



Appeal Decisions

Hearing and site visit took place on 15 July 2025

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 SEPTEMBER 2025

Appeal A Ref: APP/K3415/C/25/3361494

Appeal B Ref: APP/K3415/C/25/3361496

Elford Lowe Farm, Elford Road, Elford, Tamworth, Staffordshire, B79 9BJ

- Appeals A & B are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Elford Lowe Farm Limited against two enforcement notice ("Notice A and Notice B" respectively) issued by Lichfield District Council.
- The notices were issued on 29 January 2025.
- The breach of planning control as alleged in Notice A is without planning permission, the unauthorised material change of use of the Land to Use Class B8 including storage of Heavy Goods Vehicles trailers, large piping, building materials including rubble, wooden pallets and shipping containers ("the unauthorised items").
- The requirements of the notice are to: a) Remove from the Land all Heavy Goods Vehicle trailers and thereafter cease the use of the Land for the storage of Heavy Good Vehicle trailers. b) Remove from the Land all piping, building materials, rubble, wooden pallets, shipping containers and any other paraphernalia associated with the unauthorised material change of use of the Land and thereafter cease the use of the Land for storage including the storage of the "unauthorised items." c) Dispose of any waste arising from the compliance of the above steps from the Land.
- The period for compliance with the requirements is 6 months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (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.
- The breach of planning control as alleged in Notice B is without planning permission, an engineering operation comprising of the importation of material to increase in height the level of the Land.
- The requirements of the notice are: a) Remove all the imported material from the Land and restore the Land to its original condition prior to the unauthorised engineering operation taking place. b) Dispose of any waste arising from the compliance with the above step from the Land.
- The period for compliance with the requirements is: 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (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.

Decisions

Appeal A

1. It is directed that Notice A is corrected by: the deletion of paragraph 3 and its substitution with the words "Without planning permission, the unauthorised material change of use of the land to a mixed use comprising agriculture and Use Class B8 including storage of Heavy Goods Vehicle trailers, large piping, building materials including rubble, wooden pallets and shipping containers".
2. Subject to the correction, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the land to a mixed use

comprising agriculture and Use Class B8 including storage of Heavy Goods Vehicle trailers, large piping, building materials including rubble, wooden pallets and shipping containers at land at Elford Lowe Farm as shown on the plan attached to the notice and subject to the conditions in the Schedule.

Appeal B

3. It is directed that Notice B is corrected by: the deletion of paragraph 3 and its substitution with the words “an engineering operation comprising of the raising of the level of the Land.”; and removal of the words “Remove all the imported material from the Land and” from paragraph 5 a).
4. Subject to the corrections, Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the engineering operations comprising of the raising of the level of the Land” at land at Elford Lowe Farm as shown on the plan attached to the notice.

Notice A

5. Notice A alleges the unauthorised material change of use of the Land, and the Appellant accepts that whilst the use of the relevant land has changed significantly, the allegation reflects the element of B8 use which was taking place when the Council were considering enforcement action. The appellant argues that there was a mixed use which also included the agricultural use associated with Elford Lowe Farm.
6. I am satisfied having heard the representations from the parties that I can correct Notice B to include the agricultural use of the site so the allegation would be of a mixed use, and that this can be done without causing injustice. The notice should therefore be corrected to accurately reflect the mixed B8 and agricultural use.

Notice B

7. An enforcement notice must be drafted to tell the recipient fairly what they have done wrong and must do to remedy it.
8. Section 55 of the 1990 Act provides that “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Notice B alleges “an engineering operation comprising of the importation of material to increase in the height the level of the Land,” and the plan attached to it defining the Land identifies the area of land to the north of the pre-existing commercial buildings. It does not cover the whole of the landholding owned by the Appellant.
9. Caselaw¹ tells us that the term “engineering operations” should be given its ordinary meaning in the English language, and it must mean operations of the kind usually undertaken by engineers i.e. operations calling for the skills of an engineer. However, this does not mean that an engineer must have been involved in the project, simply that it is the kind of operation on which an engineer could be employed.

