



Appeal Decision

Site visit made on 22 May 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 MAY 2025

Appeal Ref: APP/F2360/C/23/3329753

Land to the rear of Duxburys Garden Centre, 92 Chain House Lane, Whitestake, Preston, PR4 4LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ventbrook Limited against an enforcement notice issued by South Ribble Borough Council.
 - The notice was issued on 21 August 2023.
 - The breach of planning control as alleged in the notice is (i) without planning permission the unauthorised material change of use of land to land used as a compound in connection with a traffic management company for use as storage, offices and parking, including the erection of portacabins and palisade fencing to facilitate the unauthorised material change of use, and, (ii) without planning permission unauthorised operational development consisting of the erection of a storage building (marked B7 on the layout plan at Appendix 1), and additional portacabin forming the second storey of an existing portacabin (marked B8 on the layout plan at Appendix 1).
 - The requirements of the notice are to i) cease the use of the Land for use as a compound in connection with a traffic management company for use as storage, offices and parking (the compounds is shaded blue for identification purposes on the red line plan attached to this notice); ii) permanently remove the portacabins marked numbers B1, B2, B3, B4, B5 and B6 on the attached site layout plan at appendix 1 of the enforcement notice from the Land; iii) permanently remove the building marked number B7 on the attached site layout plan at appendix 1 of the enforcement notice from the Land; iv) permanently remove the portacabins stacked on top of each other marked number B8 on the attached layout plan at appendix 1 of the enforcement notice from the Land; v) permanently remove the palisade fencing surrounding the perimeter of the compound from the Land; vi) permanently remove the two pole mounted CCTV cameras and poles erected on the Land in connection with the traffic management business (shown in the approximate position shaded yellow for identification purposes on the red line plan attached to this notice), and vii) permanently remove all storage racking, materials and equipment brought on to the Land in connection with the traffic management business and restore the Land back to the condition it was before the unauthorised material change of use commenced.
 - The period for compliance with the requirements is six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
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Decision

1. It is directed that the enforcement notice be varied by deleting the words '*and restore the Land back to the condition it was in before the unauthorised material change of use commenced*' in section 5(vii). Subject to the variation, 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.

Application for Costs

2. An application for costs is made by South Ribble Borough Council against Ventbrook Limited. This application is the subject of a separate Decision.

Preliminary Matters

3. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. I afforded the main parties the opportunity to comment on the implications of the 2024 Framework for the purposes of determining the deemed planning application made on ground (a) of section 174(2) of the Act. I have considered the additional comments received from the main parties.
4. An appeal made under section 78 of the Act was dismissed by a different Inspector for essentially the same development on 23 February 2023¹ (the 2023 appeal decision). Such an appeal decision is a material consideration from the point of view of my consideration of the ground (a) appeal and the deemed planning application, particularly in terms of comments made about the impact of the appeal development on the character and appearance of the area. Green Belt policy has changed in the 2024 Framework, and this post-dates the 2023 appeal decision. In this regard, it has also been necessary for me to consider additional comments made by the main parties.

Reasons

Appeal on ground (b)

5. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. The onus is on the appellant to make his case on the legal grounds of appeal.
6. The evidence demonstrates that when the notice was issued, the appeal site was being used as a compound in connection with a traffic management company including the erection of portacabins, the 'B7' building and palisade fencing to facilitate the material change of use. Moreover, and, as a matter of fact and degree, and with particular regard and weight afforded to the size and permanence of the buildings marked as 'B7' and 'B8' on the plan appended to the notice, I find that such operational development has occurred.
7. The appellant's case on ground (b) is essentially that the matters alleged do not constitute a breach of planning control. This is a matter to be considered as part of the ground (c) appeal below, as distinct from this ground (b) appeal.
8. On the evidence that is before me, I conclude that the matters comprising the alleged breach of planning control have occurred. Therefore, the ground (b) appeal fails.

Appeal on ground (c)

9. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.

