



Appeal Decisions

Site visit made on 23 July 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/N3020/C/23/3326480 (Appeal A) & 3326482 (Appeal B) & 3326517 (Appeal C)

Land at Lime Lane Woods, Lime Lane, Arnold, Nottinghamshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act). The appeals are made by B2B Events Ltd (Appeal A), Mrs Lianne Jones (Appeal B) and Mr John Hammond (Appeal C) against an enforcement notice issued by Gedling Borough Council.
 - The notice was issued on 22 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to an outdoor pursuits, cinema and leisure venue.
 - The requirements of the notice are to:
 - i) Cease the unauthorised use of the land as an outdoor pursuits, cinema and leisure venue.
 - ii) Remove from the land all structures, facilities, equipment and paraphernalia associated with the unauthorised use, to include seating, fire pit, rifle range, archery boards, axe throwing boards, toilets, game equipment, signage, lighting, electrical fitments, fire assembly points, viewing platforms, ticket booths, post and rope means of enclosure, above ground storage tank, bins and canopies.
 - iii) Remove from the land all storage containers.
 - iv) Remove from the land the food trailer.
 - v) Remove from the land the parking area and restore the land to its condition immediately prior to its installation.
 - vi) Remove from the land the access track and restore the land to its condition immediately prior to its installation.
 - The period for compliance with the requirements is: three calendar months.
 - Appeals A and C are proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal Ref: APP/N3020/C/23/3326478 (Appeal D) & 3326479 (Appeal E) & 3326528 (Appeal F)

Land at Lime Lane Woods, Lime Lane, Arnold, Nottinghamshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by B2B Events Ltd (Appeal D), Mrs Lianne Sebastian (Appeal E) and Mr John Hammond (Appeal F) against an enforcement notice issued by Gedling Borough Council.
- The notice was issued on 22 June 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of an access track and car park.
- The requirements of the notice are to:
 - i) Remove from the land the parking area and restore the land to its condition immediately prior to its installation.

- x) Remove from the land the access track and restore the land to its condition immediately prior to its installation.
 - The period for compliance with the requirements is: three calendar months.
 - Appeals D and F are proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal E is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Summary Decisions:

1. Appeals A, B and C: The appeals are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out in the Formal Decision.
2. Appeals D, E and F: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out in the Formal Decision.

Preliminary Matters

3. The appeals, the subject of this decision letter, relate to two enforcement notices issued by Gedling Borough Council. The first alleges a material change of use of the land and the second alleges operational development. Both of these enforcement notices have been appealed by three different appellants, as set out in the banner heading above. It is suggested that an appeal against refusal of planning permission for a retrospective application is being submitted. However, no such appeal has been submitted to date and so my consideration is limited to the aforementioned appeals against enforcement notices issued by the Council.
4. On 30 July 2024, the Government published its National Planning Policy Framework: draft text for consultation. While the document proposes changes to the Green Belt chapter of the National Planning Policy Framework, at the time of writing my decision, it remains in draft form and is therefore subject to change. I therefore afford it very limited weight.

Matters concerning the notices

Material change of use notice

5. The enforcement notice alleges without planning permission, the material change of use of the land to an outdoor pursuits, cinema and leisure venue. During my visit, I saw that the appeal site comprises a substantial area, which includes areas used for agriculture. While different parts of the site are used for different activities, there is no clear physical or functional delineation between the different parts of the site and so it would appear the overall site comprises a single planning unit which is in mixed use.
6. Where there is a mixed use, it is not open to the local planning authority to decouple elements of it; the use is a single mixed use with all its component activities. Furthermore, if the ground (a) appeals were to succeed and planning permission were granted for 'outdoor pursuits' and 'leisure venue', this would be open to wide interpretation. Following the site visit, in light of the above, the Planning Inspectorate wrote to the parties and queried whether the allegation should be corrected to 'a material change of use to a mixed use of agriculture

and leisure activities comprising a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing.'

7. It was also queried whether, if the allegation were to be corrected as suggested above, it would also be necessary to correct the requirements to: 'Cease the use of the site for leisure activities, including a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing.' The parties do not dispute that agricultural activities are being carried out on the land and, since the suggested corrections would not require the agricultural use to cease, there would be no injustice to either party in making such a correction. The description of the different activities within the allegation provides clarity, without narrowing down or expanding the scope of the allegation and so I am satisfied that the notice can be corrected without causing injustice to either party.

Operational development notice

8. The appellants assert that the enforcement notice does not include details of the condition (of the access track) immediately prior to its installation and as such, the notice does not clearly set what steps the Local Planning Authority requires to be taken to remedy the alleged breach. The Act sets out the purposes of a notice, which include restoring the land to its condition before the breach took place. The landowner will be the person with the best knowledge of what the previous condition was. A notice which accords with the Act in this respect is sufficient for validity purposes.

Ground (d)

9. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
10. The appeals under ground (d) are all made with respect to the track. The main thrust of the appellants' cases is that the track has been *in situ* for more than 4 years. The operational development notice is concerned with the installation of an access track and car park and refers to the breach having occurred within the last four years. To succeed in appeals D, E and F, therefore, the appellants will need to show that the access track and car park were substantially completed on or before 22 June 2019, namely 4 years before the notice was issued.
11. The appellants suggest that, while the track serves the outdoor sport and recreational uses, it was initially installed, and remains in use, to serve the farming operation on the site. The area of hardstanding, whilst installed more recently than the track, is stated to be used for harvesting.
12. It is not disputed that the works comprise development and, given the length of the track and volume of material used to create the surface, which would have required an element of pre-planning and would have been carried out using plant and machinery, I consider the works amount to an engineering operation within the meaning of development in section 55 of the Act.

