Planning Inspectorate

Appeal Decision

Site visit made on 30 September 2025

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2025

Appeal Ref: APP/A0665/C/24/3352792
Moss Lane, Lostock Green, Northwich, Cheshire, CW9 7TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by W S Storage Solutions against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 8 August 2024.
- The breach of planning control as alleged in the notice is 'The material change of use of the land to storage and distribution (Class B8) use for the storage of refrigerated trailers, plus an open sided structure with plastic panelled dual pitched roof and the construction of earth bunds' ("the unauthorised development").
- The requirements of the notice are to:
  i Cease the use of the land for the storage of refrigerated trailers.
  ii Remove all trailers from the land.
  iii Remove the open sided structure with plastic panelled dual pitched roof from the land.
  iv Remove all material from the earth bonds from the land.
  v Return the land to its previous condition before the unauthorised development took place.
- The period for compliance with the requirements is: Four calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.

Decision

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

   the deletion of the word 'plus' and its substitution with the words 'the erection of' in Section 3 of the Notice; and

   the deletion of step iv in Part 5 of the Notice and its substitution with the words 'deconstruct the earth bunds on the Land'

2. Subject to the corrections, the appeal is allowed insofar as it relates to the material change of use of the land edged red to storage and distribution (Class B8) use for the storage of refrigerated trailers 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 material change of use of the land to storage and distribution (Class B8) use for the storage of refrigerated trailers at Land off Moss Lane, Lostock Green, Northwich CW9 7PG subject to the conditions set out in a schedule attached to this Decision.

3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the erection of an open sided structure with plastic panelled dual pitched roof and the construction of earth bunds on the Land edged red on the plan attached to the Notice, and planning permission is refused in respect of the open sided structure with plastic panelled dual pitched roof and the construction of earth bunds at Land off Moss Lane, Lostock Green, Northwich CW9 7PG on the

application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Ground (b) and the Notice

4. Inspectors have a duty to try to get notices in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Act to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellant or the Council. If the Notice cannot be corrected, I must quash the Notice.

5. The appellant's case on ground (a) refers to a mixed use of the site for B2/B8 purposes. It references the 'processing' of trailers by removal of branding and the 'stripping out of refrigeration motors'. The reference to general industrial uses does not appear in the allegation set out in the Notice. Accordingly, having consulted the main parties, the appellant confirmed that their position was tantamount to a ground (b) claim.

6. For an appeal to succeed on ground (b), the appellant must prove that the use of the land identified in the Notice had not changed to include a B8 storage use, plus an open sided structure and the construction of earth bunds. The burden of providing relevant facts rests with the appellant, and the test of the evidence is the balance of probability.

7. There is no dispute between the main parties that the earth bunds and a structure as described in the Notice remain on the Land. There is also no disagreement that a storage use is taking place there. However, the appellant contends that a general industrial use occurs as part of a mixed use alongside the storage of trailers.

8. In consideration of an alleged material change of use of land, Bridge J in *Burdle*[1] highlighted 3 broad categories of distinction in considering the relevant planning unit. These are:

   1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;

   2) a single PU that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and

   3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.

   Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.

9. The appellant refers to the 'processing' of trailers as the removal of branding and refrigeration motors. While I have little basis to doubt the claim that such activities have taken place on the Land, there is minimal detailed evidence provided to support that proposition. If those 'processes' occurred there, aside from some activity taking place within the canopied structure during inclement weather, the appellant has largely failed to accurately identify when or where it took place; what

[1] *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

is practically involved to cause it to be considered a general industrial use as described in the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) by way of impacts such as noise, dust or vibration, for example; or, any frequency with which the claimed activities occurred.

10. The appellant refers me to the original description of development proposed under planning application ref. 2023/01998/FUL as an indicator of the use taking place at the site. The original description is not before me. However, in referencing the change of description to that application the Council's report clearly states:

> 'Confirmation has been sought that the trailers parked on site are not serviced or worked on. They are stored on site only. This position is consistent with the observations of the case officer during the site visit undertaken. It is therefore concluded that the current use of the site falls within the B8 Classification of the Order as a matter of fact and degree'.

The claim also runs contrary to the Council's enforcement report which highlights, prior to the service of the Notice, two investigatory site visits and enquiries found that the building's use was only for the removal of branding.