¹ Appeal reference number APP/F2360/W/22/3309015

10. There is no dispute between the parties that the appeal land was previously used as part and parcel of the use of the land to the south as a garden centre. The evidence demonstrates that the land has included hardstanding for several years. The appellant states that the land (i.e., that shaded blue on the plan attached to the notice) has been used for overspill car parking and/or storage in association with the garden centre use. While I have only limited evidence from the appellant in respect of the latter car parking and/or storage uses, the local planning authority (LPA) nonetheless states that it *'accepts that the land where the yard is situated falls under use class E'*. I have no contrary evidence before me which would lead me to depart from this common ground position.
11. The appellant makes the claim that appeal land can lawfully be used for any use which falls within use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). However, in order to establish whether a material change of use of the land has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to incidental) uses of that unit. On the evidence that is before me, and, as a matter of fact and degree, I find that prior to the unauthorised development occurring, the planning unit (including the appeal land) was being used as a primary garden centre use, with visiting members of the public, and with the appeal site being used for ancillary and occasional overspill car parking and/or storage purposes.
12. The appellant asserts that a material change of use of the land has not occurred as the traffic management compound use falls within Class E of Part A of Schedule 2 of the UCO. It is claimed that it is not therefore an act of development requiring planning permission as section 55(2)(f) of the Act states that the use of land shall not be taken to be an act development if *'in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class'*.
13. The evidence is that the traffic management compound use does not relate *'principally to visiting members of the public'*. In fact, there is no objective evidence before me to substantiate any such claim. The use is focussed on providing a traffic management service to clients such as, for example, Lancashire Country Council and Lancashire Police. It is not a facility where visiting members of the public principally attend. In this regard, it cannot be accurately claimed that the alleged use falls within the purposes identified in Class E(a) to (f) of Part A of Schedule 2 of the UCO.
14. I do not find that the use falls within the purpose identified in Class E(g) of Part A of Schedule 2 of the UCO. This is because the alleged unauthorised use does not solely relate to an office to carry out operational or administrative functions. There may be an office on the land, but the land is primarily used for the storage of traffic management equipment, cones, frames and signs. Put another way, in this case the office would not be in place if the above items were not required to be placed on the land in association with the business. Moreover, the use does not relate to the research and development of products and processes, and there is no evidence that any industrial process is being carried out.
15. I note the findings of the LPA in terms of the use not being capable of being carried out without detriment to the amenity of the area. If operated on a 24/7 operation

basis, as is the case now, I find that there would be some detrimental noise caused to the occupiers of dwellinghouses at the site entrance because of vehicular and pedestrian comings and goings at unsociable hours. Such an operation is in direct contrast with the opening hours of the garden centre. The advertisement evidence included as part of the appeal indicates that the opening hours for the garden centre is 09.00-17.00 hours Monday to Saturday, and 10.00-16.30 hours on a Sunday.

16. While it would be possible to minimise such noise by imposing an hours of use condition, I do not know, based on the evidence that is before me, if the appellant would accept such a condition. Indeed, the appellant did not make any comments in respect of the LPA's suggested conditions at final comments stage. While not a determinative issue in terms of this ground (c) appeal, given the reasoning above, I must, in any event, also conclude that based on a continuation of a 24/7 business operation, the development is detrimental to the amenity of the area by reason of noise. Consequently, even if the appeal development had been in accordance with Class E(g)(i) of the UCO, it is not permitted development for this reason.
17. The evidence is that the appeal land is being used by a business (i.e. a traffic management compound) which is not functionally related to Duxburys Garden Centre. It is a 24/7 operation and employs its own members of staff (sixty-two in total) as well as making use of agency staff when needed. It is fenced off from the adjacent garden centre and is being used for a different and unrelated purpose. As a matter of fact and degree, I find that the appeal land is being used for a new primary use and within its own separate planning unit. Put another way, the appeal land is a separate unit of occupation and, save for the common access from Chain House Lane, its use is functionally separate from that of the garden centre use.
18. As a matter of fact and degree, I find that there has been a material change in the character of activities occurring within the former planning unit. Prior to the traffic management compound use occurring on the land, the evidence is that the land was mainly used for occasional overflow car parking purposes or limited storage in association with the garden centre business. The evidence is that the traffic management compound business, with its associated items/operational development, has, in relative terms resulted in a material change in the way that the site is experienced both from a visual and openness point of view (see reasoning later in this decision).
19. In addition to the above, the evidence is that the alleged material change of use operates on a '24/7' basis. In my judgement, the frequency and timings of vehicular and pedestrian comings and goings, as well as the day-to-day activity and movement on the site itself, has resulted in a material change in the character of the activities from what has gone on previously as a matter of fact and degree. The land now includes a significant storage function, an associated operational base for the active business, and a compound for associated trucks, vans and cars. For the collective reasons outlined above, and, as a matter of fact and degree, I find that the alleged material change of use relates to a sui generis use, i.e., it does not fall within any defined use class in the UCO.
20. As a matter of fact and degree, I consider that the evidence indicates that the operational development, portacabins, fencing and other business items facilitated the material change of use of the land on an ancillary or subsidiary basis. The onus is on the appellant to make a case on the legal grounds of appeal. It is suggested