13. The appellants state that access to the site has been taken from the same spot on Lime Lane since at least 2001 and since 2017 until the present time, the track has been present in its current form. I have been provided with a series of aerial images dated between 2001 and 2022. In the 2001, 2004 and 2007 aerial images provided by the appellants, the track is not clearly visible, though what appear to be tyre tracks are visible, as is a modest gap in the hedgerow, suggesting there was an access point in this location. While this would support the suggestion that the access has been used in some way for 22 years, it is the operational development that the enforcement notice is attacking, not the use of the track.
14. The Council has provided a Streetview image from 2008, which show a set of gates near the entrance to the field. Although a modest section of land appears free of vegetation between the gate and the highway, the area beneath the gates appears laid with grass, suggesting infrequent use of the gates. Within an aerial image provided by the Council, also dated 2008, there is some slight discolouration along one side of the field leading down towards the gate, suggesting this was used by vehicles to navigate along. In my experience, it is not unusual for tractors to utilise the edge of fields to limit the effect on crops, which can result in linear features which are visible on aerial photographs.
15. On the 2012 and 2015 aerial images provided by the appellants, what appears to be some sort of track, most likely created by regular use by tyres, is evident. The Council has provided a 2012 Streetview photo and suggests there is no access track visible. Grass is still evident between the gate (which in this photograph is left open) and the field. Crop appears to be growing in the field, with what appears to be a track comprising compacted mud along one side of the field. Within an aerial photograph, dated 2015, there is some slight discolouration, similar to that seen in the 2008 aerial photograph, suggesting it is used by farm machinery to travel along.
16. The appellants have provided a Google aerial image dated 2015, which describes the 'continued use of track with natural surface'. A Streetview image, dated 2016, shows gates which are far more substantial in width. Hardcore is visible between the highway and the gates, beneath the gates and along a limited section leading into the field. This suggests the access is being used by vehicles to access the highway. Beyond the gates, however, the track appears typical of a farm track created by vehicles, with grass growing in the middle of the track, where the wheels of vehicles would not have prevented it from growing.
17. The appellants have provided a Google aerial image dated 2017, and describe it as showing 'continued use of track with the conversion [sic] to a stone track due to more intensive cropping of Maize'. While some sort of track is evident in the aerial image, it appears less well defined, less prominent and of a width that is less substantial compared with the track on the 2022 image and, in my view, still has the characteristics of a track which is created by vehicles. Furthermore, the parking area does not appear to have been laid in the 2017 photograph.
18. A similar image, dated 2018 is described as showing 'the track is evident and the hard core present in the picture which was placed down for the harvesting operation for potatoes'. A Google aerial image dated 2019 states 'this is the first introduction of B2B onsite. The track is already established'. However, the

appearance of the track does not change markedly, until the image dated 21 September 2019, when it appears more solid, without grass between tyre marks and it appears wider compared with previous images.

19. On the image dated 31 March 2021, the parking area appears to have been partially constructed. A Streetview image dated 2021 shows that the gates have been moved back from the highway a number of metres and fencing has been erected. Hardcore appears to have been laid along the rest of the track and the track appears more substantial in width compared with the track in 2016. By the image dated 4 June 2022, the car park is evident and appears to be being used by cars.
20. Although the car park appears to have been partially constructed in the 2021 aerial image, it is not until the 2022 aerial image that it appears to have been substantially completed. By this point, the track appears to have been finished using a lighter coloured stone which reflects the light more than material used previously, making it appear more prominent in the aerial photographs. It seems unlikely the change in appearance of the track simply relates to maintenance at different times throughout the seasons. In my view, the difference is likely to be due to the laying of substantial quantities of hardcore.
21. I have been provided with accounts information which shows that, on 13 June 2015 crushed stone was purchased. The accounts also detail payment on 22 June 2015 for 'track laid'. However, the documents do not show where within the farm the track was laid. Given the appearance of the track in 2016, it seems unlikely it was used to construct the track as it exists today.
22. Furthermore, in an aerial photograph dated 2021, the image is stated as showing 'planting potatoes in 2021 and hardcoring the area used for grading in preparation for harvest', which points to further works being carried out to the track in 2021. While it may have been possible to use stone taken from other farm tracks across the wider farm holding in construction of the track, given the consistent appearance of stone used in the track and the car park and the likely quantities required, I consider it more likely the material used to construct the track was brought to site and laid as one act of development.
23. The appellant has provided an aerial photograph taken in 2019, which is stated to be when B2B was first introduced to the site. The carpark is not evident in its current form but appears to comprise a much smaller area. An email, dated 7 March 2023, to the Council¹ states that 'the farm's records show that the track was installed in 2010. The records also confirm that the wider area was installed in 2021'.
24. Although it is not precisely clear what the appellant means by 'the wider area' from the photographs provided, it seems likely that works to the track and car park were carried out in 2021. Such works do not relate to the maintenance of the track at different times throughout the seasons, or the visibility of grass at different times of the year, but the extent of hardcore which has been laid within the site.
25. While there may have been some form of track present within the site prior to the installation of the track and carpark, what has been installed, in my view,

¹ Appendix A to the Appellant's Statement submitted in support of Appeal F

is, as a matter of fact and degree, a new track and car park. The material used to finish the track and car park appears the same, and in my view, is likely to have been laid at the same time.

26. For the reasons given above, I consider, on the balance of probabilities, that the track and car park were not substantially completed on or before 22 June 2019 and so the appeals under ground (d) must fail.

