The Planning Inspectorate

Appeal Decisions

Site visit made on 12 February 2018

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 February 2018

Land on the Northern Side of East Hall Lane, Wennington, Rainham
Appeal A: APP/B5480/C/17/3184559 (Notice A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Binning Property Corporation Ltd against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 14 August 2017.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the change of use of the land shown hatched in black on the plan attached to the notice from car parking area to storage of aggregates, distribution activities and storage of containers.
- The requirements of the notice are within 3 months of the date when the notice takes effect to have:
  1. Ceased the use of the land shown cross hatched in black on the plan attached to the notice for storage of aggregates, distribution activities and storage of containers; and
  2. Removed from the land all aggregates, containers and any other plant equipment associated with the unlawful use; and
  3. Removed all building materials, rubble and debris associated with taking steps 1. and 2. above and return the land back to the condition before the unauthorised use started.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(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 s177(5) of the Act.

Summary of Decision: The appeal is dismissed and the notice upheld as corrected and varied.

Appeal B: APP/B5480/C/17/3184556 (Notice B)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Binning Property Corporation Ltd against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 14 August 2017.
- The breach of planning control as alleged in the notice is:
  (i) Without the benefit of planning permission, the display and sale of motor vehicles shown hatched in black on the plan attached to the notice.
  (ii) Without the benefit of planning permission, the erection of a temporary sales office shown cross hatched at the front of the main building fronting East Hall Lane.
- The requirements of the notice are within 3 months of the date when the notice takes effect to have:
  1. Ceased the use of the land shown hatched in black on the plan attached to the notice for storage of display and sale of motor vehicles; and
  2. Removed the temporary sales office shown cross hatched used in connection with car

sales on the plan attached to the notice; and
3. Removed from the land all motor vehicles, temporary structures and any other plant, equipment associated with the unlawful use; and
4. Remove all building materials, rubble and debris associated with taking steps 1, 2 and 3 above and return the land back to the condition before the unauthorised uses started.

- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(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 s177(5) of the Act.

Summary of Decision: The Notice is quashed.

Procedural Matters

1. The appeals concern two different enforcement notices issued by the Council on the same day in relation to land on the northern side of East Hall Lane which is part of a former farm complex. Notice A attacks the use of land at the rear of the site identified in the notice and Notice B concerns the use of land at the front. Neither allegation concerns any use or operations on the piece of land which is located in between where there are vacant buildings.

2. The appellant has confirmed that there was a typographical error in the Appeal Form for Appeal B and the correct company name is Binning Property Corporation Ltd which I have utilised in the heading above.

Matters relating to the Notices

Notices A & B

3. The appellant argues that the notices are a nullity and to support this stance, reliance is placed on case law. Specifically, the *Miller-Mead*[1] judgment which is authority that a notice must tell a recipient of it fairly what he has done wrong and what he must do to remedy it and *Dudley Bowers Amusements Enterprises Ltd v SSE*[2] where the wording of an enforcement notice was so ambiguous that it was a nullity. Further reference is made to *Kerrier District Council v SSE*[3] as authority that an enforcement notice must be clear and unambiguous in its terms, both as to the breach alleged, and as to the steps required to be taken to remedy the breach.

4. The point is firstly made that the notices refer in each case to the "land affected" being "edged in black" on the site plan attached to notices. As the plans are printed in black and white it is claimed this causes confusion.

5. Each plan has the site outlined by a bold black line. Within that line, an area is shown hatched to identify the land where the development is alleged to have taken place. The entire site is within single ownership, but there are different occupants. The Council would be entitled to draw the line wider than the area on which the breach is alleged to be occurring in order to avoid the purpose of the notice being defeated by an unlawful use simply being moved to another part of the site within the same planning unit. However, in this instance there are three physically and functionally different areas. The central area not

[1] Miller-Mead v Minister of Housing and Local Government [1963] 1 A11 ER 4592
[2] [1986] 52 P.& C.R. 365
[3] [1981] P. & C.R. 284

included within the notices is redundant buildings partitioned off from the land at the front and rear. The land at the rear (Notice A) has a separate access off East Hall Lane and is in use for storage and distribution purposes whereas the land at the front (Notice B) relates to car sales. They are separate planning units. As such, each notice should be confined to the relevant planning unit.