11. At the time of my site visit, albeit post-service of the Notice, the building was only in use for storage. Elsewhere, a number of trailers appeared to have had their refrigeration units removed, however, for the larger proportion of the stored trailers their refrigeration units were intact. There was little evidence of removed refrigeration units on the site.

12. Taking the above matters together, I find the appellant has provided inconclusive evidence of the claimed 'processing' use as part of a mixed use of the site. On the basis of the detail before me, I am unable to conclude on the balance of probability that any general industrial activity takes place there. Moreover, even if it did occur, the appellant has not demonstrated the nature of that use and whether or not it was incidental to the primary storage use, whether it constituted a distinct primary use as part of a mixed use, or whether it might have been functionally and physically separate use such that a new planning unit had been created.

13. In terms of the wording of the Notice beyond the alleged use, the words 'plus an open sided structure with plastic panelled dual pitched roof'…. creates some ambiguity as to whether the structure is determined to be part and parcel of the alleged use, or operational development. The appellant refers to the structure as being temporary in nature.

14. The definition of a 'building' in s336 of the Act includes any 'structure or erection…'. The well-established caselaw[2] of *Cardiff Rating Authority,* endorsed by *Skerritts* in the Court of Appeal, confirms the three primary considerations as to what might constitute a building. Those are size, permanence and physical attachment.

15. At my site inspection, the building remained in the location shown on the submitted site plan dated 24 September 2024. It is a sizeable structure which appears bolted to ground anchors, or similar. Although the appellant asserts that it sits on top of the ground and is designed to be erected or dismantled within a day, having regard to the three main factors, I find the 'open sided structure' is a building for the

[2] *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385; *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102

purposes of the Notice. Accordingly, the wording in the allegation should be amended to clarify this.

16. The degree of ambiguity is not so great as to render the Notice a nullity or invalid. As the effect of the Notice requires the removal of the structure in any event, and the appellant states that the development has occurred in the last 4 years, I do not consider injustice would arise to either party if that clarifying correction is made to the Notice.

17. Notwithstanding my correction of the Notice, taking the above matters together, I find the appeal on ground (b) should fail.

Ground (a) and the deemed application for planning permission

Preliminary Matters

18. Under the ground (a) appeal the appellant does not seek permission for the retention of the earth bund surrounding the site. This development was the subject of refused planning application ref. 23/01998/FUL. However, the appellant's case refers to a mixed storage and general industrial use of the site. Pursuant to my finding on ground (b), and that it is not open to me to extend the description of development subject to the Notice[3] as it would likely cause injustice, the deemed application is limited to a B8 use of the site and the erection of the open-sided structure.

Main Issues

19. The main issues are whether or not the development requires a countryside location and could not be accommodated in an identified settlement in the interests of protecting the intrinsic character and beauty of the countryside, and the effect of the development on:

- highway safety
- health and safety, arising from potential past site contamination, and
- biodiversity.

Reasons

Locations for development – requirement for a countryside location

20. The Land includes some wooded areas within its western part; the boundaries are generally fenced, some with a high earth bund formed inside, other lengths of bunding have been provided within. The remainder is predominantly levelled, open and surfaced in concrete or gravel. The site formerly accommodated numerous buildings but, according to the Council, these were demolished prior to December 2005.

21. The site is bordered by two private roads coinciding with public rights of way (PROW) to the north and east. The Northwich to Knutsford railway line lies beyond the northern access. The wider area is mainly characterised by arable and grazed fields bordered by fences and hedges. The landscape benefits from intermittent tree cover and woodland blocks.

[3] See *Richmond BC v SSE* [1972] 234 EG 1555

22. The site lies within the countryside. Policy STRAT 9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies [2015] (the LP1) seeks to protect the character and beauty of the countryside. It restricts development in the countryside to a number of listed exceptions requiring countryside locations and those which cannot be accommodated within existing settlements. Storage uses and associated buildings are not within the list of exceptions.

23. There is no dispute between the main parties that the use of the site relies on large areas of open storage. The appellant highlights that the availability of such sites within settlement areas is very limited and often attract prohibitive inflated values due to housing and other development pressures. This is supported in a statement by a local commercial property agent.

24. According to the appellant, there is limited availability of alternative suitable sites within the functional economic market area. The identified sites are stated as being unsuitable, unavailable or financially out of reach. In referencing a dearth of available sites to meet the business's operational needs, the appellant refers me to the Council's commercial land monitoring and assessment documents[4]. Whilst the information provided by the appellant suggests that there is a pipeline of potential sites which could be used for open storage purposes, many of those currently allocated are said to be subject to permissions for alternative uses (or uses reliant on the development of buildings), or are not yet deliverable. The appellant's claims are not contested by the Council.