Material change of use notice

27. It is not suggested that material change of use of the land has occurred for a period of at least 10 years, which is the relevant immunity period for a material change of use. Whilst a notice which alleges a material change of use can require the removal of ancillary or incidental works in order that the site is restored to its previous condition, I have found that the track and car park are not immune from enforcement action for the reasons set out above and so it is not necessary for me to consider under ground (d), whether the works facilitated the material change of use and therefore whether the material change of use enforcement notice could have required their removal. I shall, however, consider this matter below, since it is relevant to my consideration of the appeals under grounds (a) and (f).

Ground (a)

28. A planning application, reference 2022/1316, was submitted to the Council for the use of the land for outdoor sports and recreation, siting of structures for ancillary storage, office and refreshments, and associated track car park and infrastructure in November 2022, which was refused by the Council. The appellants suggest that, given that the Council's reasons for refusing the planning application related to Green Belt, the only matters in dispute in these appeals are the impact (of the appeal schemes) on openness of the Green Belt. However, the enforcement notice was issued following the refusal of the planning application and does not limit its concerns to Green Belt.

Main Issues

29. The main issues of appeals A and C, with respect to the material change of use are:
- Whether the material change of use is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (December 2023)(the Framework) and relevant development plan policies;
 - The effect of the material change of use on the openness of the Green Belt;
 - The effect of the material change of use on the living conditions of nearby occupants;
 - The effect of the material change of use on highway safety;
 - If the material change of use is inappropriate development, 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 required to justify the material change of use.

30. The main issues of appeals D and F, with respect to the operational development are:

- Whether the access track and car park are inappropriate development in the Green Belt having regard to the National Planning Policy Framework (December 2023)(the Framework) and relevant development plan policies;
- The effect of the access track and car park on the openness of the Green Belt; and
- The effect of the access track and car park on highway safety;
- If the access track and car park are inappropriate development, 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 required to justify the access track and car park.

Reasons

31. Although not identified in the allegation, the material change of use notice requires removal of the parking area and access track on the basis that they were installed to facilitate the material change of use. As set out above, a notice which alleges a material change of use can require the removal of ancillary or incidental works in order that the site is restored to its previous condition.
32. It asserted that the access track was initially installed to serve the farming operation on the site and whilst the hardstanding was installed more recently, it is used for agricultural purpose during the harvest season. It is stated that machinery is used, including a grader, that requires a solid base that is robust in wetter weather.
33. However, while some of the photographs provided show machinery being used on a hard surface, some of the photographs also show the machinery being used on, what appear to be, unmade surfaces. Given the purpose of these machines, I consider it likely they would be designed to be used on unmade ground in all weathers.
34. In addition to the use of a grader, it is suggested that the business requires access for lorries, which would serve land to the north side of Lime Lane and land to the south, as there are no other areas present for lorry access on the farm. I have been provided with indicative turning circles for a lorry and a potato grader. However, given its layout, I consider it unlikely the track and carpark has been constructed to facilitate the turning of large vehicles such as this. Rather it appears to have been constructed to facilitate the parking of cars belonging to visitors of the leisure activities, with posts and rope demarcating different parts of the track/parking area.
35. From the evidence before me, I consider it likely that the car park and track were laid to facilitate the material change of use of the land and, while there may have been some sort of track prior to the laying of the track which is currently *in situ*, even if some of it remains, it has been incorporated into the track and car park.

Whether inappropriate development in the Green Belt

36. Policy 3 of the Aligned Core Strategies Part 1 Local Plan (the ACS)(2014) sets out the principle of the Nottingham Derby Green Belt will be retained. The National Planning Policy Framework (the 'Framework')(December 2023) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
37. The construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 154, including b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for... outdoor recreation...; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
38. Paragraph 155 advises that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include: b) engineering operations; and e) material changes in the use of land (such as changes of use for outdoor sport or recreation...).
39. The appellants suggest that the use of the land as an outdoor pursuits, cinema and leisure venue would fall to be considered as 'outdoor recreation', a matter which is not disputed by the Council. I agree that the activities which take place within the appeal site should be considered to be 'outdoor recreation' and that it therefore falls to be considered under paragraph 155e) of the Framework.
40. As held by the Inspector in respect of appeal decision APP/R5510/W/22/3306805, logic dictates that it must be possible to permit such a new building whilst also preserving openness, as otherwise, this exception would serve no purpose. While the Inspector's consideration relates to buildings in the Green Belt, in my view the same principle would apply to a material change of use, i.e., that some reduction in openness does not automatically mean that a material change of use fails to preserve the openness of the Green Belt.
41. Indeed, paragraph 150 of the Framework advises that, once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use and to provide opportunities for outdoor sport and recreation (amongst other things). Whether openness would be preserved requires a balanced judgement, having regard to the particular facts and circumstances of the case in hand.
42. In support of their case, the appellants have provided a Landscape and Visual Appraisal (LVA). The LVA concluded that there is predicted to be a neutral effect on the landscape character, reducing to potentially beneficial if planting and woodland management is carried out. This conclusion was drawn considering the sensitivity of the receptor and the magnitude of change.
43. 'The magnitude of change' considers alteration or loss of one or more key landscape features/elements of the baseline important to character,

introduction of features / elements characteristic or not uncharacteristic of the area. However, the essential characteristics of Green Belts are their openness and their permanence.