¹ Fayrewood Fish Farms Limited v SSE [1984] JPL 1983

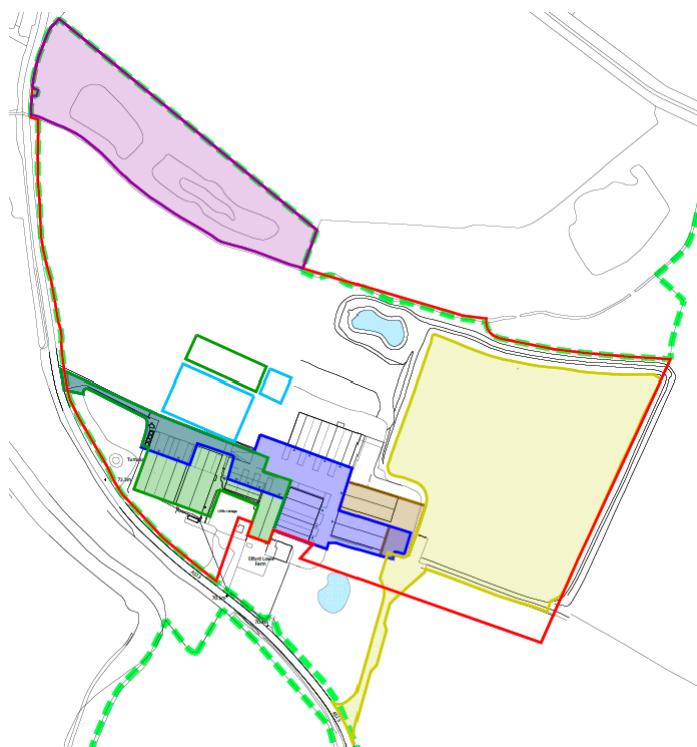
10. The works in this case were fairly substantial, and indeed the plateau created is large enough to accommodate many HGV trailers (around at least 75) as well as other items. It is clear from the evidence provided regarding the previous land levels, and in my observations during the site visit that the operations were of a sufficient scale that the creation of the level plateau at that height when compared to the level of the lower ground to the north and west is the kind of operation on which an engineer could be employed (notwithstanding that this was not the case here). There has been a significant physical change to the land, and as a matter of fact and degree, the works do therefore fall within the definition of development.
11. The appellant argues that the description of the alleged breach in Notice B is inaccurate and confusing as it refers to the importation of material which is not operational development but rather a material change of use. In addition, they say that there was not importation of material as it came from the wider farm landholding, however, identification of the planning unit is also relevant when considering whether the material has been brought onto the land.
12. Section 55(3)(b) states that the deposit of refuse or waste materials on land involves a material change in its use. Whilst the “importation of material” is not operational development when considered as a stand-alone event, and is more akin to a material change of use as it would lead to the deposit of materials, the allegation in Notice B goes further as it refers to the importation of material *to increase in height the level of the Land*.
13. There is a duty on me to put the notice in order if possible, and there are wide powers of correction as long as any such change would not cause injustice to the parties. I am satisfied, taking into account the grounds of appeal made including the deemed planning application, evidence before me and discussion at the hearing, that the Appellant understood that Notice B was targeting the works which created the raised plateau on the area of land identified in the notice plan. These works were not a material change of use in their own right but rather operational development to facilitate a different material change of use (as alleged in Notice A).
14. Whilst the allegation in Notice B is sufficiently clear regarding the alleged breach as a whole, it should be corrected for future clarity to state “an engineering operation comprising of the raising of the level of the Land.” Requirement a) will also need to be corrected to take out the reference to imported material and should simply require that the Land is restored to its original condition prior to the unauthorised engineering operation taking place, and this consequential correction can also be made without causing injustice. The Appellant will have the best knowledge of the previous condition of the Land.

Appeal A

Ground (b)

15. An appeal on this ground is that the matters alleged in the notice have not occurred as a matter of fact. The Appellant says that there has not been a material change of use of the Land because it is part of a much larger planning unit in a mixed use and any changes that have occurred are not material and therefore do not constitute development. It is therefore necessary to first consider the planning unit

16. Elford Lowe Farm Limited has a very large landholding which was originally all in agricultural use. This landholding is substantially bigger than the area of land shown edged red on Notice B. The use of parts of the overall landholding has changed over time. The key elements of the planning history of the overall site for the purposes of this appeal are:
 - I. 2017 and 2018 – Various permissions granted for buildings for produce stores and the storage of implements and farm machinery (Units 4, 5, 6, 13, 14, 15, 16 and 17). Refs: 16/1220/ABN, 17/00308/FUL, 16/1440/FUL, 16/01439/FUL, 16/01438/FUL, 17/01760/FUL.
 - II. Permission granted for change of use of land from agriculture to caravan/motor home storage, creation of bund and erection of associated lighting and fencing Ref: 16/00921/COU.
 - III. Retention of change of use of buildings (Units 8 – 12) from Caravan Storage to Employment use (Classes E(g) – Business, B2 – General Industrial and B8 – Storage and Distribution) Ref: 18/01821/COU.
 - IV. Retention of change of use of agricultural buildings (Units 1 – 7) to employment use (Classes E(g), B2 and B8).
 - V. Use of vehicle storage area and HGV parking with access off Elford Road – granted on appeal APP/K3415/W/22/3313524.
17. It is evident from this history that the use of parts of the wider site have changed over the last few years, and that there are now non-agricultural uses on parcels of the overall landholding. During the hearing, the Appellant explained the occupation and uses of the wider site with reference to Plan PL-APP-01A, an extract which is included here:



18. The part shown yellow has a lease in place which allows exclusive possession, other than the access route shown yellow which is also used by the Farm. The part

shown orange has a separate lease to a logistics company and there is some shared parking between the yellow and orange parts also. There are separate leases to various businesses in the area shown blue and green which consist of units within the buildings with the shared access and some associated shared parking. In addition, one of these tenants has non-exclusive use of part of the appeal site for storage (piping).

19. The main user of the appeal site currently is the Farm but it was clear from the site visit that it was not being used to its full capacity in terms of storage. Indeed it can be seen in some of the photographs provided that it had previously been used much more fully with many HGV trailers stored on it.
20. The area shown pink contains two fishing lakes which are operated by Elford Farms, and there is some overlap in the uses as water can be used from the fishing lakes on the agricultural lands if required.
21. The rest of the wider landholding (which is much larger than the area shown on the extracted plan above) is in agricultural use.
22. The leading case of *Burdle & Williams v SSE & New Forest DC*² sets out the principles to be considered when assessing a planning unit. The starting point is the unit of occupation, but this is not simply the ownership of the land but how it is actually being used. In this case, it is evident as a matter of fact and degree that the whole of the overall site within the freehold ownership of the Appellant is no longer in their sole occupation. The various leases allowing exclusive access to parts of the site (namely the areas shown yellow, orange, and parts of the green and blue buildings) have created new planning units.
23. The Appellant has retained use of the Appeal Land but the nature of this use has changed and their evidence is that one of their tenants is also currently using part of this land for storage, and that in the past it had been used to store other items such as a large number of trailers.
24. Taking into account the functional and physical characteristics of the appeal site, it does form a separate unit to the rest of the Farm. It is clearly delineated physically with hedging to the south, and with the embankment providing the boundary to the north and west. Whilst some of the storage is associated with the farm, or at the permission of the Appellant on a fairly ad hoc basis, there clearly has been storage of a very different nature taking place, and with no functional connection to the wider agricultural use. The use of part of the appeal site for the storage of piping by a tenant who is involved in the construction of the new HS2 line has no functional connection to the agricultural use, and neither did the use for the storage of many HGV trailers. As such, and as a matter of fact and degree taking into account the three tests set out in caselaw, the appeal site is physically and functionally separate to the wider farm site and a new planning unit has been formed. The change of use from agricultural to a mixed use of agricultural and storage is material, and there has been development on the site as alleged in the corrected notice.
25. Whilst some of the storage and use of the site is in association with the farm use of the wider land-holding, some is not. On the evidence before me during this appeal, the non-agricultural storage use is of such an extent that it is not ancillary but a