6. There can be no real doubt over the land to which the notices are directed. Indeed, it is evident that this was understood from the nature of the arguments advanced by the appellant in the grounds of appeal.

7. I have a duty to get each notice in order if I can. Pursuant to section 176 of the 1990 Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party. By confining the area of each notice to that where the respective activities are being undertaken will not prejudice either party. In the case of Notice A, the access facilitates the change of use and is solely used for that purpose. It should be shown as part of the unit. As this strip of land is within the site outlined already on the plan its inclusion is no more onerous then before.

8. Turning to the content of the notices. Where there is a ground (a) appeal, as in these cases, it is important that the allegation is correct because the terms of the deemed planning application is derived from the wording of the allegation.

Notice A only

9. It is the "material" change of use which constitutes an act of development for the purposes of section 55 of the 1990 Act. For precision, the word "material" should be added to the allegation in Notice A[4]. As a point of clarification only, I am satisfied that this correction along with the change to the plan mentioned above can be made without injustice to either party. Those points neither individually nor collectively render Notice A invalid or a nullity. The notice shall be corrected and I shall proceed to determine Appeal A on that basis.

Notice B only

10. The first allegation in Notice B makes no reference to the act of development at all. In describing the use which does not benefit from planning permission, it is evident that the notice is concerned with the material change of use of land. This should be made clear in the allegation. The allegation and requirements in an enforcement notice should match. The first requirement of the enforcement notice in Appeal B is to cease the use of the land for the "storage of [sic] display and sale of motor vehicles". The allegation makes no reference to the storage of vehicles. Neither party refers in their submissions to there being an ancillary storage use which might have accounted for 'storage' being mentioned in the requirements but not the allegation.

11. Having consulted the parties on the disparity between the allegation and requirement, the Council responded that the words "storage of" had for some reason been omitted from the notice and invited me to amend the notice.

12. At my site visit I saw that the front part of the appeal site is occupied by the car sales business. Towards the rear of this part of the site there is a small portacabin signed as a 'sales office'. The expansive forecourt was full of

[4] The reasons for issue of the enforcement notice refer to a 'material change of use'

vehicles. It was unclear which were for sale as very few had a price displayed. More cars were inside a wide covered structure not accessible to the public located at the very front of the site. Overall, there appeared to be a mix of vehicles being stored and for sale across the site.

13. Storage and display are not the same use. If a "storage" use was added to the allegation then it would widen the scope of the notice. Prejudice would thereby be caused to the appellant who has not had opportunity to make a case with reference to any storage use of this part of the site. The notice cannot be corrected without injustice. That being so the notice must be quashed. It does not prevent a corrected notice being re-issued.

14. There is a further issue with the notice in Appeal B. The second requirement is to remove the temporary sales office "used in connection with car sales". These words do not appear in the allegation which is expressed simply as "the erection of a temporary sales office". The additional words are unnecessary and could be deleted had the notice not been quashed for other reasons.

Reasons

Appeal A - ground (c)

15. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof lies with the appellant to demonstrate on the balance of probabilities that there has not been a breach of planning control. The thrust of the appellant's argument is that there is not a material change of use.

16. The appeal site forms part of a former farm complex which had subsequently diversified into manufacturing, storing and distribution of food products. The main building was damaged by fire in recent years and is now vacant. It was in use for purposes falling within Class B2 (general industrial) of the Town and Country (Use Classes) Order 1987 with ancillary storage and distribution and offices. The building is located on land between the two uses now attacked by the enforcement notices.