44. While I have considered the findings of the LVA, the openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. How to take account of the visual effects is a matter of planning judgement rather than one of legal principle.
45. The access track is constructed of hardcore and is of substantial width and length, with a parking area located away from the road. Adjacent to the road is a wooden sign, advertising 'Notts Maze', with substantial poles which are clearly visible from the highway. A pole with a camera affixed is located by the entrance to the site and a banner advertising 'Into the Forest' was affixed to wooden fencing.
46. The access has a width of approximately 11 metres at its junction with Lime Lane, with an internal gate around 9 metres wide, located around 20 metres back from the carriageway. The access track leading into the site narrows to approximately 4m in width, extending around 335m from Lime Lane, providing access to a parking area of around 1,410sqm.
47. While there appears to have been an agricultural access in this location prior to the material change of use, from the evidence, it appears this was far more modest in width, with agricultural metal gates and limited wooden fencing either side. The access track which is currently *in situ* is clearly visible from the highway, as is the wooden fencing, banner, camera and wooden sign.
48. The Council advises that it is necessary to surface the first 10 metres of the access track in a hard bound material and to provide drainage solutions to prevent the discharge of water onto the highway. While I will deal with these matters in more detail below in respect of highways below, whether I agree they are necessary or not, the effect on Green Belt is, in my view, likely to be similar. The track and car park are laid with hardcore, which covers a substantial area and, despite it being relatively level, it has resulted in a loss of openness.
49. Cars parked within the car park are also visible from the public domain. The appeal site was closed during my site visit and so there were a limited number of vehicles parked within the site at that time. However, within the Council's committee report, it is suggested that the parking area accommodates up to 55 vehicles. I have also been provided with a transport statement, which includes the results of a survey carried out on Friday 28th and Saturday 29th of October 2022 during the half term holidays. The survey also identifies typical car trip generation for the weekend and weekdays, which indicates that up to 42 cars were on site at any one time. The report also advises that car parking demand for 250 vehicles are associated with periodic events such as Bonfire Night.
50. The parking of up to 55 vehicles or more has both a spatial and a visual effect on the openness of the Green Belt. Furthermore, the number of vehicles can be significantly greater than this. While the spatial and visual effect of vehicles is likely to be less during the winter months when the appeal site is less busy and there may be no vehicles parked when the facility is closed, I consider the

effect of vehicles parked within the site to be nonetheless, significant, resulting in a loss of openness.

51. The appellants suggest that landscaping could address any concerns, however, this would not address the spatial effect of the cars. Furthermore, the use of native species which are characteristic of the area, is unlikely to be effective during the winter period when deciduous plants lose their leaves.
52. The appellant has suggested replacing the hardcore within the parking area with 'Ecodeck parking'. However, in my experience, such a solution is still likely to require some sort of aggregate fill to ensure it can withstand the weight of vehicles. Therefore, whilst such a solution may have a lesser visual effect compared with hardcore alone, it will still have a spatial effect on the openness of the Green Belt. Moreover, this would not address the effect of the parked cars or the access track on openness.
53. A ticket booth is sited opposite the car park area and is constructed of wood. A number of containers are sited within this area, with solar panels leaning against them. A mobile catering unit was adjacent to the containers. Lighting and security cameras on substantial poles have also been erected. Seating and a modest wooden building was also located in the area close to the car park. Wooden poles with rope limit where users of the facility can park and walk.
54. Photographs provided by the Council show that, prior to my visit, there were a greater number of containers within the site. Indeed, I note that two of the containers were removed from site during determination of the planning application, prior to the issue of the enforcement notice. A greater number of wooden seats were provided, as was what appears to be an outdoor heater. To the rear of the containers were bins, what appears to be a generator, lighting equipment and other paraphernalia.
55. Although removed by the time of my visit, a series of poles connected by strings of lights frame the area where the ticket booth and iso containers are located. The containers, ticket booth and other paraphernalia can be seen from Lime Lane and despite their limited height and setback from the highway, they give the site a cluttered appearance.
56. It is suggested that the removal of a number of containers from the site is a significant concession. However, these containers facilitated the unauthorised use and did not benefit from planning permission, nor is it suggested that they were lawful. Their removal does not, therefore, weigh in support of the appeal scheme.
57. While many of the items on the site can be easily removed in the event the use ceases, including the containers, they are likely to remain in the same place for a significant period of time, giving them the quality of permanence. Indeed, a number of the containers are stated to be required on a daily basis all year round.
58. I note the appellants are willing to consider the re-location of containers and also suggest cladding the containers in timber and providing planting. However, this would not lessen their spatial effect, furthermore, it is not clear where they would be moved to or what the resultant visual effect would be.