25. On the evidence before me, it seems to me that there is currently a shortage of available sites located within the Council's defined settlement areas. Furthermore, there is little evidence of alternative availability in the wider area. Accordingly, I find a countryside location for the storage is justified in the case circumstances.

26. Conversely, in the absence of a justified requirement for the building, and my finding on the ground (b) appeal, there is little to demonstrate the structure's need in conjunction with the storage use. The appellant has not provided the justification necessary for the erection of a building in the countryside.

27. Development justified outside of settlement areas is likely to give rise to some impact on the character and beauty of the countryside. Accordingly, STRAT 9 requires development to be of a scale and design not to harm the character of the countryside.

28. The majority of the trailers are enclosed. They come in various colours but at the time of my visit most were white. Views to the stored trailers are visible in the landscape from most directions save for some views from the west / northwest, which are screened by the woodland straddling part of the western boundary. Views from the east are available along the Moss Lane public right of way, however, longer views are restricted by woodland running along the eastern side of the road.

29. Elsewhere, trailers can be seen from the right of way and railway line to the north, through gaps in boundary vegetation and above the height of the bunds viewed from the network of roads to the south. Glimpses of the building are also available due to its overall height. The boxed utilitarian appearance and artificial colouration

[4] The Draft Employment Areas Survey 2023; Land Availability Assessment - Stage One (Draft) 2023; Annual Monitoring Report 2024

of the trailers and building contrast starkly with the predominant natural vegetative cover of the rural landscape. Compared to the prior nil use of the site, the scale of the storage operation and the presence of the trailers and building cause moderate harm to the intrinsic character and beauty of the countryside.

30. The appellant acknowledges that some harm arises to the landscape. To moderate the effects of the development, a condition could be imposed to require additional landscaping to assimilate it within its rural setting. While this could improve the appearance of the site, I find there would likely be some residual harm on account of the time necessary to provide a reasonable level of screening. Furthermore, it is unlikely that the building could be adequately assimilated on account of its overall size.

31. As described above, the appellant does not seek to contest the Council's finding that the bunds formed on the site cause visual harm to the beauty and character of the countryside. From the evidence before me and observations at the time of my site visit, I find no reason to disagree with the Council's conclusion on that aspect of the development.

32. For the reasons above, I find that, in the absence of justification, the building causes undue harm to the character and beauty of the countryside. Furthermore, because of the site's scale and the nature of the items stored there, the use also results in some undue harm to those aspects of the countryside. The development thereby conflicts with Policy STRAT 9 of the LP1 and Policies ENV 2 and ENV 6 of the LP1 and GBC 2 and DM 3 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies [2019] (the LP2) as together they seek to protect the beauty and character of the countryside by limiting development there and otherwise ensuring it is of a scale and appearance which is appropriate to the local character, distinctiveness and site context.

Highway safety

33. The site is accessed via a private road running from Lostock Hollow. The junction with Lostock Hollow is suitable to accommodate large vehicles, including HGVs, with good forward and exit visibility close to the point where the road speed changes from 30 to 40 mph. In addition, the proximity of the junction to the rail bridge is likely to curtail traffic speed on approach, or having crossed the bridge, on account of the crossing's more limited width.

34. Although not weight restricted, the use of Station Road to the north of the bridge, which links to the A559, would not be suitable for increased HGV traffic. It primarily serves residential development, a children's nursery and is a route to a local primary school. However, I note that an existing sign in place on the exit from the private road meeting Lostock Hollow states no right turn for HGV's in order to avoid that area.

35. The route southwards along Lostock Hollow provides a direct link to the A556, a main east-west route between the M6 and Chester. Although the link relies on a rural road, there are relatively few properties directly served by it such that, to my mind, direct material harm to highway safety would be unlikely to result from the use of the Land.

36. The private road between the site and Lostock Hollow is mainly of sufficient width and with good forward visibility to allow vehicles and users of the PROW to pass

safely. Only a limited section is of reduced width, where the road passes under the A556. While it is unclear as to whether the PROW extends to this point, there is vehicle priority signage and areas for other users to allow safe passage. There is little before me to give reason to find that the existing use of the site results in any significant adverse impact on highway safety or capacity in the locality.

37. For the above reasons, I find the use is consistent with Policy STRAT 10 of the LP1 and Policy T5 of the LP2 as they require traffic associated with new development to be safely accommodated within the existing highway network.

Contamination

38. The appellant acknowledges that the site may suffer from land contamination due to past industrial uses. The company assert that a Phase 1 geoenvironmental assessment submitted with a previous application to the Council resulted in their Environmental Protection (EP) advisors seeking further assessment and any necessary remediation by way of a planning condition.

39. The document is not before me. The Council's report for application ref.23/01998/FUL identifies shortfalls within the initial assessment, particularly in relation to the water environment. Contrary to their advisor's views, the Council determined that it would be inappropriate to leave that matter to condition on the retrospective application.

40. Policy DM32 of the LP2 requires development on contaminated sites must be accompanied by an appropriate contamination assessment which clearly demonstrates that the risk from contamination can be successfully mitigated and managed over the lifetime of the development. While Paragraph 197 of the Framework is clear that the responsibility for securing a safe development rests with the developer and/or landowner, Paragraph 196 requires adequate site investigation information to ensure the site is suitable for the use and to assess the risks arising from the former use/s. It should demonstrate that the remediated land could not be classified as contaminated under Part IIA of the Environmental Protection Act 1990.

41. The absence of that information is in conflict with the development plan and the Framework. However, it seems to me that, in suggesting a detailed condition to secure remediation measures, the Council's EP advisors are satisfied that the Land could be remediated. This approach is in line with the Framework's promotion of safeguarding and improving the environment and making effective use of land, including by the remediation of contaminated land (Paras. 124, 125).

42. In the context of a s174 appeal relating to development already carried out, it is open to me to impose a condition with a sanction in the event that the condition requirements are not met. In accordance with the advice in Paragraph 56 of the Framework, this approach could secure the necessary land remediation to meet the requirements of Policy DM32 of the LP2 and the Framework as they seek the safe use of previously contaminated sites, and Policy SOC 5 of the LP1 as it promotes safe environments that avoids adverse impacts on health and quality of life. As the development plan policies referred to me, these are the most relevant in respect of past site contamination.

Biodiversity

43. There is no dispute that parts of the site were cleared of vegetation to facilitate the use. As the development has already taken place, if adverse effects on protected species or their habitats arose, this is a matter for the relevant enforcing authority.

44. Furthermore, while biodiversity net gain does not apply in s174 ground (a) appeals, planning permission could be granted subject of a condition to assure commensurate replacement and/or enhancement planting. Subject to those requirements, I consider the aims of Policies ENV 3 and ENV 4 of the LP1, Policies DM 44 and DM 45 of the LP2 and the Framework as they seek to protect and enhance biodiversity could be suitably secured.

Other Matters

45. In support of the development, the appellant refers me to the Framework's promotion of the effective use of land, including previously developed land (PDL). There is some dispute between the main parties as to whether the land falls within the Framework's definition of PDL, and therefore the weight the land status might attract in the planning balance. The appellant also asserts that the site benefits from a previously established lawful use for Class B2 purposes.

46. The site's previous planning records date from 1991 and earlier. The most recent records include reference to the potential use of the site within former Class B3 'Special Industrial Group A', now within Class B2 of the UCO. Although the appellant claims the Land was in industrial use up until 1993 - with British Gas potentially utilising some or all of the site, there is little evidence of the actual use at that time or its duration. If only part of the site was utilised such that a new planning unit was formed, then any lawful use right for the wider site, if it existed, may have been lost at that time.

47. There is no dispute between the main parties that the site probably had a nil use between 1993 and 2023. Moreover, during that period, the site was cleared of buildings and, according to the Council, natural growth allowed to occur such that any former use relying on the buildings could not have been reinstated. Having regard to the likely 30-year period of non-use, the loss of the buildings, and the unmaintained condition of the Land, to my mind, any reasonable person would conclude that the previous use had been abandoned.

48. The appellant highlights that the site ownership changed in 1989, 2005 and 2021. In 2005, it was acquired by a regeneration, remediation and land development company. Although during the time of its nil use the site was considered for commercial purposes under development plan review procedures, a 2016 report[5] identifies that the owner was seeking B8 units, albeit potentially alongside B1 and B2 options. This does not support a position that their intention was merely to suspend the previous use of the site. Accordingly, I find the Council's assertion that the former use of the site has been abandoned is probably correct.