17. The alleged breach of planning control in Notice A is taking place on a hard surfaced area behind the building. The Council maintains that the land was in constant use as a car park in connection with the Class B2 use as shown by aerial photographs from 2015 and 2016. The appellant refers to an undated aerial photograph and another from 1999 to demonstrate that it was also used for delivery lorries and storage. Such uses could have been ancillary to the B2 use of the building. It does not mean that a stand-alone storage and distribution use confined to the appeal site must be lawful.

18. It is contended that the appeal site is used for the mixing of raw aggregates by machinery to produce an alternative product which amounts to a manufacturing process falling within the general industrial use Class B2.

19. No case has been made under ground (b) to argue that the allegation is wrong. When the retrospective planning application[5] was refused by the Council on 27 July 2017 shortly before the issue of the notice it was for the "use of the site as an aggregate storage and distribution facility with ancillary storage containers".

[5] Under planning ref: P0480.17

The description is similar to the use now alleged with no mention of Class B2. It makes no sense for the application to be described in that way if those uses were ancillary to a different primary use.

20. From what I saw at my site visit there is a Class B8 use and that is what is alleged in the notice. The containers are stored and aggregates are stored and distributed. There was no sign of any Class B2 use at the time of my visit albeit the site appeared to have been cleared with no activity taking place. Whether or not there is treatment of aggregates ongoing, I did not see it. Even if there were, the whole site has since been subdivided into three, starting a new chapter in the planning history and the previous B2 use no longer applies.

21. On the evidence before me, there is a mixed use of the site for storage and distribution. They are not ancillary to any other use which benefits from planning permission because it is now a planning unit on its own. That planning unit may remain in single ownership but it has a separate occupier from the car sales and is physically and functionally separate from the other uses. It is used for Class B8 purposes for which there is no planning permission. I conclude that the use alleged in the notice amounts to a breach of planning control.

22. The appeal on ground (c) fails.

Appeal A - ground (a) and the deemed planning application

Main Issues

23. The Council's reasons for issue of the enforcement notice are limited to the use amounting to inappropriate development in the Green Belt, the effect on openness of the Green Belt and the absence of very special circumstances to clearly outweigh that harm. In its statement of case, the Council has expanded upon its reasons to include visual harm, the effect on living conditions of nearby residents and impact on the local road network/highway safety. The appellant has addressed these issues in submissions and no prejudice arises from my considering those points.

24. Therefore, the main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect on the openness of the Green Belt;
- the effect on the character and appearance of the surrounding area;
- the effect on living conditions of neighbouring residential occupiers with particular reference to noise and dust emissions and lighting;
- the effect on the local road network and highway safety; and
- whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

25. The appeal site is located within the Metropolitan Green Belt. The appellant points out that the Council has not relied upon the Green Belt policies within its development plan. That is not unusual where, as in this case, development plan policies pre-date the Framework. In this instance, the Council places reliance upon the Framework and Policy DC43 of its Core Strategy[6] (CS). It does not matter that specific paragraph numbers within the Framework are not identified when the notice summarises, albeit briefly, the gist of the paragraphs relied upon. There is sufficient detail for the appellant to understand the basis for the Council's concerns which the appellant has been able to address.

26. Policy DC43 provides that within the Green Belt, planning permission will only be granted for ready mix concrete plant and other secondary aggregate processing plants at current mineral working sites. Whilst there is a mineral working site very nearby, the site itself is not one and so this exception does not apply.

27. Paragraph 89 of the Framework lists certain buildings which are not inappropriate development in the Green Belt. The notice does not concern 'buildings' but a material change of use of land and so Paragraph 89 does not apply. Paragraph 90 goes on to identify certain other forms of development which are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. One exception is engineering operations. The appellant asserts that the development subject of the notice comprises the installation of an aggregates plant which falls within the definition of engineering operations.