59. The refreshment trailer is on wheels and can be moved around the site and can also be removed from site during the winter months. Beyond the ticket booth and containers is a wooded area. The outdoor cinema and bush school are located in the area closest to the ticket booth. A wooden platform is used to place the screen and blue cables provide a power supply. A fire extinguisher, fire alarm and first aid kit are affixed to a tree by one of the platforms. A fire pit, constructed using bricks is located beneath a parachute, which is suspended from the trees.
60. A makeshift structure constructed using wood and corrugated plastic sheeting is located by the fire pit. Beyond this is an area which is used for laser tag. Tyres, wooden pallets, makeshift buildings, drums and other paraphernalia are located within this area. These elements could not be seen outside of the site during my site visit due to intervening vegetation. While they may be visible outside the site during the winter months, their visual effect on the openness of the Green Belt is likely to be limited due to their position in the woodland.
61. Beyond the laser tag is a clearing, within which the riffles, axe throwing and archery are located. Wooden frames and target boards are located within the clearing, along with number of wooden benches. The various items within the clearing were not visible from the public domain during my visit due to their position within the clearing and the presence of intervening vegetation. However, due to gaps in the vegetation, were the target boards (for example) to be moved, it is possible that they may become visible from the public domain. Gap planting may help address this and could be secured by condition.
62. To the north of the wooded area is a maze, within which two viewing platforms have been erected, which allow users of the maze to climb to the top and see across the maze. Within the maze is seating and boards. The maze itself is created using maize, which is planted in a pre-determined pattern. The maze is a seasonal activity and so the viewing platforms can be removed from November to June each year.
63. The maze is located to the north of woodland, with no significant views from the public domain. However, its precise location within the site could change. In a 2019 aerial photograph provided, for example, the maze appears to be located in an area to the west of the carpark. Even if the maze is retained in its current location, the viewing platforms, which are substantial structures, and other paraphernalia have a spatial effect on openness, albeit such effect would be limited in duration were a condition to be included requiring removal of the viewing platforms between November and June each year.
64. A number of other items are only required on site for part of the year, such as portaloos (up to 5 on site between August and October each year, hired on an 'as required' basis) and the cinema pallet stage (on site between May and October). The Council has suggested the inclusion of a condition to secure the removal of these items, which would ensure the use has a more limited effect on the openness of the Green Belt during those periods.
65. The Council has also suggested a condition limiting the retention of ancillary equipment to the site to that which is hereby approved. However, in the absence of a clear and detailed list showing which items are approved, it would be difficult for the appellant to know what they could bring to the site, or indeed for the Council to know whether the condition has been breached.

Furthermore, it would prevent the appellant from replacing items when they became worn out or broken. I do not consider such a condition would therefore be reasonable to impose. Moreover, this would not address the harm to openness caused by items which are already on the site.

66. The access track, car park, ticket booth, containers, advertising board, advertising banner and security camera are all visible from the public domain and have both a spatial and visual effect on the openness of the Green Belt. Although a number of activities are carried out within woodland, which limits their visual effect on the openness of the Green Belt, overall, the material change of use, through the introduction of substantial quantities of hardcore, vehicles, ticket booth, containers, a trailer, game equipment, and other paraphernalia associated with the unauthorised use fails to preserve the openness of the Green Belt.
67. While it would be possible to include a condition to require removal of structures, facilities, equipment and paraphernalia associated with the unauthorised use to be removed in the event the use ceases, the harm to openness arises during their use in association with the unauthorised use.
68. My attention has been drawn to an application at the Bulwell Foresters Archery Club, just 2.8km from the appeal site. Planning permission was granted for retention of use of the grazing field to target archery field including 2 no. storage buildings for safe storage of equipment and toilet. The Officer's Recommendation stated *'Given their scale, and location in close proximity to the Goosedale Conference Centre complex of buildings and within the corner of a field screened on 2 sides by mature hedgerow and trees I am satisfied that the buildings to be retained would preserve the openness of the Green Belt setting of the site and would not conflict with the purposes of including the land within the Green Belt'*.
69. While the above planning permission is asserted to be very similar (to the appeal scheme) I respectfully do not agree. Although I have limited details regarding that scheme, it is clear the officer has made their recommendation on the basis of its proximity to an existing complex of buildings. Access is also via an existing car park serving that complex and would comprise grass. Significantly, while the appeal scheme before me includes archery, it includes a number of other activities. I do not consider it to be comparable to the appeal scheme before me.
70. Furthermore, the officer concluded that the proposed archery use would not be inappropriate development given that it would fall within a recreational use. However, the Framework requires consideration as to whether those other forms of development preserve its openness and do not conflict with the purposes of including land within it. In this respect, it is not clear that the officer has considered whether the use preserves the openness of the Green Belt.
71. I recognise that the level of activity within the site will vary on a daily and seasonal basis and that the effect on the openness of the Green Belt will, as a consequence, also vary. I also note the suggestions made by the appellants, as well as the conditions suggested by the Council to limit the visual and spatial effect of the appeal scheme. However, in practice it would be very difficult to control the equipment that is brought to the site, particularly where the items

brought to site do not constitute development. Such items diminish the openness of the Green Belt.

72. The access track and car park is an engineering operation which has resulted in a loss of openness and the use of the car park for the parking of vehicles also results in a loss of openness and conflicts with the purpose to assist in safeguarding the countryside from encroachment. When considering the different elements of the activities on site, I consider the storage containers, structures, equipment and paraphernalia associated with the unauthorised use fail to preserve the openness of the Green Belt and results in moderate harm to the Green Belt.
73. Although I have considered the track and car park as part of the material change of use, since an enforcement notice has been issued in respect of the track and car park, it is necessary to consider this independently of the material change of use. The material used to construct the track and car park reduces the openness of the Green Belt in both visual and spatial terms. Furthermore, the hardstanding facilitates the parking of vehicles in that area, which can be seen from Lime Lane. As set out above, I do not consider planting would overcome the visual or spatial effects on the Green Belt. As a result, I find the track and car park fails to preserve the openness of the Green Belt and results in moderate harm.
74. Consequently, I find that both the material change of use and the access track and car park are inappropriate development in the Green Belt and have resulted in moderate harm to the openness of the Green Belt, contrary to policy 3 of the ACS and the relevant expectations of the Framework, the requirements of which are set out above.