² [1972] 1 WLR 1207

primary use in its own right. The use of the appeal land is therefore mixed, agricultural and general storage.

26. The appeal on ground (b) does not therefore succeed.

Ground (c)

27. This ground is that the matters alleged in the notice do not constitute a breach of planning control. For the reasons set out above in relation to the ground (b) appeal, there has been the creation of a new planning unit and a material change of use to a mixed use. The degree of the use for non-agricultural storage purposes, including for the storage of large piping and many HGV trailers, is such that it is a primary use in its own right and not ancillary.

28. The appeal on ground (c) therefore fails.

Appeal B

Ground (b)

29. The ground of appeal is on the basis that the matters alleged in the notice have not occurred, and particularly that there was no importation of material.

30. Whilst the appellant's case is that the material came from the wider landholding, this would still be importation onto the appeal site due to the creation of the new planning unit as set out above. In any event, any issues regarding importation are no longer relevant given the correction to Notice B as described above.

31. The appeal on ground (b) does not therefore succeed.

Ground (c)

32. The appellant argues that the works do not constitute a breach of planning control as they are not operational development. However, as set out in my findings above regarding Notice B, the works constitute a physical alteration to the land and an engineering operation as a matter of fact.

33. The creation of the new planning unit also means that the permitted development rights pursuant to Class A (b), Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 cannot apply as the land is no longer part of the wider agricultural unit and is in a mixed use. It also has not been shown that the works were reasonably required for the purposes of agriculture within the wider unit, and indeed the purpose of the works was to facilitate the material change of use.

34. As such, the appeal on ground (c) does not succeed.

Ground (d)

35. The ground (d) appeal was withdrawn other than in relation to the argument that the material was already on the site more than 4 years before the date of the issue of the notice. However, it is for the appellant to prove their case on the balance of probabilities, and there is insufficient evidence before me to show that the material was all present on the appeal land before 29 January 2021.

36. In any event, the appellant accepts that the works were not completed more than 4 years before the issue of the notice which is why this ground of appeal was withdrawn.

Notices A and B - Ground (a) and the deemed planning applications

37. As there are two notices, there are two deemed planning applications, one for each of the developments alleged and as corrected in the notices as set out above, namely:

Notice A – the material change of use of the land to a mixed use comprising agriculture and Use Class B8 including storage of Heavy Goods Vehicle trailers, large piping, building materials including rubble, wooden pallets and shipping containers; and

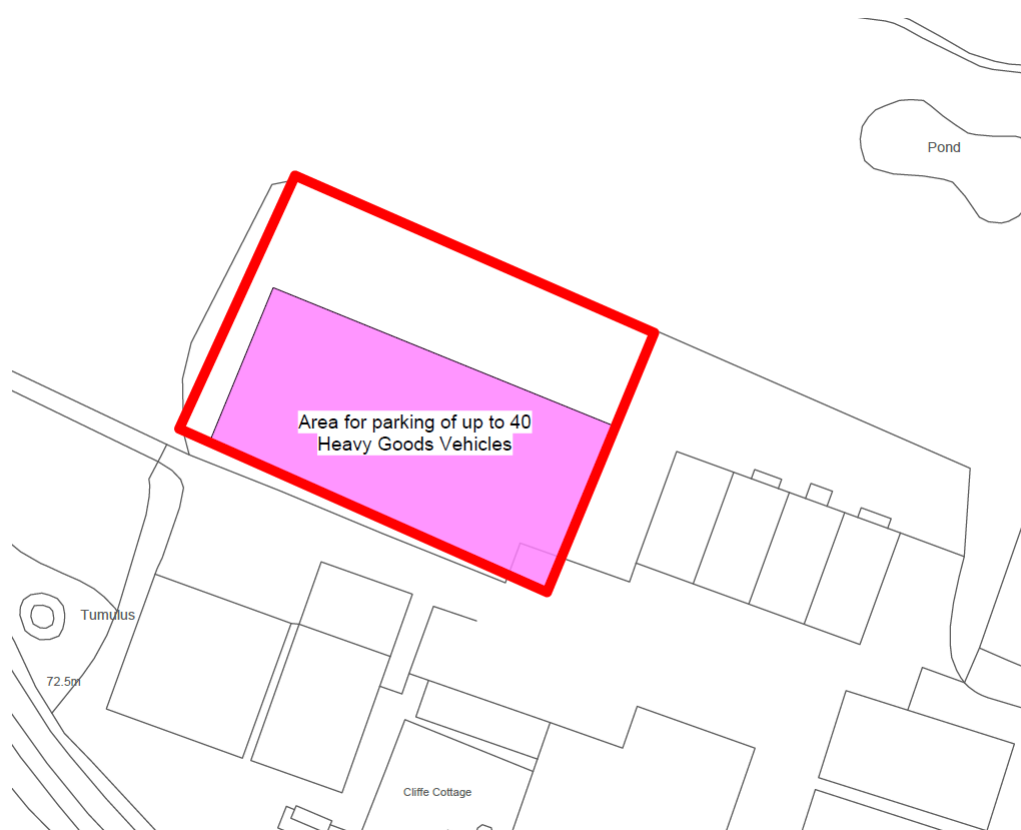
Notice B – an engineering operation comprising of the raising of the level of the Land.

38. The planning merits of the deemed planning applications need to be considered both separately and together as it may be acceptable to grant permission for one but not the other. However, there is significant overlap in the relevant issues and the main issue in both cases is the effect of the development on the character and appearance of the area.

Character and appearance

39. The appeal site is a rectangular shaped piece of land to the north-east of the existing commercial buildings and Elford Lowe Farm. The Elford Lowe Ponds (Fishing Lakes) lie further to the north
40. Prior to the development alleged in the notices, the land had been part of the agricultural fields which lie behind the existing commercial buildings and near to the car storage facility. The commercial buildings had originally been granted permission as agricultural buildings and generally appear as such, and the various uses including the agricultural and commercial uses sit together when viewed from outside of the wider site.
41. The level of the land on the appeal site has been raised to create a flat platform as it previously sloped downwards to the north as part of the natural gradient of the field. The land then slopes upwards to the north of the fish ponds so that there are views of the appeal site from the road and byway to west, north and round to the east of the appeal site. The topography of the land and existing landscape features mean that views are fairly limited with intermittent screening provided by mature trees along field and road boundaries.
42. The changes to the character and appearance of the appeal land arises from both the operational works and the material change of use itself.
43. The key characteristic of the surrounding landscape is of “estate farmlands” so that it mostly consists of farm, agricultural lands and lanes. The effect of the development on the character and appearance of the area and landscape is limited to the views at the localised site level and immediate environs. Its impact is very limited on the wider area, and neither the operational development nor the material change of use have any effect on the National Character of the landscape, and only minor or negligible effect at the District level.