28. That is not how the notice is framed. The deemed planning application is derived from the allegation which concerns the material change of use to a use for the storage of aggregates, distribution activities and storage of containers. It is a storage and distribution use, not an engineering operation. Neither this nor any of the other exceptions within Paragraph 90 apply.

29. The Courts have confirmed that Paragraphs 89 and 90 are closed lists. Therefore, any development (including a material change of use of land) which does not fall within the scope of the specific exceptions set out in Paragraphs 89 and 90 is inappropriate development. That is so irrespective of whether the Council Officer assessed the development as being 'appropriate'. It remains inappropriate even if the development does improve damaged and derelict land in the Green Belt as advocated in Paragraph 81.

30. Thus, the development is inappropriate development in the Green Belt.

Openness

31. As set out in Paragraph 79 of the Framework, the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

[6] London Borough of Havering: Core Strategy and Development Control Policies Development Plan Document, 2008

32. The appellant cites the High Court decision in *Timmins & Anor v Gedling Borough Council*[7] as authority that openness means the absence of buildings or development. With reference to this earlier judgment, the Court of Appeal in *Turner v SSCLG & East Dorset Council*[8] found that the Judge had gone too far in stating that there is a clear conceptual distinction between openness and visual impact and stated that it was wrong in principle to arrive at a specific conclusion as to the openness by reference to visual impact. It is clear that the openness of the Green Belt has a spatial as well as visual aspect. Openness is thus not necessarily confined to permanent physical works.

33. The site had been developed already by the laying of a hardstanding. The appellant argues that there has been a reduction in built form across the former farm complex as a whole following fire damage and the redevelopment of this and other parts of the wider site. However, the fact remains that the former farm complex has now been divided into physically distinct areas under separate occupation and uses to create separate planning units. The appeal site was used for parking. The laying of a hardstanding and parked vehicles will have impaired openness to some degree. The deposit of large stockpiles observed by the Council, the presence of heavy plant and equipment and stored containers will invariably compromise openness to a greater extent than before.

34. At the time of my visit, a single row of metal shipping style containers were positioned towards the rear of the site. Considerably more containers covering a wider area are shown in the copy photographs supplied by the Council dated 14 August 2017. There were no trucks or piles of aggregate as also shown in copy photographs of the same date. Aggregates were being stored in bays along one side boundary. There were two low level silos, one stored in a corner of the site along with a front loader. Whilst there was some other storage and equipment in the corner, the site was mostly clear leaving an expansive area of empty hardstanding. A large area would be needed for HGV's to park and manoeuvre in connection with the distribution activities. There was no sign of any activity at the site on the morning of my visit, but the evidence indicates that much more of the site is in active use at other times.

35. The plant may not be substantial in size, but it is large. The containers are sizeable and the effect on openness will increase with their number. This could be controlled by condition, but containers are bulky by their very nature even if limited to single height. All of the items associated with the use are capable of being moved and the amount of storage and distribution activities may well fluctuate. Nevertheless, whilst the use is ongoing there will be an effect on openness and one that is more harmful than a car park. Not only does the use involve larger scale items, those that are stored or kept on the site are also liable to be present for longer periods.

36. The plant may have a limited operational lifespan, but it could be replaced or added to. The appellant says that a significant proportion of the aggregates come from the minerals site in East Hall Lane and suggests that the use could be restricted to the time limited minerals workings. The impact on openness from the use would not then be permanent. If limited to 10 years, as suggested

[7] Timmins & Anor v Gedling Borough Council [2014] EWHC 654 (Admin). Appealed to the Court of Appeal - citation [2015] EWCA Civ 10.
[8] John Turner v SSCLG and East Dorset Council [2016] EWCA Civ 466

by the appellant, the effect would still be evident for an appreciable length of time. It would do little to mitigate the effect on openness.

37. I conclude that there is a material adverse effect on openness.

Character and appearance

38. The appeal site is accessed off East Hall Lane. Very little of the site can be seen from the lane because of the large disused buildings and car sales business at the front which is screened by a structure and high hoardings. The former farmhouse to the west remains in residential use and there is a pair of partially demolished cottages to the east. According to the Council, planning permission has been granted for the cottages to be re-built. There are no other buildings in the immediate vicinity with the surrounding area being otherwise open. Boundary planting screens views into the site to a reasonable degree from across the fields provided the storage containers are not stacked high.

39. Views of the countryside are interrupted by areas of minerals workings. Extraction is taking place both on the opposite side of the lane and virtually adjacent the appeal site. Frequent HGV movements take place between the sites on either side of the lane. The minerals site area is considerable, but workings will be phased with reinstatement of the land afterwards.

40. The appellant has also drawn my attention to another minerals site with processing plant which was granted planning permission on appeal[9] on 4 May 2017 for land adjacent to Wennington Hall Farm. Upon implementation of this permission, a considerable part of the land on either side of East Hall Lane will be subject to minerals extraction. The character and appearance of the area will no doubt change further in consequence.

41. Although the appeal site cannot readily be seen from the public domain, the introduction of plant and equipment along with storage of aggregates and containers has created a type and intensity of use that has industrialised the site over and above its previous use. Its character will also have changed to detrimental effect from the distribution activities and movement of containers generating noise along with HGV's in and around the site.

42. With minerals workings in close proximity, the storage and distribution of aggregates does not look wholly out of place in the surroundings, but it jars with the residential uses on either side. The storage of a large number of containers does not sit comfortably on the site given their bulk especially if stacked. Although the number and height could be controlled by condition, it would not overcome the inherently harmful appearance of containers being stored within a rural location notwithstanding the site history and erosion of the landscape through excavations.

43. I conclude that there is a material adverse effect on the character and appearance of the site and surroundings contrary to CS Policy DC61 insofar as it seeks to maintain, enhance or improve the character and appearance of the local area and the aims of Paragraphs 17 and 58 of the Framework for development compatible with its surroundings.

[9] Appeal ref: APP/B5480/W/16/3159082

Living conditions

44. The former farmhouse is in use as residential flats and is located on the adjacent site. Even though the appellant has acquired this property there is still a lawful residential use with potential for the living conditions of occupants to be affected. On the other side of the access there is a pair of semi-detached cottages which are in a state of dilapidation, but with planning permission granted for their reconstruction. When the Council considered that application, the Officer's report identified that the cottages are "adjacent to an industrial premise". Environmental Health did not object. A condition was recommended to ensure that the replacement semi-detached houses are built to a particular specification to ensure sufficient sound insulation against airborne noise.

45. Whilst that decision took into account the general industrial use which also had ancillary uses, the uses now involve outdoor distribution of aggregates utilising plant and equipment which would not have been anticipated given that the use is unlawful. There is nothing to indicate that either the replacement dwellings or the flats on the other side will have sufficient sound insulation to provide satisfactory protection against the noise that is invariably generated.

46. The residential properties are not directly adjacent to the appeal site which is set further back from the highway. Nonetheless, they are not far away. The access runs beside the shared boundary with the cottages which will be utilised by HGV's among other vehicles delivering and collecting aggregate. No doubt, there will also be HGV movements associated with the storage of containers.

47. The appeal is accompanied by a Transport Statement prepared by consultants. A traffic survey is appended. A traffic count was undertaken on Thursday 13 July 2017. Over a 12 hour period between 0700-1900 there were 63 arrivals to the appeal site recorded of which 39 were HGV's and 71 departures of which 46 were HGV's. The report suggests that the combined number of traffic movements generated by the uses in Notices A and B is likely to be around the same as the previous B8 development. However, the previous use would have encompassed a larger site including the main building. The report also acknowledges that the trip rates for the B8 use are not known and suggests they could well have been higher than estimated.

48. How comparable the trip rates are in terms of the previous and existing uses is largely speculative. What is evident is that the existing uses of the appeal site generate significant traffic movements including HGV's which will also create noise potentially causing disturbance to residents.

49. A restriction secured by condition on the operating times would limit the duration of noise and hours of deliveries and collections. That is not to say the levels and frequency of noise within those hours would be within acceptable limits. It is unclear in the absence of further information whether there are measures that could be put into place to reasonably safeguard the living conditions of residential occupiers in relation to noise.

50. I am unpersuaded on the evidence before me that there would no adverse effect on living conditions of neighbouring occupiers in terms of noise to avoid conflict with CS Policy DC61. This policy seeks to prevent unreasonable adverse effects by reason of noise impacts. Whilst it pre-dates the Framework, it is consistent with the core planning principle within Paragraph 17 thereof for development

that secures a good standard of amenity for all existing and future occupants of land and buildings.

51. The Council acknowledges that safeguarding conditions could be imposed in terms of dust and I have no reason to disagree. It seems to me that conditions are also capable of controlling outdoor lighting to an acceptable degree. I find no material harm in these respects.

Local Road Network

52. East Hall Lane is a narrow lane that connects with Wennington Road and the A1306. Part of the lane is extremely narrow with no passing places and is limited to vehicles under 7.5 tonnes. In consequence, HGV traffic from the appeal site and the adjacent minerals site exit the area in an easterly direction onto the A1306.

53. The local highway authority objected to the development on highways grounds but has not commented on the Transport Statement outlined above. To my mind, the Transport Statement confirms that the use of the appeal site generates significant HGV movements and it is uncertain how those levels compare with the previous lawful use.

54. Paragraph 32 of the Framework advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts on development are severe. This is more stringent that CS Policy DC32 which provides that new development which has an adverse impact on the functioning of the road hierarchy will not be allowed and I give it limited weight accordingly. Simply because the Council has not cited conflict with any paragraph within the Framework does not mean that there is accordance with planning policy. I must still consider relevant local and national policies.

55. Unlike the appeal site, the minerals site which was granted permission on appeal is not accessed from East Hall Lane, but directly onto the A1306. There is an extensive area of mineral workings already implemented taking place on either side of the lane onto which traffic will exit.

56. The lane is narrow and appears not to be in good condition exacerbated by large quantities of mud. Given the numbers of vehicles, especially HGV's, using the lane there is scope for concern over road user safety and adverse effects on the road network. The cumulative impacts of all these developments along the lane are unclear.

57. As such, I am not satisfied that the development is acceptable in terms of its effect on the local road network and highway safety for the development to accord with CS Policy DC32 and Paragraph 32 of the Framework.

Other considerations

58. Paragraph 88 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.

59. The lawful use for Class B2 purposes with ancillary storage and distribution and offices is advanced as a significant fallback position. That depends on re-commencement of a Class B2 use. Given that the buildings are fire damaged, it is unlikely that they would be brought back into use very soon.

Moreover, aggregates could only be stored and distributed and containers stored, if they were used for purposes ancillary to the B2 use. As things stand, they are primary uses of the land. In the circumstances, the lawful use of the site as a whole carries little weight as a fallback.

60. It is submitted that the previous use saw crates stacked high on parts of the site with storage being unrestricted by condition. That scenario would only recur if a lawful B2 use were to recommence. There is no indication that is likely to happen. In many respects, the storage of aggregates and containers further away from the lane is an improvement upon the position as it stood previously where there is less visual impact. It is also preferable in terms of being capable of being controlled by condition including opening hours. In this regard, I attach moderate weight. There is also moderate benefit from the site being brought back into use with the land maintained following fire damage to the wider site.

61. Planning permission for the phased extraction of sand and gravel from land off East Hall Lane was granted on 20 February 2015 for a 10 year period. A significant proportion of aggregates are stated to derive from operations at that site. It is argued that this is highly sustainable as minerals only travel a small distance between the extraction point and appeal site. The proximity of this existing minerals site with planning permission also granted for another close-by prompts me to give moderate weight to the compatibility of the uses for the storage and distribution of aggregates and to the sustainability of the location. However, part of the use includes the storage of containers. No justification is given for that use in the context of the mineral workings, if there is any at all. Weighed against the use is its incompatibility with the neighbouring residential uses. These factors have limited the weight I attribute to the type of use.

62. The appellant proposes that the duration of planning permission be limited to 10 years to tally with the minerals workings. It is still some considerable time during which harm to the Green Belt occurs and so it carries limited weight.

63. As an employment site, jobs will be created which could help to boost the local economy. It is unclear how many people are employed and so I can only attach limited weight. The appellant also says that the development helps to maintain and enhance the vitality of local services, facilities and other businesses within the vicinity of the site. No elaboration is given and I cannot speculate as to how that might be achieved. Little weight attaches to the submission accordingly.

Green Belt Balance

64. The use enforced against is inappropriate development in the Green Belt which is harmful by definition. There is a reduction in openness and harm to the character and appearance of the area, principally in relation to the storage of containers. According to the Framework substantial weight must be given to any harm to the Green Belt.

65. I have balanced the totality of harm against the combined weight of those factors advanced in favour of the development. When considering the factors in favour of the case as a whole, I have reached the view that the other considerations do not clearly outweigh the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion on ground (a) and the deemed planning application

66. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The appeal on ground (f)

67. The ground of appeal is that the steps required by the notice to be taken are excessive.

68. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

69. The Council has not identified which of these purposes it seeks to achieve. In requiring cessation of the use and removal of all aggregates, containers, plant and equipment, it is evident that the Council seeks to remedy the breach. The reasons for issue of the notice concern protection of the Green Belt which is also indicative of seeking to remedy injury to amenity. The notice therefore appears to be directed at both purposes.

70. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) and (b), it is not excessive.

71. The appellant suggests that a lesser step would be the removal of the containers only to address the Council's concerns over openness. This would address the harm to some extent, but it would not overcome all of my concerns on the main issues.

72. The appeal on ground (f) fails.

The appeal on ground (g)

73. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.

74. The effect of the appeal is to stop the clock. The notice only takes effect on the date of this appeal decision and gives 3 months thereafter for compliance. The appellant seeks a period of 12 months to allow the current operation to find potential alternative premises and relocate the business which employs a number of people. It is suggested that this will be time consuming.

75. The appellant refutes the Council's contention that it has other premises from where similar operations are conducted. The alternative site is stated to be in the Heathrow area from where it would not be commercially viable to continue to serve existing customers or be environmentally sustainable.

76. No details are before me on the availability of other sites in the area. Three months is quite a short time for a business to relocate and to put in place relevant permissions. I am also mindful of the implications for employees. Set against that is the harm to the Green Belt and potential impact upon the living conditions of residents with no controls in place.

77. It seems to me that a period of 6 months would strike the right balance. The notice shall be varied accordingly. To this extent, the appeal on ground (g) succeeds.

Formal Decisions

Appeal A

78. It is directed that the notice be corrected by:

    (i) deleting the word "edged" in paragraph 2. and substituting the word "hatched".

    (ii) inserting the word "material" before "change of use" in paragraph 3.(i).

    (iii) replacing the plan attached to the notice with the plan annexed to this decision.

    And varied by deleting 3 months from paragraph 6 and substituting 6 months as the period for compliance.

79. Subject to those corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 act, as amended.

Appeal B

80. The notice is quashed.

KR Saward

INSPECTOR

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 27 February 2018

by K R Saward Solicitor

Land on the Northern Side of East Hall Lane, Wennington, Rainham

Reference: APP/B5480/C/17/3184559 (Notice A)

Scale: NOT TO SCALE