Living conditions: Noise and disturbance: Material change of use

75. I note that the Council did not refuse application 2022/1316 on the basis of noise and disturbance. However, this appeal concerns the issue of an enforcement notice which does identify noise and disturbance as a reason for issuing the notice. Furthermore, a number of interested parties have raised concern regarding noise and disturbance through this appeal.
76. Policy LPD32 of the Gedling Borough Local Planning Document Part 2 Local Plan (2018) (the LPD) seeks development which does not have a significant adverse impact on the amenity of nearby residents or occupiers, having regard to noise, amongst other things. The activities carried out within the appeal site have the potential to cause noise and disturbance from events and activities and associated vehicle movements. The Council states it has received complaints regarding noise emanating from the site as a result of the cinema events held in 2022 and I have been provided with a log of complaints by interested parties.
77. Without a condition to control noise, it is suggested the use has the potential to cause unacceptable noise and disturbance to those in the locality, contrary to policy LPD 32. Through this appeal, the Council has suggested the inclusion of a condition requiring that any amplified audio on site shall not exceed 5db above background noise levels when measured 2m from any boundary of the site at any time. In accordance with the guidance set out in BS4142. In the Council's officer report, it is stated that Environmental Health have

recommended a condition requiring the monitoring and recording of noise levels of cinema events or any events that include live or recorded amplified music to ensure that noise levels do not exceed 5db above background noise. However, it would not, in my view, be reasonable to require noise monitoring every time the cinema is used.

78. The appellant has provided a copy of a noise assessment which was submitted in support of the planning application for the site. There are a number of residential properties to the south west of the site, located off Lime Lane. The nearest noise sensitive receptors are Witt Barns. The assessment identified daytime background sound levels of 51dB_{A90,T} evening background sound levels of 45dB_{A90,T} and night-time background sound levels of 35dB_{A90,T}. However, data logged between 10:00 and 23:00 on Saturday 24th and Sunday 25th September was removed from the analysis of baseline data because two music events were taking place at the site, which, it is suggested, may have affected the measured sound levels.
79. I have some concerns with the assessment provided. Background noise levels on a Sunday, for example, can often be lower compared with the rest of the week as people are less likely to be travelling to and from work. Since road traffic movements on Ollerton Road and Lime Lane are stated to be the primary sources of noise affecting the baseline acoustic environment, excluding weekends in this way is a real concern. It was open to the appellants to carry out noise monitoring on a weekend when no activities were taking place within the site.
80. The raw data provided, which does include levels taken on the Saturday and Sunday, shows that levels taken on the Saturday in particular, were generally higher compared with those taken on other days when the music event was not occurring. I have no substantive details of the 'music event' that was taking place on these days. Nevertheless, it appears to have influenced the noise levels recorded at the measurement location, LT1, south west of Site, near Witt Barns. This is a concern.
81. While it may be possible to impose conditions to limit the hours of operation and to control noise arising from the site, conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have concerns that it would be reasonable to impose a condition limiting noise levels to 5dB above background, or that it would be sufficiently precise, since background noise levels can vary over time.
82. The condition would, in my view, need to specify the level of noise emitted from the site which should not be exceeded, as measured on the boundaries of the site at a particular location. However, I do not know what level this should be, since I do not know what the background noise levels are for Saturdays or Sundays.
83. Furthermore, I do not know whether it would be feasible for the site to operate whilst adhering to such noise restrictions, since the noise assessment has relied upon modelling rather than assessing the actual noise generated by the site. While noise will be generated by the different activities within the site, it will also be generated by users of the car park, ticket booth and containers. It is not unreasonable to expect users of the site to be in high spirits, and so they

are more likely to generate noise by shouting, laughing and so on. Given the proximity of the car park to Witt Barns, such noise may cause noise and disturbance which occupants of Witt Barns find intrusive.

84. The Council has also made reference to the potential for lighting pointed towards neighbouring residential properties. However, while the use of lighting has the potential to cause harm to the living conditions of occupants, I consider this could be controlled by condition. While this is not, in my view, a reason to refuse planning permission, it is a neutral factor in my consideration of the appeal.
85. Thus, for the reasons set out above, I consider the material change of use harms the living conditions of nearby occupants, contrary to policy LPD32 of the LPD, the requirements of which are set out above.

Highway safety

86. I have been provided with a Transport Statement (TS), which was produced in support of the aforementioned planning application for the site. The TS concluded that the access is suitable to cater for the largest vehicle type expected to access the site, that suitable visibility splays can be achieved across land controlled by the appellant or the Highway Authority and that the uses will not result in a severe net impact on the highway network.
87. The track has been constructed using an unbound material, which I saw vehicles can track onto the highway. This has the potential to create a hazard for users of the highway. The Council states that to meet the requirements of the Highway Authority, the access would need to be formally constructed and hard surfaced for a minimum distance of 10m behind the nearside carriageway edge. The introduction of an impermeable access may also result in surface water being discharged on the highway and so drainage solutions would also need to be provided.
88. I agree it is necessary to modify the access, in the interests of highway safety. It would, however, be possible to secure such improvements by condition and so, there would be no harm to highway safety arising from the appeal scheme and no conflict with policy LPD 61 of the LPD which seeks to ensure development does not have a detrimental effect on highway safety, amongst other things.
89. Policy LPD 57 sets out the requirements for parking. The Council also refers to its Parking Provision for Residential and Non-Residential Developments: Supplementary Planning Document (SPD) (2022) in its Statement of Case, which sets out parking requirements. The Council has suggested the inclusion of conditions to secure the provision of 3 no. disabled parking spaces and the demarcation of individual parking spaces. The space within the site is substantial and as such, I consider it would be possible to provide sufficient parking on site.
90. The required works are alleged to cause further harm to the Green Belt, however, this is a matter which should be considered in terms of the Green Belt rather than highway safety. Subject to the inclusion of conditions to address the above matters, there would be no conflict with policies LPD57 and LPD61 of the LPD, or the SPD, the requirements of which are set out above.

