historic character in some villages/towns. Elsewhere, settlement density is low. Where the landscape is crossed by busy transport corridors, these have a strong visual and audible influence.

116. Prior to the breach of planning control taking place, the appeal site displayed many of the characteristics of the LCA. This is shown in the aerial photograph taken in 2004. At that time, it formed part of and was contiguous with an extensive area of low-lying open farmland. Tree cover was sparse, being largely confined to a belt of trees lining Roundmoor Ditch. There was only one built structure on the site, together with what appear to be some polytunnels. The M4 motorway asserted a strong visual influence on the site, as did the Lake End Road overbridge (then on its original alignment).

117. At that time (2004), the yard was in operation but, for the reasons set out in the appeal on ground (c), the right to revert to the use then taking place has now been lost. Consequently, I have taken the baseline for my assessment of the effect of the development on the site on the character and appearance of the area as not including the development on the yard the yard but rather as appeal site forming part of the extensive network of low-lying open farmland that extended westwards. I have relied on the aerial photograph taken in 2004 as my reference for this.

118. In my judgement, this is not a valued landscape for the purposes of paragraph 180 of the Framework. It is nonetheless a landscape that exhibits a

strong and clearly defined character. It is a landscape that has a strong sense of identity. Due to its low-lying and open topography, I consider that this is a landscape that with a low capacity to accommodate the type of development that has taken place. Accordingly, the susceptibility of this landscape is high. Bringing these factors together, I consider that the landscape is sensitive to change of the type that has occurred on the appeal site.

119. The appellant has produced a Landscape and Visual Impact Assessment (LVIA). The author of that LVIA, Mr Petrow, confirms that the methodology used is based on the Guidelines for Landscape and Visual Impact Assessment, Third Edition 2013 (GLVIA3). Nevertheless, I have some difficulties with the LVIA that has been produced.

120. Firstly, there is some uncertainty in the LVIA regarding the nature of the development which is being assessed, particularly in relation to the height of development has been considered. For example, the proposed height of storage on height does not appear to have been assessed. Indeed, beyond reciting verbatim the breach of planning control alleged in the notice, there is very little in the LVIA by way of description or analysis of the development or its effect in visual terms. Moreover, despite Mr Petrow's assurances in oral evidence, in some places the phraseology of the LVIA would strongly suggest that the existing development formed part of the baseline.

121. Furthermore, it was acknowledged by Mr Petrow that the Zone of Visual Influence that has been produced is not comprehensive. But the most significant failing with the LVIA is the omission of several viewpoints, including from Lake End Common and Jubilee River Walk. The omission of these viewpoints means that the LVIA cannot be considered to be comprehensive, such that any conclusions reached were not fully informed. For these reasons, amongst others, I have treated the LVIA with more than a degree of caution.

122. The LVIA categorizes the effect of the development on the landscape on a scale ranging from 'No Change' to 'Major Adverse'. I will adopt that system here. In doing so, I recognise that the sensitivity to changes in the landscape varies between different receptors.

123. Based on my site visits, the development on the appeal site is considerably more obvious in the landscape from positions to the north. It is very noticeable in views from around the entrance to West Town Farm, from where it contrasts markedly with the open farmland in the foreground. I categorise the harm to the landscape from there as being Major Adverse. Traveling southwards (on foot), the site initially disappears from view for a section of Lake End Road before becoming increasingly visible as the overbridge is ascended.

124. It is from this viewpoint, on the overbridge to the M4 motorway and descending down to the entrance to the appeal site, that the development on the appeal site is at its most obvious and, indeed, most intrusive in the landscape. In part, this is due to being able to look down into the site, such that the viewer is fully aware of the extent of the development and all its component features. It is also due in no small part to this view being experienced by pedestrians (and by lesser degree by drivers) on the route between Burnham and Dorney, and therefore by some of the most sensitive receptors. As Councillor Sandy explained, Lake End Road is the 'gateway' into Dorney and beyond, including to many tourist spots. I categorise the harm to the landscape from there as being Major Adverse.

125. The development on the appeal site is also clearly visible from the M4 motorway itself. However, the development on the appeal is site is typically viewed only fleetingly by the occupants of vehicles fast moving traffic, albeit including by passengers in cars and on buses/coaches. But it is all the more jarring for that. I categorise the harm to the landscape from the M4 motorway itself as being Minor Adverse.

126. To the south of the appeal site, I viewed towards the appeal site from Lake End Common. At the time of my site visit, these views were largely obscured by the trees and other vegetation lining Roundmoor Ditch. As such, only limited glimpses of the appeal site were possible from there. The same was true from the garden of The Pineapple Public House, and the track leading to the kennels at the property known as 'Davette'. However, reference is made in representations to the appeal site being visible in the winter months from the rear of the properties fronting Ashford Lane. That evidence was not seriously challenged by the appellant. I therefore categorise the harm to the landscape from Lake End Common and the surrounding properties as being Moderate Adverse.

127. With the exception the pedestrian footbridge over it[7], I walked the Bridleway that runs along the south side of the Jubilee River from Lake End Road to where it passes beneath the M4 motorway. At the time of my site visit, the intervening vegetation between there and the appeal site prevented any views or even glimpses of the appeal site. However, in one or two places the vegetation on the north bank of the Jubilee River was less dense than elsewhere. In those places, I anticipate that views or glimpses of the appeal site would be possible in the winter months, from where the development on the appeal site would appear as incongruous intrusions into the rural landscape. Accordingly, I categorise the harm to the landscape from the Jubilee River as being Minor Adverse.

128. In summary, from all the places from which I viewed the appeal site or towards it, the harm to the landscape varied between Minor Adverse at best and Major Adverse at worst. This is because the development that has taken place, by reason of height and overtly industrial appearance, is intrinsically at odds with the clearly defined and distinctive character of the Dorney Floodplain LCA. This landscape has a strong sense of identity but the development that has taken place is far beyond the capacity of the landscape to accommodate and assimilate it. This applies equally with or without the mitigation measures proposed to be put in place, especially given that any mitigation planting would make no difference to views from Lake End Road (a key viewpoint), which is elevated above the site and provides clear views down into it.

129. I conclude that the breach of planning control that has taken place on the appeal site unacceptably harms the character and appearance of the area. I therefore conclude that the development is contrary to Policy EP3 of the Local Plan which indicates, amongst other things, that development will only be permitted where its scale, layout, siting, height, design, external materials and use are compatible with the character of the locality in general. The policy goes on to state that poor designs which are out of scale or character with their surroundings will not be permitted.

[7] Fenced off at the time of my site visit with no access across it.

Other considerations

Heritage

130. The duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 includes having special regard to the desirability of preserving the setting of listed buildings. Annex 2: Glossary of the Framework defines 'setting' as the surroundings in which a heritage asset is experienced. In that respect, four listed buildings (all Grade II) have been identified as potentially being affected:

- Lake End House[8]
- Barn at Lake End House[9]
- Two Barns at Lake End Farm[10], and
- Lake End Farmhouse[11]

131. The Framework requires that consideration is given to the impact of development on the significance of any designated heritage asset, including its setting. I have therefore considered the effect of the development, if any, on the setting of the Dorney and Huntercombe conservation areas.

132. The significance of all four listed buildings identified derives in part, and insofar as relevant to this appeal, from the historic association between those listed buildings and the working rural landscape that surrounded them. This includes the appeal site, which therefore forms part of the surroundings in which these heritage assets are experienced. I recognise that more recent developments may have diluted that association particularly, in relation to Lake End House, with the construction of the Lake End Road overbridge. Nevertheless, in relation to all four listed building that association remains apparent and is more than tenuous.

133. The lawful use of the appeal site is for agriculture. As such, prior to the breach of planning control that has taken place, the appeal site made a positive contribution to the surroundings in which all four listed buildings were experienced. By reason of its extent, height and industrial appearance, the development that has subsequently taken place on the appeal site has eroded the association of the listed building with the surrounding rural landscape. Consequently, it does not preserve the setting of these listed buildings.

134. The significance of the Huntercombe Conservation Area derives in part, and insofar as relevant to this appeal, from the historical buildings within it, including Huntercombe Manor and Burnham Abbey. The Burnham and Huntercombe Conservation Area Appraisal explains that this area thrived as an agricultural community from the Saxon times onwards and still retains its rural setting with both enclosed fields and open fields dating from Saxon times. This establishes a direct association between the conservation area and its rural surroundings, and this too forms part of the significance of this heritage asset.

[8] List Entry Number: 1161925
[9] List Entry Number: 1124516
[10] List Entry Number: 1309878
[11] List Entry Number: 1124435

135. When in agriculture use, the appeal site contributed to the wider setting of the Huntercombe Conservation Area. As such, prior to the breach of planning control that has taken place, the appeal site made a positive contribution to the surroundings in which the conservation area was experienced. By reason of its extent, height and industrial appearance, the development that has subsequently taken place on the appeal site has eroded the association of the conservation area with the surrounding rural landscape. Consequently, it does not preserve the setting of the setting of the Huntercombe Conservation Area.

136. There has been a settlement at Dorney since the late Anglo-Saxon times, albeit the settlement as it exists today has largely grown from the 15th century onwards. The significance of the Dorney Conservation Area therefore derives in part, and insofar as relevant to this appeal, from its history and development as a settlement. However, other than passing reference to Dorney being surrounded by open pastureland, there is nothing in the Dorney Conservation Area Appraisal to specifically link the development of the settlement to any agricultural use.

137. The Dorney Conservation Area is some distance to the south of the appeal site. Moreover, it is separated from the appeal site by, amongst other things, the Jubilee River (with the tree cover on both banks) and by the line of buildings on Ashford Close. As I noted during my site visit, there is no intervisibility between the conservation area and the appeal site. Given the absence of clear evidence of any association with the settlement of Dorney to agriculture, it follows that there is no visual or historical association between the Dorney Conservation Area and the appeal site. Consequently, I consider that the breach of planning control stated in the notice at least preserves the setting of the Dorney Conservation Area.

138. I conclude that the development that has taken place on the appeal site fails to preserve the setting of the four Grade II listed buildings identified above, as well as failing to preserve the setting of the Huntercombe Conservation Area. On that basis the development that has taken place on the appeal site fails to meet the requirements of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (in relation to the four listed buildings) and would harm the significance of all these designated heritage assets. In accordance with paragraph 205 of the Framework, I give this harm considerable importance and therefore great weight in the planning balance.

139. This harm would not result in a total loss of the significance of the listed buildings or the Huntercombe Conservation Area. As such, the harm would be less than substantial in terms of the Framework. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits arising from the development.

140. The appellant has put forward two main benefits arising the development that has taken place on the appeal site: these may be summarised as economic benefits and Biodiversity Net Gain (BNG). I acknowledge that the development may contribute to the local economy to some extent, but this is wholly unquantified. For the reasons that I set out below in relation to Biodiversity, I have serious reservations whether the claimed BNG in this case is achievable. The appellant has advanced no other public benefits arising from the development that has taken place. Consequently, when considered in the round, the public benefits that would accrue from the development do not

outweigh the considerable importance and great weight I attach to the harm that would result from it.

141. I conclude that the development that has taken place on the appeal site to date fails to preserve the setting of the four Grade II listed buildings identified as well as the setting of the Huntercombe Conservation Area. This would continue to be the case in relation to the smaller site proposed under this appeal on ground (a), given that the geographical relationship with the listed buildings and the conservation area would remain unchanged. The failure to preserve the setting of the four listed buildings would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990. It would also fail to comply with Policy 8 of the South Bucks District Core Strategy 2011 (Core Strategy) which, amongst other things, states that the setting of Grade II listed buildings will have the highest level of protection. The failure to preserve the setting of the Huntercombe Conservation Area would not accord with the provisions within the Framework.

Highways

142. The third reason for issuing the enforcement notice alleged that the use of the sub-standard entrance to the appeal site would be detrimental to highway safety and inconvenient to highway users. This was supported in representations, including those made by Dorney Parish Council. The Parish Council points out that the speed limit on this section of Lake End Road is 60mph and that the required visibility for vehicles coming south over the overbridge does not exist. In the view of the Parish Council, this necessitates the larger, heavier, vehicles entering the appeal site to undertaking a very dangerous manoeuvre to overcome the problem caused by the limited width of the access to the site.

143. The Parish Council and others also point out the use of the appeal site generates off-site parking in Lake End Road. I noted this parking on all four of my site visits. At this point, Lake End Road is cul-de-sac that serves primarily as an access to the houses along it. The road is relatively narrow and, in the view of the Parish Council, reduces visibility for those residents trying to exit this section of Lake End Road.

144. Prior to the Inquiry, the appellants and the Council agreed a Statement of Common Ground to address this reason for refusal. It was agreed that appropriate visibility splays can be achieved in both directions from the access junction and that there is no concern with the retention of the access junction to serve the appeal site in respect of adequate visibility. It was agreed that there is sufficient land within the site that can be set out to provide a suitable turning area to enable larger vehicles to both enter and exit the site in a forward gear, as well as to accommodate car parking. It was agreed that the existing access will be reconstructed to accord with the Council's highway specifications. This would incorporate a larger bellmouth radii to facilitate an improved swept path for HGVs when both entering and exiting the site.

145. It was agreed that all these measures could be achieved through the imposition of conditions, including a condition to provide turning and parking within the site. It was agreed in the Statement of Common Ground that the conditions would each state that all use of the site would cease within a period of six months of the date of any permission being granted.

146. I am satisfied that the measures set out in the Statement of Common Ground would successfully address the third reason for issuing the notice, as well as the concerns expressed by Dorney Parish Council and others. I am also confident that the conditions proposed, with some slight amendments to wording, would be sufficiently robust to secure the implementation of the measures proposed. I am therefore satisfied that this reason for issuing the enforcement notice has been overcome. Accordingly, this matter becomes neutral in the overall planning balance.

The effect of the development on the living conditions of the occupiers of Lake End House, specifically in relation to noise disturbance and dust

147. The occupier of Lake End House, Mr Stopford, complains that he is disturbed by continuous noise emanating from the site. He explains that this noise is primarily from two sources: engine noise from heavily laden lorries existing the site in a low gear, and workings on the site loading the raw materials for concrete onto vehicles, with the attendant movement of those vehicles around the site (including when reversing). In his representations, Mr Stopford says that there are multiple vehicular movements over six days each week, and that the site operates from as early as 06:00 hours to as late as 20:00. This evidence was not challenged by the appellant.

148. In addition, Mr Stopford explains that he suffers from dust raised by the movements of lorries which, in dry weather, is in his view substantial.

149. During the last of my site visits, I spent some time observing and listening to activity on the appeal site. This was mostly from the Lake End Road overbridge, but I also took the opportunity to listen to activity on the appeal site from directly outside Mr Stopford’s property. My experience of the noise environment there was clearly only a snapshot in time and during the daytime when traffic on the M4 motorway formed a significant part of the ambient noise. Nevertheless, and particularly when there were brief pauses in the background noise of the M4 motorway, the activities on the appeal site were clearly audible. Mr Stopford himself confirmed that in his oral evidence to the Inquiry. I can envisage that this would be more prevalent outside of normal working hours, but causes disturbance to the occupiers of Lake End House at all times of the day.

150. There did not appear to be excessive levels of dust at Mr Stopford’s property at the time of my site visit, but at the same time the activity on the appeal site itself was generating a lot of dust. It is therefore entirely logical that, due to its proximity the appeal site, Lake End House could be affected by high levels of dust in certain conditions. In any event, I have no evidence from the appellant to counter Mr Stopford’s claims in this respect.

151. I conclude that the development that has taken place on the appeal has to date had an unacceptable effect on the living conditions of the occupiers of Lake End House, specifically in relation to noise disturbance and dust. I see no reason why this would be any different in relation to the smaller site proposed under this appeal on ground (a), given that the geographical relationship with Lake End House would remain unchanged. I therefore conclude that the development is contrary to Policy EP3 of the Local Plan in this respect which, amongst other things, states that development will only be permitted where the use is compatible with the amenities of the adjoining development and the locality in general.

Intentional Unauthorised Development

152. The Ministerial Statement delivered on 17 December 2015 confirms that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. It explains that in such cases there is no opportunity to appropriately mitigate the harm that has already taken place, and it can involve local planning authorities in having to take expensive and time-consuming enforcement action.

153. Right from the very outset, when the appellant first purchased the site in 2003/4, it has been used for development that was unauthorised. The appellant was well aware of this, having taken advice from his solicitor at the time. The parking use was enforced against in 2005 and the notice was upheld on appeal, but other unauthorised uses of the site continued.

154. Following the 2010 decision, the appellant continued to let and use the area of land outside of the yard for unauthorised purposes. This included the use of the land as an animal sanctuary, which continued long after a retrospective application for planning permission had been refused in 2014. Then, in 2018, the appellant started using the site for HGV storage, which intensified over the following years in flagrant breach of the enforcement notice upheld in the 2010 Decision.

155. In relation to that, the appellant explained he had been advised by a planner for the proposed technology development on the site that the 2010 notice permitted the use of the land for the storage of non-agricultural plant, equipment, vehicles and materials. That advice completely contradicted his previous understanding of the position but, without taking any further advice from his solicitors involved in the 2010 Appeal and who in his words have been trusted advisers for many years, the appellant simply accepted the advice he had been given. That is simply not a credible explanation.

156. Further unauthorised uses were then introduced to the site in 2022 once Highways England vacated the plot. This included airport parking, concrete uses and other commercial businesses. What is more, on his own evidence the appellant actively assisted the airport parking use by accommodating customers who turned up on the site only to find it closed by allowing them to park on the site. Finally, even following the service of the current notice in November 2023, the appellant continued to carry out further unauthorised development on the site.

157. In considering this issue, I am required to assess to what extent, if any, the appellant was aware that the development he undertook was unauthorised. In some cases, that can be a finely balanced judgment call. Not so in this case. Given the history of the appeal site rehearsed above, there is no doubt in my mind that the appellant knew that what he was doing required planning permission and that he did not have the necessary permission(s) in place. The enforcement history of this site from 2004 onwards paints a picture of total and flagrant disregard for planning control over a number of decades. I have rarely encountered a longer and more flagrant period of intentional unauthorised development. My consideration of this issue is of course confined to the appellant's actions in relation to the breach of planning control alleged in the notice. Even so, and having regard to the background of intentional unauthorised development on the appeal site, this is a material consideration to which I attach significant weight in the overall planning balance.

Economic benefits arising from the development

158. The appellant's evidence sets out some details of the employees and turnover of the companies which are currently occupying the appeal site. Not all of these companies would remain in the event that planning permission was granted for the use of the smaller site now proposed under this ground of appeal: this would secure the future of seven of those businesses, employing approximately 28 employees. Together these seven businesses generate an estimated turnover of approximately £2.25m per year, a proportion of which is spent in the local economy.

159. However, these are the appellant's own figures and are entirely unsupported by other evidence in terms of profits & loss accounts, sales receipts, etc. Moreover, as Mrs Harding explained, the figures provided do not include details as to whether the jobs are full or part time, what the turnover is made up of and what benefits it may provide to the local or wider economy. Consequently, there is no quantification of any potential benefits that may arise from the development. The appellant says that a proportion of the combined turnover of these businesses would be spent in the local economy, but there is no indication as to what that proportion may be. Nor is there any evidence on where the employees of the companies on the appeal site come from, how much money they spend in the local area or, indeed, whether that money goes into the local economy at all.

160. Furthermore, there is no indication whether those businesses that might be displaced would be able to continue to operate their businesses from another site, or that relocation would have any material impact on these businesses. In the absence of that evidence, it is not possible to arrive at any firm conclusions as to the economic benefits that are relied upon in terms of jobs and turnover.

161. The appellant's case is in part predicated on the priority afforded to house building in the consultation draft of the Framework published in July 2024. It is axiomatic that building a significant number of new houses will require businesses that operate in the housebuilding sector and that large quantities of building materials will be required. The appellant's point is that the businesses on the appeal site are already engaged in the housebuilding sector and will be required to facilitate the push on new house building promoted in the emerging draft of the Framework.

162. It must be remembered, however, that the emerging draft of the Framework is still at consultation stage. It is reasonable to assume that there might be some kick-back from local Councils, interest groups and the residents of Buckinghamshire to the proposed amendments to the Framework. Consequently, there can be no guarantee that the consultation draft will emerge from further consideration in an unamended form. Furthermore, even if the consultation draft was to go forward unchanged in the next iteration of the Framework, there is no evidence that the need for increased capacity in the housebuilding sector could not be met on other sites that are less harmful in Green Belt and in other terms. For these reasons, I attach only minimal weight to the consultation draft of the Framework at this time.

163. There is also a further point to be considered in relation to the economic benefits arising from the development subject to the enforcement notice. A recent proposal on this same site involved the creation of 19,400sqm of non-residential floorspace, comprising shops, financial and professional services,

restaurants and cafes, hot food takeaway, drinking establishment, research and development, educational facility, and assembly and leisure. It included a 12-floor hotel with 416 rooms and two 6 floor office blocks. In accepting the Inspector's recommendation to dismiss an appeal against the refusal of outline planning permission (APP/N0410/W/22/3313350), the Secretary of State attached *significant* weight to the economic benefits arising from that much larger scheme (emphasis added).

164. The benefits arising from the much smaller scheme subject to the notice are nowhere near comparable with the much great economic benefits arising from that development, including the long and short-term job creation which in part led the Secretary of State to attach significant weight to those economic benefits. At the very most, by comparison the development subject to the enforcement notice, any economic benefit arising from the development on the amended ground (a) appeal site could only potentially be afforded moderate weight. However, in view of the lack of supporting evidence provided by the appellant, I afford it only limited weight.

165. Policy 10 of the Core Strategy states, amongst other things, that in limited circumstances where there is no reasonable prospect of a site being used for the permitted purpose or where the site is creating significant amenity issues, the priority will be for the site or premises to be reused or redeveloped (where appropriate) for an alternative economic use (i.e. a use which provides employment opportunities, generates wealth or produces an economic output or product). In this case, the site is creating significant amenity issues and would continue to do even in the smaller form now proposed. A reversion of the land to its lawful use of agriculture would still produce an economic output and product. That would therefore be a suitable alternative economic use. Consequently, I find that compliance with the enforcement notice would result in no conflict with Policy 10 of the Core Strategy.

The availability of alternative sites

166. The only evidence adduced by the appellant relies in terms of the lack of availability of alternative sites was the anecdotal evidence from Mr Wilkes that the nine sites which he lets out are always full and any spaces that do become available are quickly snapped up. The appellant has not provided any evidence to demonstrate the locational requirements of the businesses that are proposed to occupy the site.

167. The Council has not published any planning guidance in relation to site searches but, where a site search is required or submitted, Mrs Harding explained that she would normally expect to see a report setting out a clear methodology and any assumptions that had been relied upon. Amongst other things, Mrs Harding expects that a site search report should set out the site area that is required for the business and the geographical area of search, and provide commentary on why any sites were considered suitable, partly suitable or not suitable. The appellant has provided none of this.

168. It is instructive that, in a very short space of time, Mrs Harding conducted her own site search and was able to identify a number of potential sites which, on the face of it, appear entirely suitable for uses currently taking place on the appeal site. The evidence before me also suggests that at least some of these sites would be affordable to current occupiers of the appeal site. For example, a site in Chinnor providing some 0.5 acres of usable space (roughly half the

size of the ground (a) site as a whole) was being offered at a price that is directly comparable with that currently being paid by some of the occupiers of the appeal site.

169. For the avoidance of doubt, I do not take the exercise conducted by Mrs Harding to be definitive proof that there are sites currently available that would be suitable for occupiers of the appeal site to move on to. There may be any number of reasons why a particular site might ultimately not be suitable but which would not be revealed by a desk-top site search such as that undertaken by Mrs Harding. I do, however, take the site search conducted by Mrs Harding to be good evidence that there *may* be sites that are available and which would warrant further investigation. I put it no higher than that. For that reason, I cannot discount the possibility that suitable alternative sites may be available. Consequently, the claimed lack of available sites is a consideration that does not weigh in favour of retaining the development.

Biodiversity Net Gain

170. The appellant has commissioned a report that compares two scenarios for achieving BNG. Option 1 is habitat retention, restoration, creation and enhancement proposal that would be delivered if the appeal on round (a) is allowed. This would include a new native woodland to extend the existing woodland on the site, new native hedgerows and a lowland meadow priority habitat, together with the retention of existing planting adjoining Roundmoor Ditch. Option 2 is the restoration of all of the site to agricultural grazing which would be the outcome if the enforcement notice is upheld.

171. In summary, Option 1 is found to lead to a net gain in the order of 33.5% for habitat units, and 217.37% for linear features. This is the outcome that the appellant expects if the deemed planning application is granted and would be secured via a Unilateral Undertaking. By comparison, Option 2 is found to lead to a loss of habitat units in the order of approximately 37.4%. This is the outcome that the appellant expects if the deemed application is refused permission and the enforcement notice is upheld.

172. There are, however, some serious flaws in the assessment that has been undertaken and in the proposed Option 1. The pre-development baseline for the assessment is the current site, which is obviously wrong. The baseline for the assessment should be the lawful agricultural use of the land as taking place immediately before the breach of planning control took place (that does not includes the use of the yard, to which the right to revert has been lost). Furthermore, the guidance in the Planning Policy Guidance (PPG) indicates that if there has been degradation and there is insufficient evidence about the biodiversity value of the onsite habitat immediately before the degradation, the pre-development biodiversity value of the onsite habitat must be taken to be the highest biodiversity value of the habitat which is reasonably supported by any available evidence relating to it. This has not been done.

173. The BNG report confirms that a condition assessment of Roundmoor Ditch was not undertaken and that the watercourse was defaulted to a 'good' condition. That is an unscientific assumption. The habitat provided by Roundmoor Ditch could potentially host a rich variety of species. Or the opposite may be true: it may be a significantly degraded habitat. Either way, the fact that no assessment was undertaken undermines the assumptions on which the BNG calculations rely.

174. Option 1 also itself has some serious flaws. The proposed scheme incudes a new area of native woodland. The South Bucks Landscape Character Assessment for the Dorney Floodplain LCA defines the character of the landscape is having tree cover that is often sparse, with scattered trees and small pockets of woodland being widely dispersed. Extending the existing woodland, which may be fairly described as a small pocket of woodland, would not be consistent with the character of the Dorney Floodplain LCA.

175. Similarly, I am not convinced that the presence of a lowland meadow priority habitat would be entirely consistent with the flat, low lying and open floodplain landscape that is a key characteristic of the Dorney Floodplain LCA, given also that the predominant use of the land in this LCA is for agriculture. Moreover, Ms Thorne, who holds a qualification in Horticulture, expressed doubts that the stoney soil type of the appeal site would enable a lowland meadow priority habitat to take hold and to flourish. I concur. There is also the potential for the soil to be contaminated as a result of the use of the land for the parking of HGVs and other vehicles. None of this appears to have been taken into account when producing the BNG proposals.

176. There was discussion at the Inquiry whether Option 1 could be amended by, for example, distributing tree cover along the boundary of the site where it adjoins the M4 motorway rather than by extending the existing small pocket of woodland. In principle, that would be more in keeping with the character of the Dorney Floodplain LCA. The Unilateral Undertaking has been worded in such a way as to achieve the level of BNG said to be achieved through Option 1 as a minimum. I am therefore confident that this minimum level of BNG could be secured in relation to an amended Option 1. But, for the reasons set out above, I am not convinced that those minimum levels of BNG are accurate, achievable and deliverable with Option 1 or any alternative.

177. For all these reasons, I afford the benefit from BNG only limited weight.

Conditions

178. I was provided with a draft of suggested conditions in the event that I was minded to allow the appeal. These were discussed at the Inquiry, with the result that some amendments were made. I have considered these conditions against the six policy tests set out in the PPG.

179. I agree that a condition to specify and restrict the uses that may take place on the site to open storage; the storage and distribution of aggregates and other materials used for the making of concrete and the storage and distribution of scaffolding and associated equipment is both necessary and reasonable.

180. A condition requiring the submission and approval of a Site Development Scheme is necessary. Such a scheme would include details of hard and soft landscaping of the site; the maintenance and management of such landscaping; the provision on the site of parking and manoeuvring space; provision for the loading and unloading of vehicles within the site; a Construction Traffic Management Plan; wheel washing facilities; dust management; and surface water drainage including, but not limited to, preventing run-off into Roundmoor Ditch. This condition could also include measures to be undertaken in the event that contamination was found on the site.

181. Conditions requiring details of any floodlighting shall be submitted and restricting the height of any external storage would be necessary. In relation to the latter, a height of 6m for external storage would be wholly unacceptable in terms of the impact on the openness of the Green Belt and the character and appearance of the area. Although this could be amended to specify a lower height, I have no evidence to show that this would enable the use to operate. If that was not the case, imposing such a condition might negate the development for which permission is sought and would be reasonable.

182. A condition(s) restricting the hours of operation and when deliveries may take place/begin from the site would be necessary. The hours suggested of between the hours of 07:00 and 19:00 on Mondays to Fridays, 08:00 and 13:00 on Saturdays and not at all on Sundays and Public/Bank Holidays are in my view not adequate to safeguard the living conditions of the occupiers of Lake End House. Again, imposing more restrictive hours of operation might negate the development for which permission is sought and would not be reasonable.

183. I conclude that the imposition of conditions would not make the development acceptable in planning terms. Indeed, in my view the harms identified are intrinsic to breach of planning control that has occurred and could not be overcome by the imposition of conditions.

Human rights

184. I am fully aware that the dismissal of this appeal would result in Mr Pietrasik losing his home. This would interfere with his rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, his rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.

185. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the 1990 Act, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by Mr Pietrasik. The enforcement notice concerns development within the Green Belt, the protection of which is a long-standing policy objective which, as set out in the Framework, is to be afforded great weight. The development that has taken place on the appeal site harms the character and appearance of the area, and fails to preserve the setting of designated heritage assets. In that respect, the development fails to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990.

186. In weighing the balance, I am satisfied that the public interest that would be secured by dismissing the appeal and upholding the notice would outweigh the interference with the rights held by Mr Pietrasik. In reaching that conclusion, I am mindful that the caravan occupied by Mr Pietrasik did not have the benefit of planning permission. I am also mindful that the purpose of the notice could not have been achieved with any lesser steps that would have resulted in less interference with the rights held by Mr Pietrasik. I am therefore satisfied that issuing the notice was a proportionate response to the breach of planning control that has occurred, and that the interference with Mr Pietrasik's rights under the HRA is justified.

Other matters

187. A plethora of other matters have been made in the representations received from local residents. These range from nuisance arising from the burning of fires on the site to increased flooding due to the suspected blockage of Roundmoor Ditch, and more besides. I have read and understood all these comments but have focused in this decision on what I perceive to be the main issues and considerations raised by this appeal. In any event, some of the points raised in representation fall to be considered under different legislation and environmental protection regimes rather than the planning acts.

Green Belt balancing exercise

188. In accordance with paragraph 153 of the Framework, I attach substantial weight to the harm to the Green Belt. I attach significant weight to the harmful effect of the development on the character and appearance of the area. In accordance with paragraph 205 of the Framework, I attach great weight to the harm to the designated heritage assets. I attach moderate weight to the harm to living conditions of the occupiers of Lake End House. I attach significant weight to my conclusion that the development subject to the notice constitutes Intentional Unauthorised Development. These harms could not be overcome by the imposition of suitably worded conditions.

189. Against this, I attach limited weight to the benefit that results to the local economy from the development on the site. I also attach limited weight to the BNG resulting from that development.

190. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.

Conclusion on the appeal on ground (a) and the deemed planning application

191. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control that has taken place does not accord with development plan in some respects. However, I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

192. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

Appeal A: the appeal on ground (g)

193. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months.

194. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must assume that the use of the land subject to the enforcement notice does

cause the harm alleged in the reasons for issuing the notice. This includes the reason relating to highway safety which, in the absence of a planning permission, would not be mitigated by the imposition of conditions. I am also mindful that the harms resulting from the development are ongoing: this includes the harm to the living conditions of the occupiers of Lake End House, as well as any risk to highway safety.

195. The appellant initially contended for a compliance period of 15 months but presented no evidence that this length of time was reasonably necessary to achieve the steps required by the notice. In view of the ongoing harms resulting from the development, this period of time is not an acceptable outcome.

196. In cross-examination, the appellant accepted that the period of six months specified in the notice would be sufficient. However, that concession came late in the afternoon and towards the end of what was no doubt an exhausting period of cross examination. I believe that this concession represented a serious underestimation of the task that the appellant faces in complying with the notice and was offered in the spirit of being helpful rather than as a considered analysis of steps required. I consider that the period of six months specified in the notice does fall short of what should reasonably be allowed.

197. In the event, Mrs Penney recognised that it would serve no one's interests if the appellant was 'set up to fail'. Mrs Penney then confirmed that, having listened attentively to the evidence at the Inquiry, she would not object to a period of compliance of nine months. In view of the serious consequences for not complying with an enforcement notice, that is an entirely appropriate approach to take.

198. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs the private interest in significantly extending the period of compliance. However, I consider that a period of compliance of nine months would be reasonable and a proportionate response to the breach of planning control that has occurred.

199. The appeal on ground (g) succeeds to that extent and I will vary the notice accordingly.

Appeal B: the lawful development certificate

200. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful *on the date on which the application was made* (emphasis added).

201. It was held in *Nicholson v SSE* (1998) 76 P 7 CR 191 that it was plain that the reference in section 191(1)(a) of the 1990 Act to "existing use" meant that "*the use must exist at the time of the application*". In *R (Ocado Retail Ltd) v London Borough of Islington* [2021] EWHC 1509 (Admin), this was clarified as being "*only correct if the word "use" is understood as referring to a "use right", whether or not any physical use pursuant to that right is taking place at the time*". The court went on to observe, by reference to the judgment in *Swale BC v FSS* [2006] JPL 886, that it is "lawful use rights" which must subsist at the date of the application.

202. It follows that, pursuant to the judgment in *Ocado*, the lawful use right must exist at the time of the application. In this case, it did not. On the date on which the application was made (21 December 2020), Highways England had already taken occupation of the land subject to the LDC application. Indeed, Highways England had taken occupation of that land in or around January of that year, so about one year prior to the application being submitted. Highways England then commenced works to construct the new highway embankment and overbridge, as well as the realignment of Lake End Road.

203. Consequently, by the date on which the LDC application was made, the works to realign the Lake End Road overbridge had been underway for virtually one whole year. It is reasonable to conclude that these works were well advanced by then. Indeed, an aerial photo taken in April 2020 shows that significant works had already been carried out by Highways England, as authorised by the DCO.

204. At the Inquiry, a not inconsiderable period of time was spent looking at plans showing Lake End Road and comparing the old and new alignment of the Lake End Road overbridge. The outcome was an annotated plan, agreed by both parties, showing the area of the yard that remained following the realignment of the Lake End Road overbridge. It was agreed that the LDC application site was incorporated within the land utilised for the construction of the realigned overbridge.

205. That then being the agreed position, the use of the land for which the lawful development was sought (the use as a builders yard and storage of commercial vehicles, equipment and building materials) could not possibly have subsisted on the date on which the application was made. Put simply, the land was by then subsumed by and lay beneath the works being undertaken by Highways England to realign the Lake End Road overbridge. How, then, could the appellant have used the land for the uses claimed to be lawful on the day that the application was made?

206. More importantly, the "use right" could not have subsisted on that date: the land was (a) no longer under the control of the applicant and (b) the site was being lawfully used for another purpose as part of a permanent development of the land. Consequently, there was no possibility that any lawful use rights that might have accrued could have resumed.

207. Whilst there is no requirement for an accrued lawful use right to be physically taking place at the date of the application for a certificate of lawful use or development, it was held in *Ocado* that the appellant must show that it has not been lost through a supervening event. In this case, there clearly was a supervening event: specifically, the construction of the Lake End Road

overbridge. Accordingly, any accrued lawful use right was lost by the date on which the LDC application was made.

208. Having reached that conclusion, it is not necessary for me to go on to consider whether, on the balance of probability, a lawful use right had accrued for the use for which the LDC was sought.

Conclusion

209. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a correction and variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

210. In relation to Appeal B, for the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use as a builders yard and storage of commercial vehicles, equipment and building materials was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decisions

Appeal A Ref: APP/N0410/C/23/3336002

211. It is directed that the enforcement notice is corrected by:

- in paragraph 3 of the notice, deleting the words "The siting of concrete batching plant" and substituting there the words "The siting of hoppers used to store cement dust".

212. It is directed that the enforcement notice is varied by:

- in paragraph 5(15) of the notice deleting the words "Remove the concrete batching plant from the Land" and substituting there the words "Remove the hoppers used to store cement dust from the Land"
- in paragraph 6 of the notice deleting the words "SIX months" and substituting there the words "NINE months"

213. Subject to the correction and the variations, the appeal is dismissed, 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.

Appeal B Ref: APP/N0410/X/22/3304031

214. The appeal is dismissed.

Paul Freer

INSPECTOR

APPEARANCES

On behalf of the appellant

Mr Hugh Richards	Of Counsel
He called:	
Mr Christopher Ball	Appellant
Mr Matthew Ball	
Mr Ajaz Ahmed	
Mr Barry Wilkes	
Mr Christopher Winn	
Mr Craig Holloway	
Mr David Mansfield	
Mr Dermot Barrett	
Mr Graham King	
Mr James Stokes	
Mr Karol Pietrasik	
Mr Robert Petrow BA CMLI	Landscape Consultant
Mr Jeremy Flawn BA MSc MRTPI	Planning Consultant

On behalf of the Local Planning Authority

Mr Alexander Greaves	Of Counsel
He called:	
Ms Carol Thorne BA MA CMLI	Landscape Architect
Mrs Helen Harding Dip UP MRTPI	Principal Planning Officer
Mrs Stephanie Penney BA(Hons) MA MRTPI	Planning Enforcement Team Leader

Interested Parties

Mr Robert Stopford

Councillor George Sandy

Documents submitted at the Inquiry

1/ Opening submissions on behalf of the appellant.
2/ Opening submissions on behalf of the Local Planning Authority.
3/ Copy of the judgment in *R (Ocado Retail Ltd) v London Borough of Islington* [2021] EWHC 1509 (Admin).
4/ Copy of an email from Mr Christopher Ball to Mr Craig Holloway (amongst others) dated 28 September 28.
5/ Extract from the National Register of Commons, including a map showing Lake End Common.
6/ Copy of an Assured Shorthold Tenancy Agreement held by Mr Pietrasik.
7/ Closing submissions on behalf of the Local Planning Authority in relation to the appeal on ground (e).
8/ Closing submissions on behalf of the appellant in relation to the appeal on ground (e).
9/ Annotated plan showing the area of the Sweeney Yard that remained following the realignment of the Lake End Road overbridge (coloured version submitted by agreement electronically after the Inquiry closed).
10/ Extract from Guidance on Biodiversity Net Gain published on the GOV.UK website.
11/ Suggested draft conditions (updated and corrected list submitted by agreement electronically after the Inquiry closed).
12/ Closing submissions on behalf of the Local Planning Authority.
13/ Closing submissions on behalf of the appellant.

Documents submitted after the Inquiry

1/ Signed, dated and executed Unilateral Undertaking