49. Notwithstanding, the follow-up Housing and Economic Land Availability Assessment published in 2017 identified the Land as PDL at that time. An aerial photograph sequence of the site submitted by the appellant shows vegetation re-establishing on the site. A 2021 image also shows established green growth,

[5] Winsford and Northwich Land Supply Study May 2016

although some areas appear to coincide with vegetated areas appearing in historic images from when the site was developed.

50. Between the 2017 and 2021 images, I have little doubt that pioneer growth on the land will have matured. Nevertheless, both images appear to show similar extents of the core area of hardstanding and surfaced paths/roads within the site area. At the time of my site visit, significant areas of consolidated concrete surfacing remained. Although the greening of the site may have gone some way to blending the site back into the landscape, views from the adjacent public rights of way to the north and along Moss Lane would no doubt have included visible areas of the surface infrastructure.

51. Consistent with the Council's approach in 2017, I find it unlikely that prior to the commencement of the storage use in 2023, the site condition would cause it to be excluded from the Framework's definition of PDL. Subject to securing multiple benefits, the re-use of PDL is a benefit of significant weight in the planning balance.

52. The appellant refers me to several decisions relating to sites for B8 uses allowed on appeal elsewhere. Although the case circumstances are distinct, they demonstrate support for economic development in line with the Framework's aim for economic growth and productivity, and its particular reference to storage and distribution uses that allow for the efficient and reliable handling of goods.

53. Although the Land is not said to have any significant through-put by the appellant, I have little reason to doubt that the recycling of trailers for onward sale to haulage and logistics companies offers a facilitating support role to those sectors. The economic benefits of the development are also a matter of weight in its favour.

Planning Balance and Conclusion

54. The storage use, on account of its scale and nature, would cause moderate harm to the character and beauty of the countryside. Some of those effects could be offset by appropriate landscaping. Nevertheless, there would be some residual harm to the countryside.

55. The use of the site would meet a demonstrated need for outside storage which could not readily be met elsewhere in the functional economic market area, including within existing settlements. The trailer storage would make effective use of previously developed land. It would make provision for storage and distribution operations which are identified as having specific locational requirements and support economic growth and productivity.

56. The use of the Land for storage could be made acceptable in planning terms in relation to the matters of biodiversity enhancement and remediation of contaminated land. This could be secured by planning conditions.

57. Taking all of those matters together, I find the benefits of the use would outweigh the minor conflict with the development plan when read as a whole. Accordingly, planning permission should be granted for that part of the development alleged in the Notice.

58. In contrast, on the evidence before me, there is little justification for the erection of a building of significant size on the site, nor the construction of substantial earth bunds. That operational development results in significant harm to the character

and beauty of the countryside and there are no substantive reasons to outweigh the resultant harm.

59. For the reasons given above, I conclude that the appeal on ground (a) should succeed in part and planning permission is granted for the material change of use of the Land to storage and distribution (Class B8) use for the storage of refrigerated trailers. The ground (a) appeal is dismissed insofar as it relates to the operational development of an open sided structure and earth bunds.

Conditions

60. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions.

61. Conditions requiring details of any external lighting, biodiversity enhancement and landscaping are necessary in the interests of protecting the character and beauty of the countryside. A condition for further investigation and remediation of contamination is necessary in the interests of recycling land and providing a safe form of development.

62. The conditions relating to contamination and landscaping are imposed to ensure that they are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of those matters before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

63. In securing enhancement measures, a requirement for the appellant to undertake protected species surveys for development already carried out is unreasonable.

64. A condition requiring a scheme and timetable for the removal of the bunds is unnecessary as that is subject of the requirements of the Notice. It may also be informed by the remediation and landscaping requirements, if necessary.

65. A condition identifying relevant plans is not required as the Land benefitting from planning permission is defined by the plan attached to the Notice. Given the isolated position of the site and its entrance, I find limits on the times of vehicle movements to and from it are unnecessary.

Ground (f)

66. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach. Pursuant to my finding that part of the alleged development should be granted planning permission, this ground relates only to the building and bunds.

67. The notice alleges the erection of a structure and the construction of the earth bunds. It requires that they are removed. The notice does not seek to ‘under-enforce’ and the purpose of the notice must be to remedy the breach.

68. The appellant contends that the requirement to remove the material incorporated into the bunds from the Land exceeds what is necessary to remedy the breach. It is asserted that the material incorporated was derived from the site.

69. As incongruous landforms that, in places, encroach on to rooting areas of earlier established trees and vegetation, some of the bunds cause significant harm to the character and beauty of the countryside due to their size, form and potential effects on trees. While some internal to the site have a limited visual impact, others have a significant impact, including those set close to Moss Lane, for example.

70. Augmented planting of the existing bunds as proposed by the appellant would not, in my view, address the adverse effects of the bunds on the countryside. While that is not to say some low mounding to enhance landscape screening of the internal area of the site could not be installed as part of a landscaping scheme, the removal of the high bunds is necessary to remedy the breach of planning control and to remove the harm to the countryside.

71. However, in the absence of evidence that the material to form the bunds was imported, the requirement at step iv in Section 5 of the Notice exceeds what is necessary to remedy the breach. Only deconstruction of the mounds is necessary to achieve a remedy. Accordingly, the requirement to remove the material forming the bunds from the Land should be deleted, and a corrected requirement only to dismantle the bunds is necessary.

72. For the above reasons, the appeal succeeds on ground (f) insofar as the requirement to remove the material forming the bunds from the land is deleted.

Ground (g)

73. This ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant's concern here is only the time necessary to identify an alternative location to store the trailers. Subsequent to my conclusion on ground (a), and that there is no contention in relation to the remaining matters, in balancing the public and private interests bound up in this case, I find that the period of four months given for compliance with the remainder of the notice does not fall short of what is reasonable. The appeal on ground (g) therefore fails.

Conclusion

74. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for the material change of use of the Land for storage and distribution (Class B8) use for the storage of refrigerated trailers, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the other parts of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

R Hitchcock

INSPECTOR

Schedule of Conditions to the Planning Permission Granted on Appeal Ref. APP/A0665/C/24/3352792 for the material change of use of the Land to storage and distribution (Class B8) use for the storage of refrigerated trailers.

1) The use hereby permitted shall cease and all trailers shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 4 months of the date of this decision a structured scheme to deal with the risks associated with actual or potential contamination of the site shall have been submitted for the written approval of the local planning authority (LPA) and the scheme shall include:

a) A preliminary risk assessment which identifies:

- all previous uses on or within influencing distance of the site
- potential contaminants associated with those uses
- a conceptual model indicating the sources, pathways and receptors of contamination
- actual or potentially unacceptable risks arising from contamination
- initial remediation options.

b) A site investigation based on component a) from which an assessment of risk to all current and future receptors that may be affected, including those off site (including, but not limited to, adjacent watercourses, the Plumley Lime Beds Site of Special Scientific Interest, Hame Farm Local Wildlife Site), will be derived.

c) A remediation options appraisal and implementation strategy, based on the detailed results of b), giving full details of the remediation measures required, how they are to be undertaken, and a timetable for their implementation. The implementation strategy shall also include the procedure and strict timetable to be followed in the event that unanticipated contamination is discovered or anticipated during or after the implementation of the approved remediation measures.

d) A verification plan providing details of the data that will be collected and the timeframe for its submission on completion of the remediation works in order to demonstrate that the remediation works set out in c) are complete and effective and identifying any requirements for longer-term: monitoring of pollutant linkages, maintenance, contingency actions and reporting.

ii) If within 8 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in

this condition will be suspended until that legal challenge has been finally determined.

2) The use hereby permitted shall cease and all trailers shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 3 months of the date of this decision a scheme for landscape and biodiversity enhancements on the site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

The scheme shall include details of:

- means of enclosure
- car parking layouts
- other vehicle and pedestrian access and circulation areas
- soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme
- the method of disposal/storage/distribution of material used in the existing bunds.

The scheme shall be informed by demonstration of no net loss of natural assets, using a biodiversity net gain metric, supported by UKHabs plans and habitat condition assessments; implementation methods using best practice guidelines; and, mitigation strategies where appropriate.

ii) If within 7 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained/retained for the duration of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3). No external lighting shall be installed on the Land until full details of any external lighting (lighting location, luminaries and fittings) has been submitted to and approved in writing by the local planning authority. Such details shall include the equipment and supporting structures, together with isolux drawings to demonstrate the levels of illumination within the site and the amount of any overspill of lighting beyond the site boundaries and the hours at which such lighting is to be operated.

The approved external lighting plan shall be implemented in accordance with the approved details and thereafter retained. No other external lighting equipment may then be used within the development other than as approved by the Local Planning Authority.

END.