Other considerations

91. The appellants have drawn my attention to policy 4 of the Aligned Core Strategy (2014), which encourages economic development of an appropriate scale to diversify and support the rural economy. Policy 47 of the LPD also supports rural employment/business development where it accords with Green Belt policy.
92. The site utilises parts of the farm which are unlikely to be used for agriculture and generates an income for the landowner, which is likely to assist in sustaining the farming business. While this is a benefit, there is no substantive evidence to show that the farming business would be jeopardised by the loss of this income, or that a scheme which has a lesser effect on the openness of the Green Belt would be unable to support the farming business. I therefore afford this matter limited weight.
93. The appeal scheme is stated to employ up to 45 people per year and is likely to have resulted in indirect benefits to other local businesses. For example, local businesses used for the supply of goods and services, local taxi and coach companies used by members of the public and groups visiting the site, and money spent by visitors to the site elsewhere in the locality. This is a matter to which I moderate weight.
94. The appellants work with community groups and charities including Catch 22, a registered charity which offers alternative provision to schools for pupils outside mainstream education, Cubs/Scouts and Southwell Rugby Club. B2B is stated to be an alternative provider of education who works with the County Council and a number of local schools.
95. I recognise that learning through the outdoors is becoming increasingly popular in education, and that facilities which afford such provision will, by their very nature, be located in open countryside. However, while this may justify locating the bush craft and forestry school activities within the appeal site, it does not, to my mind, justify other elements of the mixed use, such as the outdoor cinema. I therefore afford this matter moderate weight.
96. Outdoor activities became increasingly popular as a result of Covid restrictions and, since lockdowns have ceased, remain popular as a way of enjoying the countryside. The appeal site comprises private land with no public access and so opening up the site to members of the public increases recreational opportunities within the Green Belt, which is a benefit.
97. Indeed, this is most likely reflected by the representations received by the Council in support of the use in response to its consultation on the planning application for the site, including a petition with 131 signatures and an electronic petition with 2500 plus signatures. Reference is also made to the use of the site by Guide Dogs for Nottingham using the site to train dogs in a safe environment. However, it is likely to be possible to increase recreational opportunities with a scheme which has a lesser effect on the openness of the Green Belt. I therefore afford this matter moderate weight.
98. The appellant has provided an ecology report which recommends a series of measures to enhance the site for a range of species, as well as active woodland

management. These measures could be secured by condition and would provide some benefit, to which I afford modest weight.

99. The maize from the maze is used as feed stock for Seven Trent Green Power and is stated to generate electricity. However, were the enforcement notice upheld, there is no reason why maize could not continue to be grown and used to generate electricity. I therefore afford this matter very limited weight.
100. During my visit I was able to see a historic farm access which meets the highway at a bend in the road, with more limited visibility splays than the appeal access. While the track which has been constructed provides an alternative point of access which could be used by farm machinery, were the notice upheld, notwithstanding any arguments advanced under ground (f), the requirements are to restore the land to its condition immediately prior to its installation. There was clearly an access point in this location prior to the installation of the track which is currently *in situ*. Once the enforcement notice was complied with, it would therefore still be possible for farm machinery to use this alternative point of access. I therefore afford this matter very limited weight.

Green Belt Balance and ground (a) conclusions

101. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Material change of use

102. The material change of use of the land to a mixed use of agriculture and leisure activities comprising a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing is inappropriate development in the terms set out in the Framework and has led to a modest adverse impact on the openness of the Green Belt. I have found it also harms the living conditions of nearby occupants. While I recognise the economic, social and environmental benefits associated with the different elements of the mixed use, I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist, and the appeal scheme conflicts with the Framework and with policy 3 of the ACS and policy LPD32 of the LPD and the development plan taken as a whole.

Operational development

103. The access track and car park are inappropriate development in the terms set out in the Framework and have led to a modest adverse impact on the openness of the Green Belt. I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist, and the appeal scheme conflicts with the Framework and with policy 3 of the ACS and the development plan taken as a whole.

104. Thus, for the reasons given above, I conclude that the appeals under ground (a) should be dismissed.

Ground (f)

105. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

106. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. Given the requirements of the notices, it is clear that their purpose is to remedy the breach of planning control.

107. The appellants state that the land has been farmed since 1901 and the track is and remains an essential route for the farming business. It is used to work the fields, including planting and harvesting of food crops. It is suggested the parking area is also used in association with the track, as it is used to site a potato grader or other large farm machinery. This argument is relevant to both enforcement notices.

108. The Town and Country Planning General Permitted Development Order 2015 (as amended)(the GPDO) permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of engineering operations which are reasonably necessary for the purposes of agriculture within that unit. However, by virtue of Article 3(6) of the GPDO, the permission granted by this Part does not authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a classified road.

109. Were the enforcement notices upheld, once complied with, the appellant would not then be able to construct the track as it currently exists, even if this was for agricultural purposes only, since it would involve the material widening of a means of access to an existing highway which is a classified road. Furthermore, to be permitted the works would need to be reasonably necessary for the purposes of agriculture within that unit. While the land is clearly farmed, the track leads to fields rather than farm buildings, where farm machinery is likely to be stored overnight.

110. Although farms will often comprise a series of tracks within their farm holdings, including tracks which provide access onto a highway, substantial tracks and car parks such as the one that has been created at the appeal site are generally not used within fields for the harvesting of crops. As set out above, in my view, the track and car park have been constructed to facilitate the alleged breach and so their removal is not excessive.

111. The notices require the removal of the access track and parking area and to restore the land its condition prior to its installation. While the appellants are best placed to know what that condition was, from the evidence, it seems likely

that there was a modest access *in situ* prior to the laying of the appeal access track and car park. Since there was previously an access point, restoring the land to its condition immediately prior to the installation of the track and car park would enable the modest access to be restored. The requirements of the notice are therefore not onerous in this regard and the appeals under ground (f) fail with respect to the track and car park.