44. The parties disagree as to the degree of change at this local level. The appellant argues that as the site is seen in the context of the existing farm and commercial buildings and uses, the degree of change is low and the development does not look particularly out of place. The Council's view is that the appearance and use of the Farm has evolved over time but that the change of use to B8 storage with the associated raised plateau is out of kilter with the landscape character.
45. Some of the photographs provided show the appeal site with many HGV trailers, and it is necessary to consider the "worse case scenario" i.e. the site being used at full capacity which will have the higher levels of effect on the landscape when considering whether the use is acceptable. It would also be possible to grant permission for the operational development alone i.e. to retain the plateau and cease the commercial storage use. The last lawful use of the land prior to the material change to the mixed use was agricultural, and if Notice A were to be upheld the land would revert to an agricultural use which would include any ancillary uses such as storage associated with the farm.
46. The use of the site, if granted permission for storage, could be regulated by the imposition of a condition to limit the amount and type of storage permitted, and within particular areas of the site. The appellant has submitted a plan which limits the use to up to 40 HGV trailers and to be stored in the more southern part of the appeal site alongside the existing development as shown on Plan Ref: 11414-L1-100 (extract below):



47. The use of the wider farm site has diversified over recent years, as a result of changes to the market and demand for agricultural crops. The new buildings, as well as other operational works and the various commercial and storage uses have changed the character and appearance of that part of the original farm holding,

and environs through the limited views from the main road, and wider views of the lane and byway to the north.

48. Whilst the storage on the appeal site extends the footprint of non-agricultural uses in the vicinity, the development is immediately adjacent to the existing buildings and uses and is viewed in that context. As the main views of the appeal site are from the north and north-west, the development is viewed with the existing buildings and uses set behind. Large vehicles and a degree of storage can often be seen as part of an agricultural use. The commercial uses in the adjoining buildings and units have already been granted permission and exist within the landscape and therefore now contribute to the character and appearance in the immediate vicinity. The operational development and material change of use are seen within that context.
49. The effects of the use, i.e. the comings and goings and other movements associated with the storage use, as well as the appearance if the whole of the site, will also affect the character and appearance of the landscape. However, the mixed planting to the northern side of the site, on the slope to the plateau, is establishing well, and will provide increased screening of the site over the years. The land to the east of the plateau is also at a similar level, and with a similar slope with some more established planting next to the commercial units, and additional landscaping can further tie these areas together visually so that external views are further improved.
50. Whilst the raised platform which forms the operational development has changed from the previous field which had a more gentle gradient, its relationship with the adjoining land and with the maintenance of the landscaping to provide softening and screening of views mean that it does not cause unacceptable harm in visual and landscape terms.
51. The material change of use (mixed use agricultural and storage) does cause some harm to the character and appearance of the area, but given the context of the existing uses and buildings on the wider site this harm is limited.
52. The harm caused by this storage use can be reduced if regulated to control the number of large trailers that are stored and to ensure they are kept alongside the existing development. In addition a landscaping scheme can ensure the existing planting is maintained, and if needed improved to ensure that the screening is provided when viewed from the north.
53. Overall, the material change of use is in conflict with Policy BE1 of the Lichfield Local Plan Strategy which seeks to achieve high quality development, and CP3 Local Plan Allocations which seeks to deliver sustainable development which, amongst other things, protects and enhances the character and distinctiveness of Lichfield District.
54. However, the material change of use is not in conflict with Policy NR1 which values the countryside as an asset in its own right but also supports development which assists in delivering diverse and sustainable farming enterprises. There is also support for the diversification of agricultural and other land based rural businesses within the National Planning Policy Framework 2024, which is a material consideration. The mixed use storage is used by not only the farm but some of the other commercial enterprises within the adjoining buildings which already have planning permission, and is therefore supporting the existing rural

economy, and in accordance with the Council's SPD on Rural Development which supports the economic vitality and viability of rural areas by enabling the local economy to adapt and support new enterprise and diversification of existing businesses where appropriate.

55. The SPD recognises that many farmers have to find alternative sources of income in order to survive financially, and the Appellant explained about the changes in the financial reality of farming in recent years, and in particular about the lower prices now being paid for crops such as potatoes which directly impacted on the viability of the farm. The Appellant is keen to retain as much of the farm land in agricultural use as possible, and does not wish to take it out of food production longer term, for example to be used for solar energy production instead, but needs to be realistic about the current economic climate. The Appellant's evidence is that the commercial and storage uses contribute towards a large proportion of the mortgage payments on the total landholding which will clearly impact on the financial viability of the farm overall. As such I accept that the Appellant has looked to diversify part of its wider landholding in order to retain most of the site in an agricultural use.
56. However, I also accept that supporting rural diversification in line with the development plan, SPD and national policies does not mean that any or all commercial or other use is acceptable in the countryside. In this case, the harm to the character and the appearance of the countryside is limited, and can be mitigated further through the regulation of the type and extent of the use, and by securing an improved and maintained landscaping scheme. The limited level of harm at a localised level, whilst in conflict with the development plan policies as set out above, is outweighed by material considerations of national and local policy support for rural diversification, and the economic benefits associated with the storage use of the appeal site by the existing farm and commercial businesses.
57. The appeal on both ground (a) appeals therefore succeed and the deemed planning applications in Appeals A and B are granted.

Conditions

58. The conditions imposed meet the statutory and policy tests. The conditions are required to protect the character and appearance of the area, and provide certainty regarding the scope of the development and its effect on the surrounding landscape.
59. Condition 2 is imposed to ensure that the required landscaping details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because the permissions are being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the landscaping scheme before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

60. For the reasons given above, I conclude that Appeal A and Appeal B succeed on ground (a). I shall grant planning permission for the use as described in the Notice

A as corrected, and for the operations as described in Notice B as corrected.
Notices A and B will be corrected and quashed.

61. In these circumstances the appeals on grounds (f) and (g) relating to both Notice A and Notice B do not fall to be considered.

Zoë Frank

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Odette Chalaby, Barrister.

Christopher Timothy, Maplevale Planning

Gary Holliday, FPCR Environment and Design

Ian Hilderley, Elford Lowe Farm Limited

Sally-Ann Hilderley, Elford Lowe Farm Limited

FOR THE LOCAL PLANNING AUTHORITY:

James Fox, Planning and Listed Building Enforcement Manager

Kerry Challoner, Development Management

Adam Collinge, Arthian Limited

PLANS

Area for HGV Parking 11414-L1-100

APPEAL A – SCHEDULE OF CONDITIONS

- 1 The storage of HGV trailers is only permitted on the area shown coloured pink on Plan Ref: 11414-L1-100.
- 2 Unless within 2 months of the date of this decision, a detailed landscaping scheme is submitted to the Local Planning Authority for approval, and unless the approved scheme is implemented within 6 months of the Local Planning Authority's approval (or such longer timescale as may be approved as part of the scheme), the use of the development will cease (being Storage (Use Class B8) including the storage of heavy Goods Vehicle (HGV) trailers shall cease until such time as a scheme is approved and implemented.

The landscaping scheme, shall include:

- (i) a detailed landscaping plan;
 - (ii) planting plans (identifying existing plants and, plants to be retained and new planting);
 - (iii) written specifications including cultivation and other operations associated with plant and grass establishment;
 - (iv) means of enclosure and retaining structures;
 - (v) boundary treatments;
 - (vi) details of hardstanding and hard surfacing materials;
 - (vii) an implementation timetable; and
 - (viii) a management and maintenance scheme.
- 3 Upon implementation of the approved scheme, the landscaping shall thereafter be maintained in accordance with the approved details.
 - 4 Any trees or plants which within a period of 5 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 5 The site shall be used for a maximum of 40 HGV trailers.
 - 6 No means of external lighting or illumination shall be installed unless and until a scheme for external lighting has first been submitted to and approved in writing by the Local Planning Authority. Thereafter, any external lighting shall be installed and maintained in accordance with the approved details.