that the when the notice was issued, some of the fencing, which exceeded two metres in height above ground level, had already been reduced in height so that it was two metres or less. However, this claim is not supported with precise, unambiguous and objective evidence.

21. On the evidence that is before me, the fencing as a whole cannot benefit from permitted development rights in Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Even if the fencing had not exceeded the two-metre height restriction imposed by Class A when the notice was issued, in this case such fencing can be required to be removed in association with the unauthorised material change of use of the land. This is because the evidence is that such fencing was erected as an ancillary or a subsidiary element to the unauthorised material change of use of the land. Put another way, neither the fencing nor the portacabins/operational development is fundamental to, or causative of, the material change of use of the land.
22. Moreover, in order for fencing to benefit from permitted development rights, paragraph 3(5) of the GPDO states *'the permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful'*. For the reasons outlined elsewhere in this decision, the land is being used for an unlawful use and the fencing was constructed in association with it. I deal with the fencing again as part of the consideration of the ground (f) appeal below.
23. For the above reasons, I find that a material change of use of the land has occurred. The appeal land is being used as a sui generis use and within its own separate planning unit. The material change of use of the land amounts to development by virtue of section 55(1) of the Act. There are no permitted development rights relating to the sui generis use. Hence, the operational development which is the subject of the notice requires planning permission.
24. For the above reasons, I conclude that the matters alleged in the notice constitute a breach of planning control. Therefore, the ground (c) appeal fails.

Appeal on ground (d)

25. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
26. The appellant's claim on ground (d) is essentially that the alleged breach of planning control has occurred on land which has an established Class E use, and that no material change of use of the land has occurred as the business is operating as a Class E use. This is not a ground (d) claim, but instead is a matter that is pertinent to the consideration of the appeal made under ground (c). I have already considered this matter above.
27. For the appellant to succeed on ground (d), it is necessary to demonstrate, on the balance of probability, that the sui generis traffic management compound use has

operated continuously on the land for a period of ten years. In respect of the operational development component of the breach of planning control, it is necessary to demonstrate, on the balance of probability, that it had been substantially completed for four years, although that may not mean that it is immune from enforcement action if such operational development was an ancillary or subsidiary element of the unauthorised material change of use of the land.

28. The appellant does not dispute the comment made by the LPA that the attending officer was informed by the company during a site visit on 21 March 2023 that it took possession of the land in March 2018. Indeed, this is consistent with the dated aerial images provided by the LPA (i.e., between April 2015 and May 2023) showing the use and relative changes to the appeal land from June 2018 onwards. The appellant does not dispute that the directors of the company advised a Council officer that the business could *'not operate effectively until portacabins and fencing were installed in March 2019'*.
29. The evidence from the appellant does not unambiguously and precisely demonstrate that the land has been continuously used as a sui generis traffic management compound for ten years, or that the 'B7' (i.e., storage building positioned on a concrete pad) or 'B8' (i.e., second storey to an existing portacabin) operational development on the land was substantially completed for four years. The aerial photograph from the LPA dated April 2020 does not include building 'B7' and there is a change in the colour of the top of the 'B8' building between the aerial photograph dated April 2020 and the aerial photograph dated July 2021.
30. Neither the Mason Owen valuation, nor the claim that the Land has been rented out since 2012, demonstrates with sufficient precision and clarity, that the land has been continuously used for ten years as a sui generis traffic management compound. Even if the land was also previously let to Fish 4 Pets, I do not know which part of the land was occupied by that business or indeed how long it occupied part of the site. I have little information about the Fish 4 Pets business, and, in any event, there is no evidence before me to suggest that the associated character of the activities on the land were like those relating to the unauthorised sui generis traffic management compound use.
31. In the absence of any contrary evidence from the appellant, it is likely, on the balance of probability, that the second storey to an existing portacabin was formed sometime between April 2020 and July 2021. This is consistent with the evidence of the LPA, which has not been disputed by the appellant, where it says *'a further building (marked B7 at appendix 1), and a further portacabin (marked B8 at appendix 1) were added over a year after the material change of use has taken place together with an extension to the southern perimeter of the compound...it is understood that the pole mounted CCTV cameras were also erected around the same period for security purposes'*. As detailed above, the evidence from the LPA demonstrates, on the balance of probability, that the material change of use of the land commenced in March 2019.
32. The notice was issued on 21 August 2023 and hence the evidence does not precisely and unambiguously demonstrate that when the notice was issued, building 'B8' was immune from enforcement action. As a matter of fact and degree, I find that the act of forming a new second storey to the existing portacabin had the effect of creating one new and contiguous structure/building. I was able to see on my site visit that the metal external staircase leading to the upper floor of the

structure (i.e., training room) was bolted to the floor and attached to the structure. There is an absence of precise and unambiguous evidence before me (including any aerial photographs) to show that the existing portacabin building was on the land (i.e., 'B8' position) prior to April 2020. The evidence is not sufficiently precise and unambiguous to demonstrate that it was on the land (or substantially completed) for four years prior to the date of the issued notice (i.e., 21 August 2023). In any event, the evidence is that this structure was erected as an ancillary element to facilitate the material change of use of the land.

33. The evidence is that the fencing around the site, the portacabins, and CCTV, were erected and/or placed on the site to facilitate the material change of use of the land. Both the fencing and the portacabins/buildings are an ancillary or subsidiary element of the material change of use of the land: they are not a fundamental or causative element of the material change of use of the land. Even if the fencing and/or the portacabins/buildings or CCTV had been substantially completed for four years prior to the notice being issued, the Courts have held that such development can be required to be removed in association with a material change of use of the land.
34. For the above reasons, I conclude that the evidence demonstrates, on the balance of probability, that when the notice was issued it was not too late to take enforcement action in respect of the breach of planning control. The breach of planning control is not immune from enforcement action. Therefore, the ground (d) appeal fails.

Appeal on ground (a) and the deemed planning application

Main Issues

35. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
36. I have considered the reasons for issuing the enforcement notice and the main issues are (i) whether the breach of planning control constitutes inappropriate development in the Green Belt; (ii) the effect of the unauthorised development on the character and appearance of the area; and, (iii) if the breach of planning control is inappropriate development in the Green Belt, 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 development.

Whether inappropriate development in the Green Belt

37. In respect of Green Belt policy in the 2024 Framework, based on the type of development which is the subject of the ground (a) appeal, I find that it is necessary to consider the development against paragraphs 154(g), 154(h)(v) and 155 of the 2024 Framework. I do not find that paragraph 154(e) of the 2024 Framework is applicable as the position and extent of the unauthorised development is such that it does not amount to limited infilling in a village. The latter was addressed by the previous inspector in her 2023 appeal decision and where she commented '*it would not fill a gap in a developed frontage*'. Moreover, and, in any event, given the size and extent of the appeal site, it could not

reasonably be said that the development is limited, even if the appeal land were considered to fall within the village of Whitestake.

38. There is dispute between the parties in terms of the hardstanding area being immune from enforcement action and whether the land to which the material change of use relates is previously developed land. The Council refer to an aerial photograph dated April 2015 and appear to suggest that there is no hardstanding. While there are some green areas falling within the red edge on the submitted aerial photograph, it appears to me to include significant areas of hardstanding. Moreover, the Council do not dispute the use of the land for Class E purposes in association with garden centre use.
39. For the purposes of this appeal, I have therefore considered the appeal land to fall within the curtilage of developed land at the garden centre. In this regard, I find that it is previously developed land. Moreover, it is noteworthy that the notice does not require the removal of hardstanding on the appeal site. Consequently, while I do not find that the breach of planning control amounts to *'limited'* infilling, the evidence is that it amounts to the *'partial or complete redevelopment of previously developed land'* as referenced in paragraph 154(g) of the 2024 Framework. However, for this exception to be met, the development should not *'cause substantial harm to the openness of the Green Belt'*.
40. The relatively open nature of the land prior to the unauthorised development taking place is now enclosed by a high palisade fence and it also includes the use of the land for the siting of permanent operational development/portacabins and high CCTV poles, coupled with the provision of equipment, storage racking, parked cars, trucks and vans, and other stored items which are spread across the site.
41. While the development is not very conspicuous from main roads or footpaths, it is nonetheless visible from the main car park associated with the garden centre, as well as from the adjacent access road which leads to Turbary House Nursery. From the latter access road, the site is seen in direct contrast with the adjacent leisure facility which is much more open. It is not therefore the case that visitors to the surrounding other businesses would not be aware of the use of the land and its associated impact on the openness of the Green Belt. Given the height of the upper storey portacabin, with its associated metal staircase bolted to the floor, this is particularly prominent in the landscape.
42. Overall, and considering the visual and spatial aspects of openness, I find that the development has caused substantial harm to the openness of the Green Belt in relative terms. Consequently, the unauthorised development does not meet the exception in paragraph 154(g) of the 2024 Framework.
43. I have considered whether paragraph 155(h)(v) is relevant in respect of the breach of planning control. I do not find that it is relevant as the words *'such as'* as outlined in *'such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds'*, means that uses which are the subject of applications for planning permission should take their flavour or extent from the examples given. The traffic management compound use, with its associated structures, storage, buildings and parking, is not reflective of the examples given in paragraph 154(h)(v) of the 2024 Framework. Hence, this exception is not met.
44. Even if one were to disagree with the above finding, there is also a requirement for such development to preserve the openness of the Green Belt and not to conflict

with the purposes of including land within it. For the reasons outlined above, the development does not preserve the openness of the Green Belt. Moreover, owing to the spread of the unauthorised development across the site, and its essentially more permanent as distinct from intermittent nature when compared to its pre-existing condition, I consider that the development has failed to safeguard the countryside from encroachment.

45. As part of this appeal, I afforded the main parties the opportunity to comment on the 2024 Framework, including paragraph 155 which was not in place when the notice was issued, or indeed when the previous inspector determined the appeal made under section 78 of the Act. In this case, and for paragraph 155 to be met as an exception, it would be necessary to satisfy each of criterion (a), (b) and (c) of paragraph 143 of the 2024 Framework.
46. Given the surrounding development, I do not find that the unauthorised development has resulted in an extended finger of development in the Green Belt. Moreover, the surrounding development weakens the contribution that the land makes to checking the unrestricted sprawl of the built-up area. In addition, the evidence indicates that Whitestake is a village as distinct from a large built-up area. The Planning Practice Guidance (PPG) states that '*villages should not be considered large built-up areas*'. I do not therefore find that the land makes a strong contribution to checking the unrestricted sprawl of large built-up area (criterion (a) of paragraph 143).
47. In respect of criterion (b) of paragraph 143, i.e., to prevent neighbouring towns merging into one another, again the PPG states that this relates to the merging of towns and not villages. Even if one were to take the view that Whitestake is not a village, I do not find that the land makes a strong contribution to this purpose. This is because the relatively contained nature of the land, surrounding by existing development, is such that the land does not form a substantial part of a gap between towns. I do not therefore find that the land makes a strong contribution to preventing neighbouring towns merging into one another (criterion (b) of paragraph 143).
48. In addition to the above, there is no evidence before me that the land strongly contributes to preserving the special character of a historic town. Again, and, in any event, this purpose relates to historic towns and not villages. Consequently, the land does not make a strong contribution in respect of Green Belt purposes 143(d) of the 2024 Framework. Given this finding, as well as my findings about the other identified Green Belt purposes, I conclude that the land is Grey Belt land.
49. While I find that the unauthorised development has caused some harm to the Green Belt purpose in paragraph 143(c) of the 2024 Framework, i.e., to assist in safeguarding the countryside from encroachment, this is not to the extent that it could reasonably be said that the appeal development fundamentally undermines the purposes (taken together) of the remaining Green Belt across the area of the plan. Consequently, the land comprises grey belt land and paragraph 155(a) is met. This is a position also reached by the LPA.
50. Notwithstanding the above, the evidence does not indicate a demonstrable unmet need for the type of development proposed. It may be desirable for the appellant to locate the business on the appeal site, but that is not the same as there being a demonstrable unmet need for the type of development proposed (i.e., a traffic

management compound use). It was incumbent on the appellant to have provided detailed reasoning and justification in terms of this matter, but no such case was made in response to my request for comments relating to paragraph 155 of the 2024 Framework. It is noteworthy that both the 2015 South Ribble Local Plan (LP) and the Central Lancashire Core Strategy 2012 (CS) allocate land for employment purposes. There is no objective evidence before me to demonstrate that there any deficiency in this regard. For the above reasons, I conclude that paragraph 155(b) is not met.

51. Notwithstanding the above finding, I have also considered the development against paragraph 155(c) of the 2024 Framework and whether it is in a sustainable location. While I accept that the site is only a short distance from motorways and major roads, it nonetheless falls within a rural location. The business employs some sixty-two people (as well as making use of agency staff) and the appellant does not dispute that while Chain House Lane is a bus route, the services are only hourly between Preston and Leyland. In the context of paragraph 110 of the 2024 Framework, I do not find that this significant development is in a location where there is a genuine choice of transport modes.
52. The frequency of bus services is such that staff would likely be reliant on the private motor vehicle for most day-to-day journeys. In the context of paragraph 115 of the 2024 Framework, the appellant has not provided any substantive evidence to demonstrate how or why sustainable transport modes are/would be prioritised. Therefore, paragraph 155(c) is not met.
53. For the above reasons, I therefore conclude that the breach of planning control constitutes inappropriate development in the Green Belt. In this regard, there is conflict with the Green Belt requirements of chapter 13 of the 2024 Framework. My conclusion that the breach of planning control is inappropriate development in the Green Belt is a matter to which I afford substantial adverse weight in decision making terms.
54. In concluding against Policy G1 (Green Belt) of the LP, it is noteworthy that it is not entirely consistent with Green Belt policy in the 2024 Framework. In particular, it refers to development on previously developed land as not having a '*greater impact*' on the openness of the Green Belt and the purposes of including land within it than the existing development, whereas paragraph 154(d) simply refers to development on previously developed land as not causing '*substantial harm to the openness of the Green Belt*'.
55. I have concluded that substantial harm has been caused to the openness of the Green Belt, and hence, and notwithstanding the inconsistency with the 2024 Framework, it stands that there is therefore also conflict with policy G1 of the LP. This is because the development has had a greater impact on the openness of the Green Belt than the development which existed on the land beforehand.

Character and appearance

56. The evidence is that prior to the unauthorised development occurring on the land it was much more open. Even the appellant's own evidence was that it was used as occasional 'overflow car parking' and/or some limited 'storage' in association with use of the adjacent land as a garden centre. The evidence, including aerial photographs, shows a site which was previously more open/undeveloped save for

the existence of hardstanding and some intermittent overflow car parking and/or limited storage.

57. The effect of the breach of planning control on the character and appearance of the area was essentially considered by a different inspector as part of the determination of a section 78 appeal in February 2023 (i.e., the 2023 appeal decision). I do not disagree with the conclusions reached by the other inspector in terms of this main issue, and the evidence does not indicate that there has been a material change in circumstances since this time. Given my own site visit observations, I agree with the comment made by the previous inspector that *'the appearance and use of the appeal site is more akin to one which would be typically found on an urban industrial estate'* and *'the spread of buildings within the site serves to join up the currently visually separate uses and buildings in this location'*.
58. I recognise that the appeal site is close to existing buildings and uses of land. However, prior to the unauthorised development occurring, the appeal site had a much more open and undeveloped feel and provided some welcome open relief between built development to the north and built development to the south. While the land may have been used for occasional overflow car parking or storage purposes in the past, in association with use of the garden centre, such a use is in direct contrast to the positioning and spread of containers, buildings, equipment, portacabins and business/staff vehicles, all of which have served to erode what was otherwise a more open and undeveloped site and with little to no evidence of regular day-to-day on-site movement and activity.
59. In the context of the above, I do not find that the breach of planning control adds positively to the overall quality of the area. It has not created a high quality, beautiful and sustainable place and, in this regard, it does not accord with the requirements of paragraphs 131 and 135 of the 2024 Framework. As per the conclusion reached by the previous inspector, the development has caused harm to the character and appearance of the area. The weight of the harm caused is modest, and the development fails to accord with the design, character and appearance requirements of policy 17 of the CS, policies G1 and G17 of the LP, and the 2024 Framework.

Other Considerations

60. I acknowledge that the business employs some sixty-two people (plus use of agency staff) and that it performs a useful function from a traffic management point of view. Moreover, I note the proximity of the site to the highway network (including motorways) and hence do not doubt that there are some locational advantages for the business. The appellant states that there is a *'lack of viable alternative premises in the region'*, but this comment is not reasonably substantiated in terms of objective evidence. Nonetheless, I afford the identified economic matters positive weight in the overall planning balance. However, that weight is tempered somewhat in so far that policy 13 of the CS does not support such development in the rural economy where there are design concerns and/or where it undermines the Green Belt.
61. On the evidence that is before me, and, as a matter of fact and degree, I find that the appeal site comprises previously developed land. I afford the use of previously developed land positive weight in decision making terms. However, such positive

weight must be weighed against the identified harm caused by the development to the Green Belt, as well as to the character and appearance of the area.

62. The appellant asserts that the breach of planning control allows the garden centre to '*grow and flourish*'. It is not clear from the evidence why this is the case unless of course it means that the traffic management company pays the garden centre rent, the money of which is for garden centre investment purposes. In any event, the evidence does not demonstrate that if the traffic management company were not to exist, it would mean that the garden centre would cease. Given the limited evidence before me about these matters, I afford them only limited weight in decision making terms.
63. The appellant has commented that rubbish was cleared on the perimeter of the site prior to the unauthorised development occurring. While the removal of rubbish is commendable, I do not find that this justifies allowing harmful development. It would have been possible to remove rubbish on the site without having to undertake works and activity amounting to an unauthorised material change of use of the land.
64. The evidence appears to demonstrate a common ground position between the main parties in respect of the lawful/ancillary use of part or all of the appeal land for use class E purposes in association with Duxburys Garden Centre. In this context, and, given section 57(4) of the Act, it remains possible that the land could be used for use class E purpose in the future. In this regard, there would be a greater than theoretical possibility of the land being used for a lawful use which differs from the traffic management compound use. However, and notwithstanding this position, there is little evidence before me to demonstrate that if the notice were upheld, there is a realistic prospect of the land being used in association with the existing or another Class E use.
65. The fact that the land has now been used for a traffic management compound use for some time suggests to me that there is not currently a pressing need to use it in association with the garden centre. Moreover, and, even if at some time in the future it were to be used for a use class E purpose, the evidence does not support a possible claim that it would be used in the same intensive manner as the traffic management compound use, or, in relative terms, that it would lead to a similar type, amount and spread of development/facilities on the land. For these reasons, I afford the fallback position only limited weight in decision making terms.

Planning Balance and Conclusion

66. I have concluded that the breach of planning control amounts to inappropriate development in the Green Belt. The harm caused to the Green Belt is a matter to which I afford substantial adverse weight in the planning balance. In addition, I have found that moderate harm has been caused to the character and appearance of the area. Overall, I conclude that the harm by reason of inappropriateness in the Green Belt, and the harm to the character and appearance of the area, is not clearly outweighed by the other identified considerations above so as to amount to the very special circumstances necessary to justify permanent development.
67. As part of the appellant's final comments, there is a suggestion that I could consider allowing the use including the retention of the portacabins and operational development on the land on a temporary basis. The appellant does not stipulate what the temporary period might be. For the purposes of this appeal, I have

considered a temporary planning permission of six months or more. This is simply in the context of the fact that the notice stipulates a compliance period of six months.

68. While a temporary planning permission for the development would result in less relative harm to the Green Belt and the character and appearance of the area than would arise from a permanent planning permission, I find that the overall planning harm would still be material even from a temporary planning permission. It would not be clearly outweighed by the other identified considerations above to as to amount to the very special circumstances necessary to justify temporary development.
69. Moreover, it is important that I also emphasise, in this case, that the evidence does not demonstrate circumstances which justify the grant of a temporary planning permission with reference to commentary in the PPG. In particular, the breach of planning control relates to retrospective development, and, in this regard, a trial run is not therefore needed in order to assess the effect of the development on the area. Moreover, there is no objective evidence before me to indicate that it is expected that the planning circumstances would change in a particular way at the end of a temporary period.
70. For the above reasons, I conclude that the ground (a) appeal fails.

Appeal on ground (f)

71. An appeal made on ground (f) is 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, or to remedy any injury to amenity which has been caused by any such a breach.
72. It is not clear from the evidence why the appellant considers that the requirements of the notice are excessive. The appellant's statement of case is essentially silent in this regard. As part of the appellant's business summary, it states '*when we first moved in, the area that we now occupy was a hardstanding area laid with hardcore and piled with waste along the outskirts of our boundary. Since we have been here, we have removed all waste, installed a fence and generally the cleanliness of how the site looks*'.
73. It might be that the appellant's case relates to the requirement to remove the fencing around the appeal site. The appellant states that '*the palisade fencing was measured in one or two areas at being 2.1 metres this has been remedied and the fencing is now at 2.0 metres*'. As outlined earlier in this decision, the appellant's evidence does not precisely and unambiguously demonstrate that the fencing as a whole was permitted development when it was erected, or that it was permitted development when the notice was issued. Furthermore, the evidence is that the fencing was erected in association with an unlawful use.
74. While it was agreed by the main parties on the site visit that all the fencing was not no more than two metres in height above ground level (even accounting for any land level changes), the evidence is that it was erected as an ancillary or subsidiary element of the material change of use of the land. The fencing is not causative or fundamental to the material change of use of the land. In this context, the Courts have held that it is not excessive to require the removal of such fencing irrespective of whether it would otherwise be permitted development.

75. The appellant asserts that the notice is not clear in terms of its reference to *'restoring the Land back to the condition it was before the unauthorised material change of use commenced'*. The appellant makes the claim that it is not certain whether this relates to ten, fifteen or twenty years ago. As part of the consideration of the ground (b) and (c) appeals, I have concluded that a material change of use of the land has occurred to a sui generis traffic management compound use falling within its own separate planning unit. The notice requires the landowner to cease the use of the land as a traffic management compound use including the removal of facilitating items and structures. I do not find that the words *'restore the Land back to the condition it was in before the unauthorised material change of use commenced'* is strictly necessary in this case. This is because the other listed requirements in the notice are sufficient to remedy the breach of planning control. I shall therefore vary requirement 5(vii), without injustice being caused to the main parties, by deleting this wording.
76. The purpose of the notice is to remedy the breach of planning control by ceasing the unauthorised material change of use of the land. This includes the removal of operational development including that which has facilitated the material change of use of the land. In this case, I find that requirement 5(vii) of the notice is not necessary and, in this regard, it is excessive. To this extent, I conclude that the ground (f) appeal succeeds.

Appeal on ground (g)

77. The appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
78. The period specified in the notice is six months. The appellant has provided no evidence to specifically indicate why more than six months is needed to ensure compliance with the requirements of the notice.
79. The only comment made in respect of the ground (g) appeal is that *'the Council would have to revoke the planning permission on the whole site and that cannot be done via an enforcement notice if that is the Council's intention'*. It is not clear what the appellant means in terms of this comment. The notice requires the unauthorised traffic management compound use to cease. The evidence does not demonstrate that this sui generis use has the benefit of any planning permission and/or that it has an established lawful use.
80. On the evidence that is before me, I conclude that the six-month compliance period is reasonable. I find that it strikes a reasonable and proportionate balance between affording the business owners time to relocate elsewhere (thereby ensuring that jobs are safeguarded), ceasing the unauthorised use and removing the associated operational and facilitating development, and bringing the harmful development to an end in the public interest. Therefore, the ground (g) appeal fails.

Conclusion

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

D Hartley, INSPECTOR