112. Many of the items required to be removed by the material change of use enforcement notice are not fixed in place, some cannot easily be seen because they are within the woodland and, in some cases, items have now been removed. However, as set out above, a notice which alleges a material change of use can require the removal of ancillary or incidental works in order that the site is restored to its previous condition. This can include the removal of works which would otherwise be immune, or which do not amount to development at all. While some items have already been removed, since they could easily be brought back to site, they should not, in my view, be deleted from the requirements.
113. Were the material change of use enforcement notice upheld, the appellant would still be able to carry out agricultural activities within this site. Since I have corrected the notice to refer to a mixed use, it is necessary to make further corrections to the requirements so that it is clear that it is only items brought to the site in association with the leisure activities which need to be removed.
114. The appeals under ground (f) succeed to that extent and I shall vary the material change of use notice accordingly.

Ground (g)

115. An appeal under ground (g) is made on the basis that any period specified in the notice falls short of what should reasonably be allowed. The appellants request that a period of 6 months is given for compliance as farming is a year-round enterprise with peaks in the Summer and Autumn seasons. It is suggested that the track is heavily used during these periods and the parking area during harvest.
116. While I saw farm machinery parked on the car park during my site visit, no machinery is evident within the photograph of the car park provided by the Council. Farm machinery is also not evident within the car park on the aerial photographs provided by the appellants. Farm machinery can be seen navigating the fields rather than the track or car park in an aerial photograph dated 2021. In an aerial photograph dated 2022, various tracks can be seen around the field, with what appears to be a track running alongside the appeal track, suggesting farm machinery purposely avoids using the track. Indeed track marks were evident in the grass alongside the appeal track during my visit.
117. Although photographs provide a snapshot in time, within the transport assessment submitted in support of the planning application, the access is described as historically been used for agricultural uses with a vehicular access onto Lime Lane, which is now being utilised for the activities and events based business. The assessment considered vehicles accessing the site and recorded cars, along with one LGV. No consideration was given the agricultural vehicles

or machinery and no such vehicles were identified as using the access during the survey.

118. While the survey was carried out over a limited period, it was carried out during October, which is in the Autumn, when the appellant suggests the track is heavily used. Furthermore, I would expect a transport assessment of this type to consider all traffic utilising an access. There is also potential conflict between farm machinery using the track and car park and visitors to the site using it, given the limited width of the track, which means farm machinery and a car are unlikely to be able to pass each other. As such, even if the track and car park are used by agricultural vehicles, their use is likely to be limited to avoid undermining the operation of the leisure uses. In my view, therefore, this does not justify extending the compliance period to 6 months.
119. Notwithstanding the above, the appeal site accommodates two separate businesses, which generate employment in the local area and provide education opportunities for local schools and education providers. These businesses may wish to explore alternative options. While it may be physically possible to carry out the works required by the two notices within 3 months, relocating the existing businesses, or agreeing an alternative scheme with the Council for the appeal site, is likely to take some time.
120. I note the concerns raised by nearby occupants regarding noise, however, given the timing of my decision letter, certain elements of the use, including the Maize Maze and the cinema are unlikely to be held during this period anyway. I consider extending the compliance period to 6 months is reasonable and proportionate and, since the access track and car park are used as part of the material change of use, both notices should have the same compliance period. I shall therefore vary both notices accordingly.
121. Thus, for the reasons given above, the appeals under ground (g) succeed.

Overall conclusions

Material change of use notice

122. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period specified in the notice falls short of what should reasonably be allowed. I shall vary the enforcement notice, as corrected, prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeals on grounds (f) and (g) succeed to that extent.

Operational development notice

123. For the reasons given above, I conclude that the period specified in the notice falls short of what should reasonably be allowed. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeals on grounds (f) and (g) succeed to that extent.

Decisions:

Appeals A, B and C: The Material Change of Use Notice

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

- At paragraph 3 of the notice, delete 'Without planning permission, the material change of use of the land to an outdoor pursuits, cinema and leisure venue.' and insert 'Without planning permission, the material change of use of the land to a mixed use of agriculture and leisure activities comprising a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing.'
- At paragraph 5i) of the notice, delete 'cease the unauthorised use of the land as an outdoor pursuits, cinema and leisure venue' and insert 'Cease the use of the site for leisure activities, including a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing.'
- At paragraph 5ii) of the notice, delete the word 'unauthorised' and after the word 'use' insert 'of the site for leisure activities, including a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing' so that it says 'Remove from the land all structures, facilities, equipment and paraphernalia associated with the use of the site for leisure activities, including a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing, to include seating, fire pit, rifle range, archery boards, axe throwing boards, toilets, game equipment, signage, lighting, electrical fitments, fire assembly points, viewing platforms, ticket booths, post and rope means of enclosure, above ground storage tanks, bins and canopies.'
- At paragraph 5iii) of the notice, after the word 'containers' insert the words 'associated with the use of the site for leisure activities, including a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing', so that it says 'Remove from the land all storage containers associated with the use of the site for leisure activities, including a maize maze, bush craft, forestry school, outdoor cinema, laser tag, crossbow and air rifle shooting, archery and axe throwing.'
- At paragraph 6 of the notice, delete 'three calendar months' and insert 'six months' as the period for compliance.

125. Subject to the corrections and variations above, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals D, E and F: The Operational Development Notice

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

- At paragraph 6 of the notice, delete 'three calendar months' and insert 'six months' as the period for compliance.

127. Subject to the variation above, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR