

Agenda Item No 7

Planning and Development Board

3 September 2018

**Report of the
Head of Development Control**

Appeal Update

1 Summary

1.1 This report brings Members up to date with recent appeal decisions.

<p>Recommendation to the Board</p> <p>That the decisions are noted.</p>

2 Appeal Decisions

a) Yardley's Tye, Hurley

2.1 This is a minor case involving an extension to a garage/workshop, but still shows that good design is required. The decision letter is at Appendix A.

...

b) Heart of England

2.2 The decision letter here covers six appeals against refusals of planning permission and the service of Enforcement Notices. In summary the Council was successful in all but one of the cases.

Looking at the individual matters, then the first was the use of the land on the other side of Wall Hill Road in connection with a dog training facility (Appeals C and D). Planning permission was refused and the Enforcement Notice was upheld with a compliance period of three months. In coming to these decisions the Inspector gave significant weight to the fact that Members had visited the site and that there was direct evidence of the adverse impact of the continuing use from local residents. This "harm" outweighed the fact that the Inspector found that the proposal was appropriate development in the Green Belt.

In respect of the bridge, the footway, waterfall and decking then planning permission was refused and the Enforcement Notice upheld with a compliance period of six months (Appeals E and F). The Inspector found that these various works were harmful to the Green Belt; the character and appearance of the area as well as to residential amenity. He did not find any circumstances that were "very special" to outweigh this harm.

There were two appeals dealing with the existing "forestry building" on the site. The first (Appeal A) was into an Enforcement Notice requiring the

cessation of its use for B8 storage and the demolition of palisade fencing. Planning permission was refused and the Notice requirement is six months. Although the Inspector found the use to be appropriate he found that the actual use caused significant harm to the Green Belt and that it had a negative visual impact. This outweighed any of the arguments put forward by the appellant.

The second appeal (Appeal B) was against refusal of planning permission to use this building additionally for assembly and leisure use. In this case the Inspector granted planning permission subject to conditions. He found that provided the additional use was confined to inside the building that there would be no adverse impacts. Whilst this decision might not be entirely welcome, it is understandable because the building is already there and that subject to conditions its lack of impact could be controlled.

An application for costs against the Council was dismissed. These decisions are welcome and once again illustrate how the openness of the Green Belt and the adverse impacts of what are small minor developments can outweigh an appellant's business case.
... The appeal decision letter is at Appendix B and the costs decision is at
... Appendix C.

3 Consultation

3.1 Consultation has taken place with the relevant Members and any comments received will be reported at the meeting.

The Contact Officer for this report is Jeff Brown (719310).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date



Appeal Decision

Site visit made on 5 June 2018

by **R C Kirby BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th June 2018

Appeal Ref: APP/R3705/W/18/3192768

Yardleys Tye, Brook End Lane, Hurley CV9 2JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Colin Trippas against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2017/0367, dated 8 July 2017, was refused by notice dated 16 October 2017.
 - The development is proposed garage extension for workshop to be used for Mr Trippas's hobby.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal site is located within an area of Green Belt. Accordingly the main issues in this case are:
 - whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on the character and appearance of the area, having particular regard to the design of the extension, and
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

3. The appeal site comprises one of 3 attached garages. The garages are linear in form with a pitched roof. The proposal is for an extension to the side and to the rear of the appeal garage to create additional space for vehicles, storage and a workshop. The ridge height of the appellants' garage would be increased by 800mm to reflect the height of the new extension.

4. The Framework establishes at paragraph 89 that the construction of new buildings in the Green Belt is inappropriate. Exceptions to this include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
5. Policy NW3 of the North Warwickshire Local Plan Core Strategy (CS) relates to the Green Belt, however it is silent on whether or not extensions to existing buildings are acceptable in such areas. I have therefore considered the proposal against the Framework in respect of this main issue.
6. Both parties refer to the volume of the new extension, and there is dispute as what the increase would be; the appellants suggesting that it would be less than 30%, the Council suggesting that it would be 88%. In the absence of calculations to support either party's case in this regard, I have assessed the proposal against the submitted drawings and my observations on site.
7. Based upon the site visit, the garage building as it currently exists appears to be unaltered and can reasonably be considered to be the original building. The proposal would increase the depth, width and height of the garage building, and would result in it being significantly larger in scale than the original building. I therefore consider that the extension would amount to a disproportionate addition over and above the size of the original building on the appeal site. Accordingly the proposal represents inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on openness

8. Openness is an essential characteristic of the Green Belt. The extension of the garage into an area of land which is currently open and the increase in height that would result would have an impact on openness, in that it would be reduced. Whilst this loss of openness would be small and localised, harm would be caused.

Character and appearance

9. The proposed extension would alter the linear form of this garage building and would introduce a catslide roof and low eaves on the roadside elevation which is not a feature of the building. It would also increase the prominence of the building within the streetscene as a result of its increase in scale and siting. However, the different roof heights that would result would reflect those found elsewhere upon this development of former agricultural buildings. Furthermore, whilst located closer to the road than the existing building, the new extension would not be overly dominant in the streetscene given the low eaves height and design of the roof on the road side elevation and the intervening grass verge between the carriageway and appeal site boundary.
10. The Council has expressed concern about the proposed doors to the extended building. I share the concern that the detail shown on the submitted drawings detracts from the domestic character of the building, however, such details could be controlled by a suitably worded planning condition in the event that the appeal was allowed. This matter is not a determining issue in this case.
11. In light of the foregoing, I conclude that the proposal would not result in harm to the character and appearance of the area. There would be no conflict with the design and character and appearance aims of saved Policy ENV12 of the

North Warwickshire Local Plan (LP) or CS Policy NW12, or the local distinctiveness aims of LP Policy ENV13.

12. The proposal would inevitably increase the volume of the original building and as mentioned earlier the extent to which this would be increased is in dispute. However, even if I were to take the Council's submissions in this regard, whilst there would be conflict with the percentage increase in volume of the original building as set out in LP Policy ENV13, there would be, given my conclusion above, no conflict with its purpose, which includes protecting the rural character of the area.

Other considerations

13. The Framework makes it clear at paragraph 88, that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
14. I have noted the appellants' reasons for requiring the extension to the garage including pursuing hobbies and allowing their vehicle with roof rack and cycle carrier to be housed. Whilst personal circumstances are a material consideration, they carry limited weight. The development would continue to exist long after the personal circumstances have ceased to be relevant.

Conclusion

15. The new extension would be inappropriate development in the Green Belt. Further harm would be caused as a result of loss of openness. The absence of harm to the character and appearance of the area does not diminish this harm. The Framework establishes that substantial weight should be given to any harm to the Green Belt. At most I give limited weight to the material considerations cited in support of the proposal and conclude that, taken together, they do not outweigh the harm the proposed development would cause to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist.
16. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR



Appeal Decisions

Site visit made on 3 July 2018

by **Anthony J Wharton BArch RIBA RIAS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 July 2018

Appeal A (Notice 1) - Ref: APP/R3705/C/17/3178455

Land at Heart of England Promotions Ltd, Old Hall Farm, Meriden Road, Fillongley, Coventry, Warwickshire CV7 8 DX

- 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 Heart of England Promotions Ltd, against an enforcement notice issued by North Warwickshire Borough Council.
 - The enforcement notice was issued on 15 May 2017.
 - The breach of planning control as alleged in the notice is as follows:
Change of use of a building and land from forestry use to a mixed use comprising B8 Storage use, to also include the storage of recreational items and parking of recreational vehicles not directly associated with the approved forestry use; toilet block and mess room, used partially in association with the recreational use of the adjoining land as approved on 8 March 2008, Council reference PAP/2007/0503, and to the internal dimensions approved 9 June 2011, Council reference MIA/2011/0006, as part of the mixed use; together with the erection of the palisade fencing and gates that forms a storage compound area to the rear of the forestry building and as an integral part of that storage and parking use.
 - The requirements of the notice are as follows:
 - i. Cease the unauthorised use of the building and land for B8 storage use, also including the storage of the recreational items and the parking of recreational vehicles that are not directly associated with the forestry use and remove the stored items and vehicles from the building and land.
 - ii. Demolish the palisade fencing that forms a storage compound area to the rear of forestry building and remove the resulting materials from the land.
 - The period for compliance with the requirements is Six Months.
 - The appeal is proceeding on grounds (a), (b), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Ref: APP/R3705/W/17/3177315

Land at Heart of England, Meriden Road, Fillongley, Coventry, Warwickshire CV7 8DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Heart of England Promotions Ltd against a decision by North Warwickshire Borough Council.
 - The application Ref PAP/2016/0414, dated 12 August 2016 was refused by notice dated 12 January 2017.
 - The development proposed is a change of use from agricultural/forestry to a mixed use of agriculture/forestry with D2 (assembly and leisure).
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Appeal C (Notice 2) - Ref: APP/R3705/C/17/3182857
Land at Great Chapel Field, Wall Hill Road, Chapel Green, Fillongley, Coventry, Warwickshire CV7 8DX

- 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 Heart of England Promotions Ltd against an enforcement notice issued by North Warwickshire Borough Council.
 - The enforcement notice was issued on 18 July 2017.
 - The breach of planning control as alleged in the notice is as follows:
Change of use of land from agricultural to the unauthorised use of the land for dog training and exercising, together with the siting of an unauthorised field shelter, agility course equipment and other associated items.
 - The requirements of the notice are as follows:
 - i. Cease the unauthorised use of the land for dog training and exercising, together with the siting of an unauthorised field shelter, agility course equipment and other associated items.
 - ii. Remove the field shelter, agility course equipment and other associated items from the land.
 - The period for compliance with the requirements is Three Months.
 - The appeal is proceeding on ground (a) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal D - Ref: APP/R3705/W/17/3177385
Land at Great Chapel Field, Wall Hill Road, Chapel Green, Fillongley, Coventry, Warwickshire CV7 8DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Heart of England Promotions Ltd against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0060, dated 8 February 2016 was refused by notice dated 16 May 2017.
 - The development proposed is the change of use of land from agricultural to dog training/exercising, including new access, car park and siting of moveable field shelter and dog agility equipment.
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Appeal E - (Notice 3) - Ref: APP/R3705/C/17/3178471
Land at Heart of England Promotions Ltd, Old Hall Farm, Meriden Road, Fillongley, Coventry, Warwickshire CV7 8 DX

- 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 Heart of England Promotions Ltd against an enforcement notice issued by North Warwickshire Borough Council.
 - The enforcement notice was issued on 15 May 2017.
 - The breach of planning control as alleged in the notice is as follows:
Unauthorised bridge, wooden pathway, waterfall, pond and lining and decking.
 - The requirement of the notice is as follows:
 - i. Demolish and remove the unauthorised bridge, wooden pathway, waterfall, pond and lining and decking and restore the land to its former condition.
 - The period for compliance with the requirements is Six Months.
 - The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Appeal F - Ref: APP/R3705/W/17/3176903

Land at Heart of England Promotions Ltd, Old Hall Farm, Meriden Road, Fillongley, Coventry, Warwickshire CV7 8 DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission (retrospective).
 - The appeal is made by Heart of England Promotions Ltd against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0480, dated 25 August 2016, was refused by notice dated 12 January 2017.
 - The development proposed is the retention of a steel footbridge spanning between access driveway off Wall Hill Road and lawn on south side of old quarry pit (Warwickshire Logs 92) together with block paved sunken access ramp and timber decked pathway to restaurant entrance.
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Costs Applications

An application for costs, in relation to Appeals C (Ref: APP/R3705/C/17/3182857) and D (Ref: APP/R3705/W/17/3177385), have been made by Mr Stephen Hammon, on behalf of Heart of England Promotions Ltd, against North Warwickshire Borough Council. This is the subject of a separate decision.

Summary of Decisions

1. Appeal A is dismissed and the notice is upheld.
2. Appeal B is allowed and planning permission is granted subject to conditions.
3. Appeals C and D are dismissed.
4. Appeals E and F are dismissed.
5. See Formal decisions below.

Introduction and matters of clarification

6. There are six appeals in total. I have referred to them above as A, B, C, D, E and F. There are three enforcement notices which I have referred to as 1, 2 and 3. Appeals A, C and E are against the issuing of the three enforcement notices and Appeals B, D and F relate to refusals of planning permissions. The wording in the allegations of the notices differ from the descriptions of the planning applications.

7. The changes of use referred to in these decisions are as set out in the Town and Country Planning (Use Classes Order, 1987 as amended). In Appeal A (Notice 1) the alleged change of use (of the building) relates to a change from a forestry use to a mixed use of Class B8 (General) storage use, which includes the storage of recreational items in association with the recreational use of the adjoining land.

8. The plan attached to the notice shows the buildings and its immediate surroundings including the area used storage and parking within the surrounding compound. Appeal B relates to the same building and is an application for a change of use from agriculture/forestry to a mixed use of agriculture/forestry with some Class D2 (assembly and leisure) use. The red line on the application plan is drawn tightly around the building and does not include its immediate surroundings. There is no site plan to indicate what the application sought in relation to the immediate surroundings, including the unauthorised compound and fencing.

9. Appeal C (Notice 2) and Appeal D relate to the same change of use (as alleged and retrospectively applied for). That is: from an agricultural use to a use for dog training

and exercising use, including some operational development comprising a shelter and the placing of some training equipment on the land.

10. Appeal E (Notice 3) and Appeal F relate to the same development (as alleged and as retrospectively applied for): that is the construction of a bridge; the formation of a pathway, waterfall, pond and lining and decking. The application drawings were amended but, even so, what is now on site does not accord with the approved drawings.

11. In reaching my conclusions in these Green Belt Appeals I have had regard, where appropriate, to all of the relevant case law references relied upon by the parties. These include the judgements in *Fordent Holdings v SSCLG [2013] EWHC 2844* (Fordent); *Turner v SSCLG & Anor [2016] EWCA Civ 466* (Turner); *Lee Valley Regional Park Authority v Broxbourne Borough Council [2015] EWHC 185* (Lee Valley); *Timmins v Gedling Borough Council [2014] EWHC 654* (Timmins) and *Fayrewood Fish Farms Ltd v SSE [1984] JPL 267* (Fayrewood).

12. At the start of my site visit a meeting was held (between representatives of the appellant company and the Council) to clarify physical matters relating to the enforcement notices; the application drawings for the three sites and any other physical matters which the parties considered to be relevant. The Council had indicated that some of the various plans submitted did not exactly reflect what is on site. I noted that that was particularly the case for Appeals E and F, where the walkway had been amended to include a short covered-in area and pergola-like columns and cross-members. At the meeting I confirmed that I had been able to view the site for Appeals C and D the previous day together with its physical relationship to the houses on the opposite side of Wall Hill Lane.

13. On the basis of what was discussed prior to the formal site visit, I requested that further information be submitted via the Planning Inspectorate Case Officer. The information requested related to the application drawings for Appeals B, D and F. I also requested copies of drawings relating to the extent of earlier approvals for the recreational use of the land. These were forwarded to me and have been taken into account in reaching my decisions.

14. During my site visit I was shown the extent of the appellant company's land and noted all of the event areas, together with various structures (some seemingly mobile), marquees, tents and vehicles and other items on the land. I also inspected the access road to the building which is the subject of Appeals B. It is evident that the Council and the appellant company are still in dispute about the lawfulness of various uses and operational developments on the overall site. However, I am only empowered to deal with the 6 appeals which are before me.

Background information

The locations of the sites

15. The appeals sites are all located within the Green Belt on land owned by the appellant company, Heart of England Promotions Ltd. Appeals A, B, E and F are on land which forms part of the 65ha (160 acres) Heart of England Conference and Events Centre (HECEC) site, which also has planning permission for a new hotel building. This overall land in the company's ownership is located to the south west of Fillongley; to the north east of Meriden and between Chapel Green and Corley Moor. Appeals C and D are located on agricultural land (in the ownership of the appellant company) to the north east of the conference centre and close to where the B4102 passes underneath the M6 motorway.

16. The HECEC complex was originally centred on Old Hall Farm which is a Grade II listed building. However, the overall land holding site is now much larger. To the south and west it now extends as far as Birchley Hays Wood. To the north the land is bounded by Meriden Road, the B4102, and to the north-east it is partly bounded by Wall Hill Road. To the south-east of the main complex of conference centre buildings there is a large lake and, further to the south-east, the company land shares an open countryside boundary with agricultural land to the north west of Corley Moor.

Planning history

17. The site has a detailed and complex planning history but, before the appellant company purchased it in 2001, the land was all in agricultural use. There is no need to repeat the whole planning history (including enforcement and other legal actions) in detail at this stage. The facts relating to the history are well recorded. However, I have referred to certain particular permissions and enforcement actions which have been referred to in the appeals now before me. In a previous appeal decision (APP/R3705/C/09/213979) it was indicated that, at that time (2009), around 15.5 ha of land was used for recreational purposes (include the large lake) whilst 17ha was in agricultural use. The rest comprised woodland. I have not been provided with any up-to-date figures but, as indicated above, I have had sight of the plans to which the authorised recreational uses of the land relate. I have also seen a list of the recreational activities which are acceptable and those which are not.

18. The latest enforcement appeals were in 2012 when several notices were upheld. The breaches included various operational developments; a change of use from agricultural to paintballing activities; driving activities on the land; the formation of a sand beach at the lake; various lighting installations; engineering works including fences and gates and a tower structure within the lake.

Relevant development plan and national policies

19. Section 38(6) of the Planning and Compensation Act 2004 requires that any determination under the Planning Acts must be made in accordance with the development plan for the area, unless material considerations indicate otherwise. The most relevant development plan policies, set out in the North Warwickshire Local Plan Core Strategy 2014 (NWCS) are NW1 (Sustainable Development); NW2 (Settlement Hierarchy); NW3 (Green Belt); NW10 (Development Considerations); NW12 (Quality of Development); NW13 (Natural Environment) and NW17 (Economic Regeneration).

20. All of these policies are generally up-to-date with the National Planning Policy Framework (NPPF) which is a major material consideration in these appeals and sets out a presumption in favour of sustainable development. In reaching my decisions in these appeals I have had regard to this presumption, as well as to the basic principles and relevant sections and policies of the NPPF. These include those relating to 'Achieving sustainable development'; the 'Core planning principles'; 'Building a strong competitive economy'; 'Requiring good design'; 'Protecting Green Belt land'; 'Conserving and enhancing the natural environment'; 'Determining applications'; 'Planning conditions and obligations' and 'Enforcement'. I have also had regard to relevant Planning Practice Guidance (PPG) in reaching my decisions in all six of these Appeals.

Appeal A, Notice 1

Introduction

21. The appeal site is located to the south of the main conference centre complex; to the west of the large lake and on the edge of the woodland. It is an existing building which can be accessed by a track from the north (which leads off from the B4102), as

well as from within the main site. However, at the time of my visit the gate to the entrance from the B4102 was locked. The building was originally approved on appeal, as permitted development for agricultural and forestry use. However, it was not built in accordance with the approved plans and an enforcement notice was issued and upheld. This required that it be returned to its approved use and layout. Following an unsuccessful legal challenge the appellant company was prosecuted and fined for failure to comply with the notice.

22. An application to amend the layout was submitted and this was granted on the basis that it was required to meet the needs of forestry workers. The alterations included relocation of toilets; a mess room and a new door. A landscaping scheme was also supposed to have been completed but, instead it is stated that a roadway was constructed and the landscape condition was not carried out. This too became the subject of enforcement action and again the notice was upheld. The requirements of that notice included returning the land around the building to its former grassed surface. The requirement was not complied with and the appellant company is in contravention of the notice. During my site visit I noted the compound and storage area; the palisade fencing and the items being stored within the compound..

Appeal A on ground (b)

23. To succeed on this ground the onus is on the appellant company to categorically show that what is 'alleged' in the notice has not occurred as a matter of fact. This ground is different to ground (c) in that it relates simply to whether or not what is 'alleged' has occurred and not whether what has been done, or is being carried out, is lawful for planning purposes. The appellant's ground (b) arguments rely on the previous appeal decision (App/R3705/C/10/2133801) and the provisions of section 173 (11). In this case, for the reasons set out below, I do not accept that this is an appropriate argument in relation to this ground (b) appeal.

24. The allegation refers to a change of use of the building and land from forestry use to a mixed use comprising B8 Storage use, which includes the storage of recreational items; the parking of recreational vehicles; the use of toilet block and mess room, with the recreational use of the adjoining land, together with the erection of the palisade fencing and gates to a storage compound area to the rear of the building.

25. The question to be asked is whether or not what is 'alleged' has occurred, irrespective of whether or not what has occurred is lawful for planning purposes. From the Council's submissions and evidence and from my own inspection I saw that the agricultural/forestry building was indeed being used for various uses including what can only be described as general storage as opposed to just agricultural and/or forestry storage.

26. The items included various off-road vehicles; a tractor and trailer, a vehicle mowing machine; various recreational items; items of furniture; building materials; PA equipment and a rack of clothing. I also noted the toilet block and mess room, the compound, gates and palisade fencing. I conclude therefore that what is 'alleged' in the notice has occurred as a matter of fact and the appeal fails on ground (b). I now turn to whether or not the matters alleged are lawful for planning purposes.

Appeal A on ground (c)

27. The merits of the case do not fall to be considered under this ground and to be successful the onus is on the appellant to show that the use being carried on the site is lawful. PPG clearly indicates that the onus is upon an appellant to shown that there has not been a breach of planning control. This could be because there is a planning

permission in place for the use alleged to be being carried out; that one is not required because, for example, the works constitute permitted development or that the use is lawful for some other reason. In this case the appellant company relies on section 173 (11) of the Act, on the basis that the LPA under-enforced in one of the previous enforcement actions in 2010 (APP/R3705/C/10/2133801).

28. That previous appeal related to unauthorised use of the land for a mixed use of 'forestry, agriculture and recreation including paintball activities and motor driving activities'. The notice specifically required the latter two activities to cease. The evidence now before me indicates that, although the paintball activities ceased the driving activities had continued after the compliance period had expired. This was also evident from my site visit.

29. Any further driving activities on the land are a contravention of that notice. An enforcement notice imposes a continuing obligation which is not discharged by compliance with some or all of its requirements. By virtue of section 181 of the Act the requirements of a notice automatically revive if the unauthorised development/use (enforced against in the first instance) resumes or is carried out after compliance with the notice. Thus, in this case, although the paintball activities ceased the requirement has an enduring effect in relation to driving activities and for that matter any further unauthorised recreational use.

30. By continuing the recreational use of driving activities there was a contravention of the notice and this subsequent breach, together with any other unauthorised recreational use of the building and compound remains enforceable under S179 of the Act. I do not accept, therefore, that in this instance the appellant can rely on section 173 (11) in relation to the current notice. The previous notice referred to a mixed use agricultural/forestry and recreation use including paintball and motoring activities. Although this related to the whole of the land it cannot, in my view, be argued that the whole of the land was authorised for recreational use of any kind, whatever that might be (the permission listed the acceptable recreational uses). In any case this current notice applies to the appeal building only which is on land not authorised for recreational use and I have been provided with information which indicates the extent of the authorised recreational land.

31. In addition the Notice 1, now before me, refers to the unauthorised compound where a general storage (B8) and recreational have been shown to be stored. With no specific permissions in place; no permitted development rights and the facts that the Council is not precluded from taking enforcement action against the mixed use being carried out (by virtue of section 179 of the Act), the use cannot be lawful. The appeal also fails, therefore, on ground (c).

Appeal A on ground (a)

32. The main issues are as follows:

- whether the development being carried out is inappropriate development in the Green Belt for the purposes of the NPPF and development plan policy,
- the effect of the development on the openness of the Green Belt,
- the effect on the character and appearance of the area,
- if the proposal does represent inappropriate development, whether the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Whether the use constitutes inappropriate development in the Green Belt

33. Clearly the agricultural and forestry use of the building is not inappropriate development in the Green Belt. Paragraph 89 of the NPPF also indicates that the provision of a building for outdoor sport and outdoor recreation is not inappropriate, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. In this case the building is existing, permanent and of substantial construction. Again, therefore, albeit not fully authorised, paragraph 90 indicates that such a development may be considered not inappropriate. However, this again is subject to the two tests set out above. I consider, therefore, that any change of use to a mixed use of agriculture, forestry and recreation would not be inappropriate as long as the use meets these two tests.

The effect of the building on the openness of the Green Belt

34. There is no definition of openness in the NPPF but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. In the 'Lee Valley' case it was held that *'the concept of openness means the state of being free from development, the absence of buildings – as distinct from the absence of visual impact'*. In the Turner case it was held, amongst other things, that *'the concept of 'openness of the Green Belt' is not narrowly limited to the volumetric approach'* and that *'the word 'openness' is open textured and that a number of factors are capable of being relevant when it comes to applying the facts of a particular case'*. The case went on to state that prominent amongst those factors was, how built up the Green Belt was/is in the first place, compared to how built up it would be if the works as proposed were carried out.

35. In that context it was held that *'volumetric matters'* may be a material consideration but not necessarily the only one. In the 'Lee Valley' case it was accepted that the *'effect of development on openness may involve questions of degree'* and that a conclusion on the degree of impact on openness is essential to the new reliance on the new flexibility for previously developed land in the first place...and to the analysis of harm. In reaching my conclusions on the effect on *openness* in these appeals I have had regard to the findings of all of the above cases.

36. The building and its compound comprises development. The enforcement notice is aimed not just at the building itself. The building and the compound clearly impact on the openness of this part of the Green Belt. With just the building in place (for a forestry use) this part of the appellant company's land was initially perceived as being a building within open land. Instead of this former *'openness'*, this part of the overall site is currently perceived as what the Council refer to as a depot.

37. With all of the items stored within the compound, as well as vehicles and other items stored outside of it to the west (including building materials; a JCB loader; wooden pallets; sand; metal containers; tarpaulins; metal fencing sections) this gravelled and part hard-surfaced area the area resembles a depot or builder's yard. These items volumetrically affect the openness of this part of the Green Belt and the openness cannot be said to be preserved by what is now happening on the land.

38. Having seen the building and its immediate surroundings I consider that the appeal building its compound and the other items are significantly harmful to the openness of this part of the Green Belt. It follows that the matters set out in the notice, and the change in use in particular have resulted in the openness not being preserved. This is contrary to the relevant NPPF test on preservation of openness and thus I conclude that the development is inappropriate development and harmful in principle to the Green Belt.

Effect on character and appearance of the area

39. I also consider that due to the combination of the building; the hardstanding area; the palisade fencing, the compound with its storage; the parked vehicles and all of the other surrounding paraphernalia, the overall visual impact is significantly intrusive and harmful to this part of the appellant company's land area on the edge of the woodland. The building and its immediate surroundings can be seen from both near and distant viewpoints within the site and I consider that the overall development is obtrusive and jarring within this rural woodland and open countryside setting

40. The storage activity is within and beyond the building and I agree with the Council's contention that it is akin to a depot or store for many items which cannot be said to be agriculturally or forestry related. Due to its overall visual intrusion I consider that the development enforced against is contrary to policies NW12 and NW13 of the NWCS which seek to protect the and enhance the quality of the area. It is also contrary in my view to the policies set out in section 11 of the NPPF (conserving and enhancing the natural environment).

41. Thus, as well as harming the Green Belt in principle through inappropriateness (non-preservation of openness), it is also harmful due to its negative visual impact on the general character and appearance of its rural (including woodland) location. I now turn to whether or not the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Very special circumstances

42. On behalf of the appellant various circumstances are put forward as amounting to the necessary very special circumstances. These include the facts that the change of use (proposal in Appeal B) would enable educational visits to recommence; that it would facilitate the smooth running of the woodland recreational activities; that the agricultural and forestry uses would remain; that it would strengthen the appellant company which provides local jobs and brings visitors to the area and that it accords with the NPPF objectives of securing economic growth and supporting a prosperous rural economy. These are arguments primarily with regard to Appeal B but clearly the economic arguments are relevant in both appeals.

43. It is also argued that the Council's arguments that '*no very special circumstances exist*' is flawed since the alleged harm is based on the appearance of the building as it was in 2010, whereas now it is much closer to the original forestry building which was granted planning permission in 2005. It is further argued that the conference centre facilities are not suitable for woodland/field recreational users and that any storage use for play equipment, vehicles and maintenance equipment is a different issue and not the purpose for which permission is sought.

44. Having considered the reasons put forward by the appellant I do not consider that they amount to the very special circumstances necessary to justify the development (as relating to Appeal A) within the Green Belt. The reasons essentially relate to circumstances regarding the recreational uses of the site (some of which are still disputed); the need for storage facilities for recreational items as opposed to agricultural/forestry storage and other needs relating to the overall running of the business (including employment). Furthermore, in granting approval for the recreational uses on parts of the land the LPA had queried the necessity for business storage needs and had been assured that these would be found off-site.

45. I acknowledge that if the appeal building and its immediate surroundings could be utilised to assist the recreational business needs, there would be an economic benefit generally and this would help in the building of a strong and competitive economy. But that could be said for any increase in the recreational use of the appellant company's land. The NPPF is quite clear that in terms of sustainability the planning system needs to perform more than just an economic role. It is also a requirement that development performs a social role and an environmental role and that these are mutually dependent.

46. I have concluded above that in environmental terms the use would be harmful to the Green Belt in principle in that it is harmful to the openness of the Green Belt and that it detracts from the character and appearance of this part of the rural area. I do not consider that the business and economic advantages put forward in support of the development outweigh the harm in principle and the other harm to the Green Belt. It follows that very special circumstances necessary to justify this particular development (the subject of Appeal A) within the Green Belt do not exist.

Appeal A on ground (f)

47. It is argued that the requirement to remove the road materials and palisade fencing and removing the resulting materials from the land is excessive. It is indicated that the base of the compound is hardcore and that there is a regular requirement for this type of material to be imported for the repair of roads and access paths. It is therefore argued that the materials and palisade fencing could be re-used in connection with the other activities on the site.

48. The Council considers that the lesser measures put forward are inappropriate. The suggestion that the materials be allowed to remain on site to maintain other roadways is not acceptable considering that some of the roadways being maintained are unlawfully retained in breach of previous enforcement action. With regard to the palisade fencing it is indicated that this is over 2m in height and any further siting on the appellant company's land would require planning permission.

49. Having read all of the submissions on this ground and having seen the palisade fencing, I do not consider that the requirements of the notice are excessive. The notice was issued in order to overcome the breach and the harm to amenity within this part of the Green Belt. I agree with the Council that the requirements as set out are necessary and that the lesser steps as suggested would not overcome the harm. The appeal also fails, therefore, on ground (f). However, the appellant is not precluded from applying for planning permission to re-use the fencing on other parts of the land. The compliance period would give sufficient time, in my view, for this course of action to be taken.

Other Matters

50. In reaching my conclusions in Appeal A I have taken into account all of the other matters raised on behalf of the appellant and by the Council. These include all of the matters covered in the initial grounds of appeal and supplementary statement (20 June 2017); the Council's statement; the officer's Board Report; the numerous appeal decisions relating to the overall site; the case law references and the appellant's final comments on the LPA's Joint Statement of case, dated February 2018.

51. However, none of these carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other factor of such significance so as to change my decision on Appeal A.

Appeal B,

Introduction

52. The red line for the application includes the access road from the main road and is tightly drawn around just the building. As indicated above the building was originally approved on appeal and was subsequently the subject of an application for non-material minor amendments. This amendment introduced toilets for use by forestry staff. However, it was not built in accordance with the approved drawings. An upper storey was installed including a cafeteria. Following the upholding of an enforcement notice the upper floor was removed and the cafeteria use ceased.

53. The current application layout drawings (366/216/01; 02 and 03) for this appeal differ from the originally approved drawings. This current proposal re-introduces an upper storey which would be accessed via an external staircase. It also incorporates further toilets, as well as an upper floor tabled seating area. The application drawings only include one elevation (the east and side elevation) which shows the new external staircase. There is also a location plan (316/216/03) but no site plan indicating the proposals immediately surrounding the building.

54. When discussed at the site visit it was indicated that, physically, the surrounding land would remain in its existing use. It is stated that the building would be operated to the same hours as those permitted for the outdoor recreational use of the site (08.00hrs to 18.00hrs Monday to Fridays and 09.00hrs to 18.00hrs on Saturdays, Sundays and Bank Holidays). I have dealt with the appeal on the basis of the application. That is, for a change of use with internal alterations but no external works and the inclusion of the access road to facilitate the new mixed use.

55. Internally it is indicated that part of the ground floor will remain in use for the storage of agricultural and forestry equipment and for forestry/woodland management operations during the winter season. The remainder of the building would be used for leisure uses associated with the approved leisure uses at the Heart of England site. The intention is to use part of the building for educational purposes and as a reception building for woodland/outdoor activities. Refreshments would be provided in part of the first floor area. Thus some sort of café would be reinstated.

56. The Council indicates that though the building was approved for use as a forestry building their view is that it is rarely used for such purposes. The present storage use is referred to and that an inspection by the Council had shown that the building was being used for the storage of, amongst other things, off-road vehicle and buggies; PA equipment; chairs; racks of clothing; grass cutters and small tractors. There had been no evidence of any agricultural or forestry use at that time. A partial upper-storey had been installed. The council is also concerned about any future parking or external storage of items around the building.

57. The land surrounding the existing building had been used for the open storage of large and small vehicles used in association with the recreational use of the site as well as for vehicles for hire including a fire engine, a truck-mounted slide, a play vehicle and an American taxi-cab. At the time of my visit some of these vehicles were parked on parts of the wider site. The Council provided aerial and normal photographs showing the storage uses and the palisade fenced enclosure. I have described above, in Appeal A, both the internal and external storage uses taking place on the land at the time of my comprehensive site visit.

Main issues

58. The main issues are as follows:

- whether the development proposed is inappropriate development in the Green Belt for the purposes of the NPPF and development plan policy,
- the effect of the development on the openness of the Green Belt,
- the effect on the character and appearance of the area,
- the effect on highway safety and,
- if the proposal does represent inappropriate development, whether the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Whether the use constitutes inappropriate development in the Green Belt

59. The appeal building, as an authorised forestry building, is clearly not inappropriate in the Green Belt. Leisure and assembly uses (Class D2) are not included in the list of exceptions set out in paragraph 89 of the NPPF. Nevertheless, because the building is of permanent and substantial construction and the proposal is for its re-use (a mixed re-use), it is potentially not inappropriate. This is on the basis that it complies with the conditions set out in paragraph 90 of the NPPF and in particular, in this case, whether the re-use (including a partial assembly and leisure use), would preserve the openness of the Green Belt.

The effect of the proposed change of use on the openness of the Green Belt

60. I consider that taking the building in isolation the minor addition of the external staircase, in itself, would not have a significant effect on 'openness' even though it is still operational development in a location where there is none at the moment. The overall volumetric effect of the staircase would not, in my view, have an unacceptable impact on the openness of this part of the Green Belt site.

61. What would have an unacceptable impact on 'openness' however would be the retention of the compound, the palisade fencing and the storage of items both within and outside of the compound. I also share the Council's concerns about any future parking of vehicles on this part of the land. These would significantly impact on 'openness'.

62. In appeal A, I have referred to the fact that there is no definition of 'openness' in the NPPF but that, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. In Appeal A the use of building and the compound for B8 storage use had been enforced against. I have concluded in that appeal that the use as carried out is harmful to the 'openness' of the Green Belt. The notice will be upheld and the requirements will necessitate the removal of the palisaded compound and the storage uses currently being carried out both inside and outside of the compound.

63. In this case a slightly different use for Class D2 assembly and leisure purposes has been proposed. The proposed development in this case would involve changes to the existing building both internally and externally, as well as the use of the access road. Unfortunately the application does not indicate what might occur as a use of the land in the immediate vicinity of the building. However, the planning statement refers to the desire to re-introduce educational uses and this would clearly result in a need for schoolchildren to be taken to the overall site in a variety of vehicle sizes.

64. Based on the submissions; the nature of the authorised uses on the overall site; the detailed planning history and my site inspection, I consider that anything in addition to the basic alterations and change of use of the building would affect 'openness'. My reasons for this conclusion are the same as set out in Appeal A. The parking of vehicles (such as School and delivery vehicles) around the building and additional comings and goings along the proposed access road (if this were to be used as a separate access),

would impact just as negatively as the current compound and parking uses on the openness of the Green Belt.

65. However, taken on the basis of the application being confined to just the building (and subject to planning conditions to ensure that this was the case), I consider that the 'openness' of this part of the Green Belt would be preserved. Therefore with matters such as landscaping, parking and use of the access road being the subject of conditions, it is my conclusion that the proposed change of use of this existing building, with just its specific alterations, would preserve the 'openness' and would not be inappropriate within this part of the Green Belt. I find in the appellant company's favour on this issue. Because of this the question of very special circumstances, and the last issue, do not need to be considered.

Effect on character and appearance of the area

66. For the same reasons as those set out above I do not consider that the basic change of use and the alterations would have a detrimental effect on the character and appearance of the area. Without the external storage activities; the parking of vehicles and the palisaded compound I do not consider that the change of use and minor alterations to this existing substantial building within the Green Belt would have a detrimental impact on the character and appearance of the area. Again, therefore I find in the appellant company's favour on this issue.

Effect of the access road and highway safety

67. As referred to above the application included the use of the access road and the Council's main concerns relate both to the intensification of use and the acceptability of the junction with Meriden Road (B4102) and visibility splays. Warwickshire County Council Highways Authority (WCCHA) had recommended that this access was not suitable and that all visitors to the site (the appeal building) should arrive and leave via the main access. On the basis that a condition was imposed to this effect the WCCHA did not object to the proposed change of use.

68. The Council refers to the submitted planning statement which indicates that the proposed change of use would not lead to any increase in traffic movements. However, it is pointed out that this does not square with the proposal to re-introduce educational visits to the site with a view to using the appeal building. There would clearly be an increase in usage and if schools were involved it is most likely that it would involve the use of mini-buses or coaches. The Council also indicates that the appeal building could be used as an assembly and leisure use in association with the main conference centre, thereby increasing the potential for additional traffic movements.

69. Having seen the location of the junction, I agree with the WCCHA and also share the Council's concerns regarding the intensification of usage of the site. However, if the suggested conditions were to be imposed and users of the building were restricted to using the main entrance to the site, highway safety issues as well as those relating to intensification of use could be overcome. I consider, however, that it would be reasonable to allow the use of the road for staff entry; deliveries and emergency vehicles. Again, therefore subject to the imposition of relevant conditions, I do not consider that there the change of use would lead to issues regarding highway safety.

Overall conclusion on Appeal B

70. If the permission granted for this use is controlled by the imposition of conditions it is my view that the basic change of use and the minor alterations can be considered to be not inappropriate in the Green Belt. Again subject to the same proviso I consider that the 'openness' of this part of the Green Belt would be preserved; that it would not have a

detrimental impact on the character and appearance of this part of the overall site and that matters of highway safety and intensification of use would not be issues on which to withhold permission.

71. On that basis I consider that the proposal accords with policies NW1 (Sustainable Development); NW3 (Green Belt); NW10 (Development Considerations); NW12 (Quality of Development); NW13 (Natural Environment) and NW17 (Economic Regeneration) of the development plan, as well as with relevant NPPF policies. The appeal succeeds, therefore and a conditional permission will be granted.

Necessary conditions

72. I consider that all of the Council's suggested conditions (with the exception of a landscaping condition), as well as those of the WCCHA are necessary and appropriate and that they all accord with the necessary tests for conditions set out in PPG. I consider that some of the conditions should be worded to ensure that they are true conditions precedent whereby the permission is controlled by and is subject to conditions. Some need to be expressively prohibitive of commencement of the development. I also consider that such conditions are necessary as they go '*heart of the permission*' and that without them the development would be harmful to the '*openness*' of the Green Belt, as well as being harmful in terms of its visual impact. With regard to the proposed landscape condition, this would necessitate going outside of the redline application and in my view this would not meet all of the necessary tests. In any case the requirements of Notice 1 require the land around the building to be returned to its former state.

Appeals C and D

Introduction

73. The irregular-shaped appeals site at Great Chapel Field is located on the north side of Wall Hill Road, close to its junction with Meriden Road in Chapel Green. It is bounded by Wall Hill Road to the south, south-west and south-east; by Meriden Road to the north-west and the M6 motorway to the north. The appellant company's site at the Heart of England Conference and Events Centre lies to the south west. There is a public Right of Way (ROW) along the northern boundary.

74. The nearest residential properties to the site are located on the opposite side of Wall Hill Road to the south-east of the site. These are '*Moor House*', '*Moor House Lodge*' and '*Moor House Bungalow*'. There are mature trees to the north and north-west and a hedgerow boundary to the south and south-east. A sloping grass verge separates the field from Wall Hill Road on the south west side and there is a partially hard-surfaced access across the drive to the main gate. I inspected this area in detail the day before my formal site visit and informed the parties at the meeting which preceded my formal visit. I inspected the whole of the site on my site visit.

75. In Appeal D, the application was partly retrospective and partly a proposal for new works. The new works related to the formation of a new access and car park and the re-siting of the moveable field shelter and dog agility course equipment. The enforcement notice in Appeal C relates to the change of use of the land from agricultural use to the dog training use plus the siting of the shelter, the equipment and some other items. Only ground (a) is pleaded. In this appeal it was the existing entrance, as opposed to the new one which was under consideration.

76. The field was rented out by the appellant company in September 2015 to a local expert dog trainer. Subsequently the open fronted timber field shelter was erected and a variety of moveable equipment was introduced to provide a dog agility course at the northern end of the field. The site is used both by the trainer for specific courses, as

well as being let out to group members for the exercising of their dogs and for them to use the agility equipment. All of the structures and equipment on the land can be readily removed without causing damage to the pasture land. At the time of my visit the agility equipment was limited to just two items but the field shelter was in place adjacent to the existing entrance.

77. There is no other planning history relating to the land and the planning application (now the subject of Appeal D) was refused on the basis that the use did not accord with Policy NW 10 (9) of the NWCS 2014 due to its *'unacceptable impact on the residential amenity of the nearest property by virtue of increased traffic, noise from activity at the site and the general appearance of the area introducing new development to an open field in the Green Belt'*.

78. The refusal of planning permission was against the planning officer's recommendation and, before the refusal the application had been to the Planning Board three times and had been deferred. The first deferral was so that members could visit the site and the other deferrals were due to requests for further information relating to highway safety. It seems to be agreed that the appellant and the Council officers had liaised and worked together with a view to resolving the highway issues.

79. It is confirmed on behalf of the appellant that there will be parking provision at the site for 10 vehicles. In February 2017 the Board had requested a highway consultant's report. This was provided and concluded that the existing access arrangements were not acceptable. This accorded with the WCHA conclusion and recommended that a new access to the site was necessary. The new access was then set out as part of the application but members were stated to be still concerned about visibility issues.

80. Traffic survey and speed data which had been collated since the date of the application was submitted and referred back to the consultant. The May 2017 Board report stated that *'This data showed that an average speed of traffic-the 85%percentile- in a westerly direction was 38 mph and in an easterly direction was 39 mph. Although the national speed limit applies here, the actual recorded survey information shows traffic moving at a lower speed and thus the visibility splays required for a road with the national speed limit need not be applied and those applicable to the surveyed speeds are appropriate'*.

81. The Board report also indicated that *'In respect of concerns about noise, it should be recognised that the land lies immediately to the south of the M6 motorway and there is consequently a higher background noise level than would be found in countryside locations more remote from the motorway. With the limit on the number of dogs on site at any one time the Environmental Health Officer does not object to the development. It is considered that the effect on residential amenity of nearby properties would not be so significant that it would justify a refusal of planning permission'*. The Council recommended a limit of 10 dogs on the site at any one time.

Appeal C on ground (a) and Appeal D

82. The main issues in both appeals are as follows:

- whether the development being carried out is inappropriate development in the Green Belt for the purposes of the NPPF and development plan policy,
- the effect of the development on the openness of the Green Belt,
- the effect on the character and appearance of the area,
- the effect on the living conditions of residents living close to the site, and,
- if the proposal does represent inappropriate development, whether the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other

considerations, so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Whether the use constitutes inappropriate development in the Green Belt

83. The Council's Board Report for application PAP/2016/060 refers to a dog training use being reasonably regarded as an outdoor sport/recreation. The report indicates that it is a use which facilitates access to the countryside and that it accords with Green Belt policy of the promotion of access to outdoor recreational opportunity. It states that the use clearly requires the use of open land and that it is akin to other recreational and animal related uses that are commonly located within rural areas. Other similar uses are referred to as being carried out in the locality.

84. Paragraph 89 of the NPPF indicates that the provision for outdoor sport and outdoor recreation are not inappropriate as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. In this case, I consider that the change of use from agriculture to use for dog training and exercising would not be inappropriate as long as the use preserves the openness of the green belt and does not conflict with the purposes of including land within it.

The effect of the change of use on the openness of the Green Belt

85. Any introduction of operational development or the introduction of recreational equipment on to open agricultural land is bound to have some effect on the 'openness' of the Green Belt. In this case the small shelter and the various items of agility equipment are noticeable physical elements which leave this part of the Green Belt less open than it was previously.

86. However, having seen the shelter and the equipment and their location on the site, I agree with the conclusions set out in the Board Report that they have not resulted in any undue intrusion into the 'openness' of this part of the Green Belt. The colours, the low form and the scale of the equipment, together with the small shelter, in my view, do not significantly detract from the perception of 'openness' within this field. The shelter is akin to a small stable and the photographs indicate that equipment is generally smaller than a series of horse jumps. The car parking area has the potential to impact on 'openness' more so than the other elements but the area is restricted to 10 spaces only.

87. The equipment is readily moveable and does not have the physical impact on 'openness' as would more permanent or larger structures. In conclusion on this issue, therefore I am satisfied that the 'openness' of this part of the Green Belt would be preserved and that the change of use does not conflict with any of the purposes of including land within it. It follows that this outdoor recreational activity is not inappropriate development within the Green Belt. The issue regarding very special circumstances does not need to be considered.

The effect on the character and appearance of the area

88. The site is well screened and enclosed by trees and hedgerows on all sides. In a rural area one expects to see outdoor recreational activities such as this and there are stated to be similar uses in the area. The equipment only occupies a small part of the field and if, as suggested in the Board Report, the equipment was sited close to the motorway, any visual impact would be kept to a minimum. The shelter is only just over 3m in height and in both positions, is well screened from views outside of the site. I also agree that the new access would be a visual improvement on what is currently in place where the elevated hardstanding cuts across the grass verge.

89. I do not consider that concerns about possible added signage, lighting (and generator) or additional visual clutter can carry much weight. Any such matters would require express consent and/or planning permission and the Council could take enforcement action against any future inappropriate or harmful additional development or alterations to a conditional approval. Overall, therefore I am satisfied that the character and appearance of the area is not so noticeably harmed so as to preclude the use of the site for this particular outdoor recreational activity.

The effect on the living conditions of nearby residents

90. The one reason for refusal relates to the effect on residential amenity and in its appeal statement the Council confirms that the decision was made against the officer recommendation. However, it indicates that the Council is not duty bound to follow the advice of officers and that it can take a different decision where it can clearly demonstrate, on planning grounds, why the use is unacceptable and where it can substantiate the reason(s) for refusal. It is stressed that the Councillors carried out a thorough objective assessment of the proposal; carried out a site visit and took into account the objections of the neighbours.

91. I have noted the objections of nearby residents (Moor House Lodge, Moor House and Moor House Bungalow) and the Parish Council and have noted their concerns, particularly those relating to the creation of undue noise and disturbance and the effects of noise due to an increase in traffic and the parking of vehicles. The Council now considers that loss of outlook is an issue which was not the case at the time of the Board Report. However, any outlook can only relate to what could possibly be seen from some upper floor windows and from what I saw of the nearby houses, such views of the site are limited. I have concluded that the Green Belt use is not inappropriate and that the character and appearance of the area will not be unacceptably affected. Apart from some views through the proposed new entrance and possibly from first floor windows, I cannot envisage residents having any distinctly noticeable views of equipment from within the boundaries of their properties.

92. From my inspection of the site and its immediate surroundings, I do not consider that the effect on residential amenity through loss of outlook is critical to the question of whether or not the change of use should be allowed. The main issues regarding the effects on living conditions relate to noise and disturbance from the activities on site; the increase in traffic and the question of the parking.

93. In objecting on noise grounds residents have referred to their experiences over the two year period (or so) that the dog training use has been operating. References are made to the shouting (or even screaming) of orders to dogs; the use of high pitch whistles and the inevitable and almost continual barking from very excited animals. Whilst acknowledging that there is background noise from the motorway, residents indicate that the high pitch noises and intermittent barking has resulted in sounds which are distinctly aurally noticeable over and above the low-pitch background traffic noise. The Council indicates that, even with a low level of usage, residents have been reporting noise disturbance from barking dogs, from the noisy activities of dog trainers and owners and from the comings and goings of the users of the land.

94. Concerns are also raised about potential noise associated with parking and the new access to the site. Residents refer to the additional traffic movements to and from the site, as well as the proximity of the new access and parking to the three nearest houses.

95. Having noted the relationship of the nearest dwellings to the site, I share the members'; residents' and the Parish Council's concerns about this particular use of the land. I acknowledge that the site is extremely well-screened by its boundary treatment

and I have already concluded that there is no significant impact on residential outlook. The houses are also very well screened from the road and, in effect, there is a double visual barrier between the land and the three dwellings.

96. Although there was no training going on during my visit, there is firm and incontrovertible evidence (based on two years of usage), from these immediate neighbours and others. They refer specifically to noise caused by barking dogs; what are referred to as 'screaming and shouting owners' and from high pitched whistles. These sounds are clearly to be expected when several dogs are together and in such conditions. I was informed during the site visit that the main training related to large dogs such as German Shepherd and Rottweiler breeds and that a lot of the activities took place in the evenings. The particular breeds of dog are not relevant in my view since the objections relate to the noise that any dog might make; that is barking. However, some larger breeds of dog are well known to have louder (if less high-pitched) barks.

97. I agree with the Council that in situations such as this the dogs are most likely to be excitable and that the owners can be quite firm and loud in shouting their orders to their animals or in using sharply piercing whistles. The motorway background noise is distinctly noticeable as a relatively low frequency; a continuous rumble. Dogs on the other hand generally have more highly-pitched sounding barks. From the evidence, these sharper sounds, together with high-pitched whistles (as well as shouting) are clearly being heard by the nearest residents over and above the low frequency rumbling background sound of the motorway.

98. Barking dogs can be a general nuisance in many situations and the residents' own dogs (where they have one) will no doubt bark when strangers approach the property. In fact this happened when I inspected the locations of the dwellings the day before the site visit. However, when such high-pitched barking sounds, along with shouting and whistling continue for the length of a training period, I consider that has resulted in environmental noise and disturbance that has become an annoying and disturbing irritant. I consider that it has been these prolonged periods of noise and disturbance during training sessions that have had a detrimental effect on residential amenity in the immediate vicinity of the site.

99. I acknowledge that the Council Officer had recommended approval and that this was a finally balanced decision. However, the officer conclusion was reached prior to the councillors' visit and after two deferments due to the seeking of further information. In any case I must make my own judgement on the basis of the submissions and my site visit and, having done so, I have reached the same conclusion as the members on the issue of noise and disturbance caused by the training and exercising use of dogs on this rural site.

100. I am also concerned about the proximity of the new entrance and the car park to the two dwellings, Moor House and Moor House Lodge. The entrance is located between the two houses and I consider that the comings and goings of vehicles; engine noise; the banging of car doors; the noise from users of the car park; the barking of dogs when being taken out of and returned to vehicles will all combine to result in further noise and disturbance for the residents of these two dwellings.

101. I have noted that at the consultation stage the Environmental Health Officer had expressed concern at the prospect of large congregations for activities such as dog shows but had not offered an objection in principle. The EHO was, however, concerned about the number of dogs using the site at any one time and had suggested a condition to limit the numbers. Residents had made complaints to the Council about the noise

nuisance, even when attendances at training sessions were low and presumably the EHO had been made aware of these.

102. On 15 May 2017, following the deferrals and a site visit the Planning and Development Board resolved to refuse the application on the basis that it was contrary to Policy NW10 (9) of the NWCS 2014 in that it would have an unacceptable impact on the residential amenity of the nearest property by virtue of increased traffic, noise from activity at the site and the general appearance of the use by introducing new development to an open field in the Green Belt.

103. I have disagreed with the view on the visual impact and found the development to be not inappropriate and that it would preserve the 'openness' of this part of the Green Belt. Despite these favourable findings, however, and for the reasons set out above, I consider that the effect on living conditions outweighs these other findings. In my view, the effect that the use has already had, and would continue to have, on the living conditions of the nearest residents (due to undue levels of noise and disturbance) is not acceptable in this particular rural location.

104. I agree, therefore, with the Board that the use is contrary to Policy NW10(9) of the NWCS, as well as to the NPPF which seeks to pursue sustainable development that involves positive improvements in the quality of the built and natural environment as well as in the quality of peoples' lives. This development is harmful to, rather than resulting in an improvement to the lives of existing residents and also results in a poor standard of residential amenity for existing and future occupants in this part of Chapel Green. Although it meets an economic role in terms of sustainability, it fails to perform a satisfactory social or environmental role. I conclude that the use is not sustainable and any presumption in favour of sustainable development is outweighed by the harm caused to residential amenity.

Overall conclusions Appeals C and D

105. For the above reasons I consider that Appeal C on ground (a) and Appeal D should both fail. The notice is upheld and planning permission is refused on both the deemed application and the retrospective (with amended site access) application. There are no other matters of such significance to alter my conclusions or to change my decisions in these two Appeals.

Appeal E, Notice 3 and Appeal F

Introduction and background information

106. The planning permission was refused for the retention of the steel footbridge spanning between the access driveway off Wall Hill Road and the lawn on the south side of an old quarry pit (Warwickshire Logs 92), together with the construction of a stepped wooden walkway and a timber-decked pathway to the restaurant entrance. The submitted plans had been amended but the Council indicates that they still have significant omissions and inaccuracies. The plans still do not indicate the full extent of the works carried out no reference is made to lighting or signage.

107. At the site visit I noted the overall construction of the bridge and the stepped timber-decked, timber post and pergola walkway. Close to where the walkway meets the restaurant entrance a small section of the walkway has had timber panels fixed on both sides and this forms a partially enclosed section of the walkway. I also noted the lighting fittings attached to the timber structure and the signage to the restaurant. It would appear that the entrance to the northern car park was precluded from use by the public through other enforcement action. Nevertheless it was clearly in use for anyone to use at the time of my visit.

108. The Council indicates that the initial development description did not reflect the works as carried out and currently on site. It is indicated that the scheme was initially presented as a proposal for a block-paved access ramp but the works proceeded in a different manner. Instead the stepped wooded walkway was constructed and the plans were amended accordingly. The Council indicates that the description of the development was not altered to more accurately reflect the plans.

109. The appeals site is located close to the main hotel and conference facilities. The proposed hotel, to the north of the conference centre, was granted planning permission in January 2016 (PAP/2013/0391) and the permission included, amongst other things, the demolition of an existing storage building; the formation of a new car park and courtyards and extensions to the south and east sides of the conference centre. The permission was the subject of a S106 agreement which had the effect of revoking the previous planning permissions at the site. The decision notice was accompanied by approved plans. None of the items the subject of the enforcement notice (Appeal E) or the application (Appeal F) was shown on the approved drawings. Following my site visit I was sent some of the application drawings which showed the relationship of the newly approved hotel works to the existing restaurant. The latter use has extended beyond the original boundary by way of another small building and some decked areas.

110. I have considered the appeals on the basis of the enforcement notice as drafted and on what has been built on site. I have noted that part of the appellant company's arguments, in favour of the bridge and walkway link, relate to the fact that, until the hotel is built, a temporary route will be required from the car park adjacent to the bridge to the restaurant. However, the retrospective application was not for a temporary period. This was confirmed at the site visit and I have considered the application as not being made on the basis of a temporary period.

111. In any case, at the time of the application the appellant company had indicated that it has the long term purpose of spanning the area between the new hotel (main block) and the new car park area to the north of the site. This parking area was part of the hotel planning permission. The provision of the footbridge was to remove the need for hotel guests using the carpark to take a detour to reach the main hotel building. It was also intended to afford a much more direct route to the restaurant lobby on the east side of the conference centre.

112. The applicant has indicated that the bridge had been designed to span the Corley sandstone quarry pit, which is part of a local geological site and that the company had recently cleared away undergrowth and rubbish to make the feature visible. A small pond was created at the bottom of the pit and this is fed by a waterfall containing a mock rock at the top of the sandstone face. Various dinosaur and other statues with motion sensors and sound effects have been installed below the bridge.

113. The applicant's agent had informed the Council that the waterfall, pond and dinosaurs did not form part of the application and that the first two items had been in-situ for an extended period. In contradiction to that, however, the Design and Access Statement (DAS) recognised the features as being more recent and the Council indicates that there is photographic evidence to corroborate that this was the case.

114. At the consultation stage the Curator of Natural Sciences (CNS), Heritage and Culture, Warwickshire County Council, commented that the bridge had the potential to provide enhanced views of the geological feature and that if permission were to be granted a request would be made to allow access for geological investigations. However, he was concerned about the introduction of water which he considered would unacceptably erode the sandstone, thus harming the geological site.

115. Fillongley Parish Council was concerned about the use of the bridge on the basis that it would encourage guests to use the access next to Moor House Cottage which had previously been specifically excluded from public access through other permissions granted. The FPC also referred to the use of lighting which is already causing concern and indicated that previous lighting schemes have been rejected on Green Belt Grounds. As indicated above, this access from Mill Hill Road, next to the cottage, was open and in use at the time of my visit.

Appeal E on ground (a) and Appeal F

116. The main issues in both appeals are as follows:

- whether the development being carried out is inappropriate development in the Green Belt for the purposes of the NPPF and development plan policy,
- the effect of the development on the openness of the Green Belt,
- the effect on the character and appearance of the area,
- if the proposal does represent inappropriate development, whether the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Whether the works constitutes inappropriate development in the Green Belt

117. It is contended on behalf of the appellant company that the works carried out are essentially '*engineering operations*' and are, therefore, '*not inappropriate*', as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The case of '*Fayrewood*' is referred to whereby it was held that the term '*engineering operations*' should be given its ordinary meaning and it was stated that such operations were usually undertaken by engineers.

118. It is stated that engineers designed and built the bridge and the raised walkways and that they must constitute '*engineering operations*'. The case of '*Fordent*' is also referred to whereby, even if not considered to be '*engineering operations*', it was held in that case that '*Merely because a proposed development is inappropriate does not mean that there is a prohibition on it. The categories of what constitute very special circumstances are not closed*'.

119. The Council does not accept these arguments and indicates that the '*engineering operations*' category of development normally applies in practice to activities on land which alter its profile by, for example, excavation, tipping; the forming of embankments or a change in surface by the laying of a hardstanding. The Council disagrees with the appellant company that the works constitute an '*engineering operation*' and stress that the construction of a bridge and walkway with a pergola is not akin to such operations as referred to above and constitute building operations.

120. The Council contends that the appellant company attempts to extrapolate the '*Fayrewood*' case too far. It is stressed that to follow the logic of the appellant's argument it could be argued that a house designed and built by an engineer was an '*engineering operation*' or that any operation that happened to be designed and carried out by an engineer was such an operation. It is also contended that the involvement of an engineer does not revert a building operation to an engineering operation.

121. The Council is of the view that the works carried are building operations. They refer to the physical fixing of the bridge structure to the ground; the excavation of sandstone to accommodate the construction of the bridge and the building (by carpenters) of the timber walkways, posts and pergola. The council also refers to photographic evidence showing the construction of the works. I noted the details during my site visit.

122. Having seen the works which are the subject of the appeals I can, to a certain extent understand the engineering point made on behalf of the appellant. A bridge is clearly a structure and its design would normally require the input of a structural engineer. In fact, even the walkway and the pergola would have required some structural calculations to make sure that the various components could perform the necessary structural and practical tasks required: that is to allow people to cross the quarry and to walk between the facilities at the site.

123. I accept, therefore that the operational development carried out required an *engineering* input. I also accept that a bridge is an *'engineered'* structure. However, for the purposes of the Act such a structure is also be a *'building'*. In the Act a *'building'* includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. *'Buildings or works'* can include waste materials, refuse and other matters deposited on land. The Act states that references to the erection or construction of buildings or works shall be construed accordingly. *'Building operations'* has the meaning given by section 55, one part of which refers to other operations undertaken by a person carrying out the business of a builder.

124. In this case, whoever carried out the works must have been a person carrying out the business of construction, whether that person was an engineer or a general builder. In this case it may well be that both an engineer and a general builder were involved but there is no definite evidence before me on this point.

125. In any case, from what I saw on site I do not consider, as a matter of fact and degree, that the whole of the works as carried out can be defined as an *'engineering operation'* in the context of that meaning in the Act. The works are typical of what a general builder might carry out, albeit with a need for a structural engineering input. Even if the bridge itself was classified as an *'engineering operation'* the alleged unauthorised development and the retrospective application must be considered on the basis of the whole of the works. The bridge would also be subject to the conditions set out in the second bullet point of paragraph 89 of the NPPF and to the same ones referred to in paragraph 90.

126. The bridge is an integral part of the overall works and because of the way they have been designed and constructed, the wooden walkway and the pergola cannot, in my view, be regarded as *'engineering operations'*. I conclude, therefore that the whole of the works as carried out cannot be considered as being *'not inappropriate'*. The works are inappropriate and harmful in principle to this part of the Green Belt. However, as indicated above even if the whole of the works could be considered to be an *'engineering operation'* and not inappropriate in principle, paragraphs 89 and 90 would apply and I therefore now turn to their specific effect on *'openness'*.

The effect of the works as carried out on the openness of the Green Belt

127. In the *'Timmins'* case the question of whether or not a visual impact of a development could be taken into account in considering *'openness'* was referred to. It was held that *'openness'* is epitomised by the lack of buildings but not by buildings that are unobtrusive or screened in some way. It was also held that *'openness'* and *'visual impact are different concepts'*, although they could *'relate to each other'*.

128. It was stated that it was wrong in principle to arrive at a specific conclusion on *'openness'* by reference to visual impact. However, it was also held that when considering whether a development in the Green Belt, (which adversely impacted upon openness) can be justified by very special circumstances, it is not wrong to take into account the visual impact of the development as one, amongst other things, of the considerations that form part of the overall weighing exercise.

129. Having seen the built form of the bridge, the wooden pathway and the other matters enforced against, they clearly introduce structures where none previously existed. The works are visible and together physically link two parts of the appellant company's land by cutting across this part of the Green Belt. Due to the physical length of the various components, their overall form and scale and their specific location I do not consider that the works preserve the 'openness' of this part of the Green Belt. Thus, even if I had concluded in favour of the appellant that the works constituted 'engineering operations' they fail to meet the test of preserving the openness of this part of the Green Belt and therefore cannot be considered to be 'not inappropriate'. It may be that a temporary bridge and a simple paved walkway would have less of an impact on openness but my decision must be based upon the works as carried out.

The effect of the works on the character and appearance of the area

130. In terms of their visual impact on the general character and appearance of the area, again I share the Council's concerns. In my view the design of the various components has resulted in an obtrusive and alien line of structures that detract markedly from the appearance of the rural setting, as well as from the settings of the existing buildings. Whilst acknowledging that the bridge itself is of a relatively simple design, the timber walkway deck and pergola are obtrusive, alien and of very poor design. From both near and distant viewpoints, these parts of the works look as though they are the result of a poorly executed do-it-yourself project. Although they appear to be structurally sound I would not consider them to be a good example of external carpentry. The poorly designed works give the distinct impression of extending inappropriate built form away from the approved hotel/conference facilities site and into the open countryside and the Green Belt to the east.

131. I agree with the Council that the overall result is one of an 'encroaching creep' into the open countryside and woodland. I find this to be contrary to the relevant development plan policies as well as to sections 7 (Requiring good design) and 11 (Conserving and enhancing the natural environment) of the NPPF and significantly harmful to the rural character and appearance of this part of the overall site and the open countryside.

132. At paragraph 64 of the NPPF it is specific that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Thus, as well as being harmful in principle (through inappropriateness and failure to preserve openness), I also find the works to be harmful due to their specific visual impact.

The effect on the geological site

133. I accept that the bridge itself has enabled the geological site to be more clearly seen and appreciated generally. In this respect I agree with the County Council's CNS. However, the officer was concerned about the impact of water on the sandstone face and it would seem to me, therefore, that any advantage relating to accessibility is outweighed by the potential of water damage to the site.

134. In addition I also consider that the theme park elements which have been introduced (moving and roaring dinosaurs etc) detract markedly from the character of the area, as well as from the integrity of the geological site. As well as visually detracting from the geological feature the installations have had a negative impact on the aural environment and on the living conditions of the occupiers of the adjacent cottage. During my site visit I could clearly hear the roaring sounds of the dinosaurs when standing adjacent to the garden boundary of the cottage.

135. It is also evident that the floodlighting of the installation and the lights along the walkway have caused light pollution issues for residents of the cottage. These other effects of the bridge/walkway and the installations reinforce my conclusions that the overall works, the subject of these appeals, have resulted in harm in principle to the Green Belt, (harm to openness) and other harm by way of impact on character and appearance and residential amenity. I now turn to whether or not the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Very Special Circumstances

136. On behalf of the appellant company various very special circumstances are put forward. These are that the works have provided a safe route between the restaurant and the conference centre; that the decking and walkways are a temporary measure pending the other approved works; that the footbridge enabled the Geological site to be cleaned up; that the CNS supported the fact that the bridge assisted in accessibility of the feature; and that the Geological site falls within the red line of the hotel application.

137. The Council indicates that the improvement of the visibility and accessibility of the geological feature was clearly not the appellant company's primary intent in forming the bridge; rather it was a fortuitous coincidence that this was the aim of the CNS. Furthermore the Council indicates that the company has been requesting that the site be removed from the county list and that the Warwickshire Geological Conservation Group (WGCG) has refused this request.

138. The Council does not accept that the reasons put forward by the appellant amount to the very special circumstances to justify the works as carried out. Nor does it accept that this is the only solution to allow movement through the site during construction of the hotel. In fact the Council makes the point that although planning permission has been granted the hotel may not go ahead and there has been no indication that the bridge would be removed after the temporary period.

139. Having considered the points made on behalf of the appellant, I do not accept that these amount to the very special circumstances required. I have concluded above that there is harm in principle to the Green Belt, through inappropriateness; that there is harm to the openness of the Green Belt; that there is other visual harm to the character and appearance of the area; that there is potential harm to the geological feature and that there is some harm to residential amenity.

140. The most relevant points put forward relate mainly to the operational needs of the business in linking the two areas. Whilst accepting that this has been an effective and safe way of connecting the north car park to the restaurant, it has resulted in the harm set out above and is not acceptable. I have not been shown any options for alternative routes which may have been considered but having seen some of the drawings relating to the approved hotel it seems to me that this route is not the only solution to the necessary link.

141. It may well be that a well-designed scaled down or alternative route could be acceptable on a temporary basis whilst the hotel itself is constructed and the appellant company could indeed consider such alternatives. But the scheme before me, which has not been submitted as a temporary solution, is harmful and unacceptable. As the Council indicates, any advantage regarding accessibility to the geological feature is fortuitous and in any case the advantage is outweighed by the potential water harm to the feature. I note that the feature falls within the red line for the hotel site but again this is no

justification for the construction of a poorly designed scheme that is both harmful in principle to the Green Belt and harmful in other ways.

142. In conclusion it is my view that these matters do not outweigh the harm in principle and the other harm identified, so as to amount to the very special circumstances necessary to justify this development within the Green Belt. Appeal E on ground (a) and Appeal F both fail, therefore, on the planning merits and planning permission will not be granted for the deemed application or the retrospective application for the works.

Appeal E on ground (f)

143. On behalf of the appellant company it is contended that lesser steps would suffice to remove any harm to the openness of the Green Belt and any other harm to amenity. It is stated that if the timber walkway is considered to be too visually intrusive, the pergola elements and the lighting could be removed leaving only the low timber platform. It is also argued that the bridge could be modified by means of cladding or painting and it is stressed that footbridges, in themselves, are not alien features within a rural landscape. It is also indicated that modifications could be carried out to mitigate any harm to the geological site. In any case it is stated that the timber walkway was only a temporary measure until the new hotel works were completed.

144. The Council acknowledges that the suggestions put forward on behalf of the appellant would be beneficial. However, it queries the powers available to vary the requirements accordingly. In any case the works carried out are considered by the Council to be of poor design and that the appellant's suggested measures would be insufficient to remedy the harm caused by what has resulted in opening up this part of the site as a public entrance to the land.

145. Having seen the works I do not consider that the requirements are excessive. To do as suggested would amount to a virtual re-design of the walkway and I do not consider that such variations would be appropriate or justified. The notice was issued to remedy a breach of planning control which I have concluded is harmful and ought not to be granted planning permission. The lesser steps of removing parts of the works and/or amending the bridge would not, in my view, overcome the introduction of inappropriate development in the Green Belt. The remaining features; their location and their obtrusiveness would not overcome the harm identified. I do not consider, therefore that lesser steps would overcome the objections and Appeal E also fails on ground (f).

Overall conclusions on Appeals E and F

146. For the reasons set out above I conclude that the works as carried out are harmful in principle to the Green Belt, harmful to openness, harmful to the character and appearance of the area and harmful to residential amenity. As such they are contrary to Policies NW1 (Sustainable Development); NW3 (Green Belt); NW10 (Development Considerations); NW12 (Quality of Development) and NW13 (Natural Environment). They are also contrary to policies within the NPPF in that they cannot be said to be sustainable; they do not protect the Green Belt and they are of extremely poor design.

Other Matters

147. In reaching my conclusions in all 6 appeals I have taken into account all other matters raised on behalf of the appellant company; by the Council and by other interested parties. These include the detailed and complex planning history of the site; the details of the previous enforcement actions and appeal decisions; all of the relevant case law references; the initial grounds of appeal in each case; the detailed statements and appendices; the DAS submissions; the Council Officers' various Board Reports; the

final comments on each appeal; the photographic evidence; all references to local and national policies; the economic benefits and the fact that the company is a major employer in Fillongley.

147. However, none of these carries sufficient weight to outweigh my conclusions on the grounds of appeal in the section 174 enforcement cases (Appeals A, C and E) or my conclusions on the section 78 appeals (B, D and F). Nor is any other matter of such significance so as to change any of my decisions which are set out below.

Formal Decisions

Appeal A

148. The appeal is dismissed and the enforcement notice (No 1) is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

149. The appeal is allowed and planning permission is granted for a change of use from agricultural/forestry to a mixed use of agriculture/forestry with D2 (assembly and leisure), on land at Land at Heart of England, Meriden Road, Fillongley, Coventry, Warwickshire CV7 8DX, subject to the conditions set out in the Schedule below.

Appeal C

150. The appeal is dismissed and the enforcement notice (No 2) is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal D

151. The appeal is dismissed.

Appeal E

152. The appeal is dismissed and the enforcement notice (No 3) is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal F

153. The appeal is dismissed.

Anthony J Wharton

Inspector

Schedule of Conditions in relation to Appeal B

Ref: APP/R3705/W/17/3177315 (PAP/2016/0414, dated 12 August 2016)

The appeal is allowed and planning permission is granted for a change of use from agricultural/forestry to a mixed use of agriculture/forestry with D2 (assembly and leisure), on land at Land at Heart of England, Meriden Road, Fillongley, Coventry, Warwickshire CV7 8DX, subject to the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this decision.
2. The development hereby approved shall not be carried out otherwise than in accordance with drawing Nos 366/216/01; 366/216/02 and 366/216/03 dated June 2016.
3. The permission hereby granted relates to the building and access road only as set out within the red line on application plan No 366/216/03. Any land outside of the red line remains subject to the authorised uses of the site. For the avoidance of doubt the land immediately surrounding the building lies outside of the red line approved under approval PAP/2007/0503 as shown on drawing No 180/27/2A.
4. Access to the building by users of the conference centre; the restaurant and the other approved recreational facilities shall be via the existing main access to Old Hall Farm, Meriden Road Fillongley. The access road to the building from Meriden Road (B4102) shall be used for staff purposes, deliveries and by emergency vehicles only.
5. There shall be no parking of any vehicles at the application building or on land surrounding the building. All parking associated with the use of building shall be confined to the authorised parking areas available within the approved conference centre, hotel and recreational land established and authorised permanent car parks.
6. Prior to the development commencing a scheme to provide any necessary external lighting shall be submitted to and approved in writing by the LPA. The lighting scheme shall be carried out in accordance with the approved scheme and no additional lighting shall be installed without the LPA's further approval in writing.
7. The hours of operation of the building shall be the same as those authorised on the surrounding land. No activity whatsoever shall take place in connection with the approved use on the site other than between the hours of 08.00 to 18.00 on Mondays to Saturdays and 09.00 to 18.00 on Sundays and Bank Holidays.
9. The application building (permitted for a mixed use of agriculture, forestry and leisure and assembly) shall not be used for any other use within Use Class D2 other than for toilets; changing facilities; refreshment and reception facilities for visitors to the building (as set out in the above application drawings).
10. Prior to the commencement of the development details of the materials to be used in the construction of the external staircase shall be submitted to and approved in writing by the LPA. The works shall be carried out only in accordance with the approved drawings.
11. Any storage of equipment, vehicles and materials shall be confined to the interior of the building. There shall be no external storage whatsoever.
12. Notwithstanding the requirements of the Advertisement regulations, no exterior signage shall be installed or displayed on or around the building without the express consent of the LPA.

End of Schedule

Costs Decision

Site visit made on 3 July 2018

by **Anthony J Wharton BArch RIBA RIAS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2018

**Costs application in relation to Appeal Refs:
APP/R3705/C/17/3182857 and APP/R3705/W/17/3177385
Land at Great Chapel Field, Wall Hill Road, Chapel Green, Fillongley,
Coventry, Warwickshire CV7 8DX**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Stephen Hammon (Heart of England Promotions Ltd) against North Warwickshire Borough Council
 - The appeals related firstly to an enforcement notice and, secondly to a refusal of planning permission relating to the change of use of land from agricultural to dog training/exercising, including new access, car park and siting of moveable field shelter and dog agility equipment.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. I have considered the application for costs in relation to both appeals C and D as set out in my appeals decision. In reaching my decision I have taken into account all of the costs application submissions and, where relevant, matters relating to the enforcement and the planning appeals.
3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

The gist of the case for the Appellant

4. In relation to the enforcement appeal (Appeal C, Notice 2) it is contended that the LPA acted unreasonably in the first instance by issuing an enforcement notice prior to a decision on the planning appeal which at that time was undecided. It is also argued that the LPA failed to consider the relevant policies within the NPPF and the Local Plan in making the decision. It is contended, therefore, that the appellant company was put to unnecessary cost and expense in having to deal with the enforcement notice appeal.
5. In relation to the planning appeal it is stressed that the applicant company worked extensively with the Council to provide extra information on highway safety. This was assessed and the proposal was found to be acceptable. It is stressed that the LPA then refused the application from a different reason: that being the effect on residential amenity. The applicant company indicates that it had not been made aware of any issues relating to the effect of residential amenity with regard to those living closest to the site. In both appeals, therefore, it is argued that in having to

employ a planning consultant to prepare statements of case and collate the necessary documentation, the appellant company suffered unnecessary loss and expense in the appeals process.

The gist of the LPA response

6. The LPA does not accept that it acted unreasonably in issuing an enforcement notice. It stresses that where a breach of planning control has occurred a LPA has a duty to take such action where there have been harmful breaches of control. It is also stressed that the then undecided planning appeal did not deal with all of the matters set out in the notice. The main differences are that the planning application dealt with issues regarding highway safety, resulting in a proposal for a new access. The enforcement notice, on the other hand, dealt with the adverse effects arising from the use of the land for dog training and exercising as well as the inappropriate access to the site across the grass verge.

7. It is stressed that the reason for issuing the notice included concerns about the existing access on to the land from Mill Hill Road. The concerns related to visibility and the fact that there was no off-street parking. The latter point had resulted in vehicles parking adjacent to the access and close to it on the road. This was considered to be a danger to highway safety which was supported by WCCHA. It is also indicated that the enforcement notice was not simply a duplication of the planning application which was recommended for approval.

8. The LPA also refers to the planning history of the site and the previous enforcement actions and continuing breaches of planning control on other parts of the appellant company's land. The Council does not accept that it applied relevant development plan policies and those in the NPPF inappropriately and indicates, that in any case, the appellant has not specified which aspects of local and national policy that the LPA has failed to take into account in both issuing the notice and reaching its final conclusion on the planning application.

9. It is contended that the issuing of the notice was soundly based although it is acknowledged that the appellant worked proactively with the case officer, who had approached the application in a positive manner by looking for solutions rather than problems as required by the NPPF. It is argued that the decision was soundly based on development plan policy and that there was no unreasonable behaviour, despite the fact that decision was made against officer recommendation. It is considered that the appellant has not demonstrated that the LPA's actions were unreasonable in relation to these two appeal and nor is it accepted that their actions led to unnecessary loss and expense for the appellant company in the appeals process.

Appellant's reply to LPA response to costs application

10. Having noted the LPA response, on behalf of the appellant company, it is argued that the Council has been inconsistent in its approach and refers to an allowed appeal (APP/R3705/W/16/3163176) prior to the issue of an enforcement notice, whereby a major incursion into the Green Belt is stated to have occurred.

Assessment

11. It is well established that planning committee members are not bound to follow officer recommendations. However, if they do so, they must substantiate their reasons for refusal. In this case the members took considerable time in reaching their eventual conclusion to refuse permission and this is well documented by the Council. In fact it has been shown that the planning decision was deferred more than once and that it was felt necessary for members to carry out a site visit. In any case the decision was clearly evenly balanced.

12. However, some material considerations must tip the balance. In this case the residents' initial objections (based on a 2 year use of the site); the submission of the LPA; and the members' site visit, resulted in conclusions that the development had resulted in unacceptable living conditions for the occupiers of the three dwellings closest to the site. The LPA was also concerned about residential outlook but, as outlined in my appeals decision, I do not shared their concerns in this respect. I did, however, agree in the Council's favour, about the noise and disturbance issues and the subsequent effect of the use on the living conditions of nearby residents.

13. With regard to whether or not the issuing of the enforcement notice was unreasonable, it is clear that as well as the noise and disturbance issue, there were also issues relating to highway safety (on access to the site) and parking in proximity to this access. One of the reasons for a LPA to take enforcement action is following complaints by residents or members of the public about the unauthorised use of land. In this case the unauthorised use had been brought to the attention of the LPA and it was clearly considered that enforcement action was expedient. In my view, therefore, it was not unreasonable on the Council's part to issue the notice.

14. With regard to the appellant's reliance on the previous appeal referred to above, where it is indicated that an enforcement notice was not issued immediately and a further application followed, I have noted these points. However, I am not aware of the specific material considerations relating to that appeal and, in any case must consider the appeals before me on their merits. Having done so, I am not convinced that the appellant company has a valid claim for costs against the Council for either of the appeals pleaded.

Conclusion on the application for costs

15. For the reasons set out above, I do not accept the appellant company's arguments that the Council acted unreasonably, either in issuing the enforcement notice in the first instance, or in refusing planning permission for this particular use of the land. It follows that I do not consider that the Council's actions led to unnecessary loss and expense in the appeals process for the appellant company, therefore, this application for an award of costs in relation to Appeals C and D must be refused. The parties must be responsible for their own costs in relation to these two appeals. The costs application is refused.

16. In reaching my conclusion on this application for costs I have taken into account all of matters put forward on behalf of the appellant and by the Council. However, none of these matters carries sufficient weight so as to alter my conclusions or to change my decision that the application must fail.

Anthony J Wharton

Inspector

