



## Appeal Decisions

Inquiry opened on 10 May 2022

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

**Decision date: 08 August 2022**

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### **Appeal A Ref: APP/U3935/C/20/3261411**

### **Hangars L6 & L7, White Horse Road, Wroughton Swindon, Wiltshire, SN4 0QZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Earthline Exchange Ltd against an enforcement notice issued by Swindon Borough Council.
- The notice, numbered EN/20/0187, was issued on 16 September 2020.
- The breach of planning control as alleged in the notice is Without planning permission the construction of:
  - 1) a two storey modular office building as marked 'two storey office block' on the plan at Appendix 2
  - 2) an extension to an existing hangar building L6 as marked '*extension to Hanger L6*' on plan at Appendix 2
  - 3) a vehicle weighbridge and ancillary ramp as marked as marked as '*vehicle weighbridge*' on the plan at Appendix 2
  - 4) a HGV fuelling area and the ancillary slot drain and fuel/oil separator as marked '*Refuelling area*' on the plan at Appendix 2
  - 5) a three brush automated vehicle washing unit and water tank, marked as '*vehicle wash down area*' on the plan at Appendix 2
  - 6) areas of hardstanding as marked '*hardstanding*' on the plan at Appendix 2
  - 7) areas laid to loose aggregate stone as detailed '*aggregate stone*' on the plan at Appendix 2.
- The requirements of the notice are to: (a) Remove from the land the two storey modular office building together with any associated ancillary development including (but not limited to) pathways, railings and external staircases and disabled parking facilities; (b) Remove from the land the extension to the existing hangar building L6 including the internal flooring and external hardstanding area; (c) Remove from the land the vehicle weighbridge and ancillary ramp; (d) Remove from the land the HGV fuelling area, fuel tanks, associated hardstanding area and the ancillary slot drain and fuel/oil separator; (e) Remove from the land the three brush vehicle washing unit and any associated ancillary development including (but not limited to) and hardstanding areas, framework and electrical fixings; (f) Remove from the land the areas of hardstanding identified as '*Hardstanding*' on the plan at Appendix 2; (g) Remove from the areas of loose stone aggregate; (h) Remove any and all resultant debris, rubbish and materials from the Land arising from compliance with the above requirements; (i) Return the land to its former state and condition by levelling the ground and re-seeding it with grass.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

**Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected and varied in the terms set out below in the Formal Decision, is upheld.**

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**Appeal B Ref: APP/U3935/C/20/3261412**  
**Hangars L6 & L7, White Horse Road, Wroughton Swindon, Wiltshire, SN4 0QZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Earthline Exchange Ltd against an enforcement notice issued by Swindon Borough Council.
- The notice, numbered EN/20/0187, was issued on 16 September 2020.
- The breach of planning control as alleged in the notice is Without planning permission, use of the site:
  - 1) for Use Class B1(a) (under the Town and Country Planning (Use Classes) Order 1987), office use;
  - 2) as a HGV fuelling area including fuel/oil separating;
  - 3) as a HGV wash down area;
  - 4) as a HGV parking area;
  - 5) for HGV maintenance and repairs; and,
  - 6) for Use Class B8 (under the Town and Country Planning (Use Classes) Order 1987), storage and distribution.
- The requirements of the notice are to: Cease the use of the Land for the following uses or activities and do not recommence or allow the uses or activities at any time on any part of the land: 1) for Use Class B1(a) (under the Town and Country Planning (Use Classes) Order 1987), office use; 2) as a HGV fuelling area including fuel/oil separating; 3) as a HGV wash down area; 4) as a HGV parking area; 5) for HGV maintenance and repairs; 6) for Use Class B8 (under the Town and Country Planning (Use Classes) Order 1987), storage and distribution.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: Appeal B – The enforcement notice is quashed.**

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**Background and preliminary Matters**

1. The appeals concern 2 former Royal Air Force aircraft hangars and surrounding land, extending to 5.7 ha in total. The hangars are in a cluster of 3 sited in the south-west corner of the former Wroughton Airfield, the third apparently remaining in use by the Royal Navy for storage of some kind. The site lies within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). It was acquired by the appellant in 2014 after some years of use which I discuss later, then leased to Network Rail in connection with a major upgrade project until 2019, when the appellant developed and started to use the site as its base. Earthline is an earthmoving, recycling and quarrying company employing over 200 people at the appeal site and other facilities across Gloucestershire, Wiltshire, Oxfordshire, Berkshire, Buckinghamshire, Surrey and Hampshire. The land and buildings at the appeal site are used for the purposes of logistics, storage, HGV fleet parking, light maintenance and administration, as the main base for the business. In addition to the hangars, a two-storey office block and a maintenance building linked to one of the hangars have been erected, along with a re-fuelling facility, a vehicle washing unit, a weighbridge and hardstanding.

*The notices*

2. The Council issued 2 separate notices, one attacking the operational development and the other the change of use to the current use. The notices were duly appealed on various grounds, but only one, the Appeal A Notice aimed at the operational development, was appealed on ground (a), which is

that planning permission should be granted for the matters stated in the notice as comprising a breach of planning control. The appropriate fee having been paid, that meant that there was a planning application deemed to have been made, and so planning permission could be granted if the appeal succeeded on that ground, but only for the development comprised in those matters. That meant that planning permission could be granted for the operational development only, but that would leave, at the very least, considerable ambiguity as to the lawful use of the site as a whole. Clearly the use and the operational development need consideration as a whole, they cannot be realistically disentangled. Given the wide powers of correction available under section 176 of the Act, the pragmatic and fair solution is to amend the Appeal A notice by incorporating the terms of the Appeal B notice, as appropriate. This was discussed at the Inquiry by the main parties and it was agreed that no injustice would be caused. It would have been open to the Council in any case to issue a notice in those terms. I shall amend the Appeal A notice accordingly, and as a consequence the Appeal B notice serves no useful purpose and shall be quashed.

3. It was agreed by the main parties that a more precise and appropriate description of the use is as "a *sui generis* mixed use comprised of HGV depot, storage, administrative offices, and ancillary uses thereto". I shall correct the Appeal A notice in those terms, along with consequential amendments to the requirements. I shall also make some minor amendments. Among other things, there is no need to distinguish between hardstanding and areas laid to aggregate stone.
4. Among the Council's reasons for issuing the notices were matters concerning heritage, and noise and air pollution, but these were withdrawn before the Inquiry commenced. The reasons nonetheless remain in the notices. The amalgamation of the developments enforced against into one notice does however require amendment to reflect the different relevant time periods within which enforcement may be taken.

## **APPEAL A**

5. As set out above, the developments the subject of this appeal are both the change of use to the current use, and the operational development that has taken place.

## **Ground (b)**

6. This ground is that the matters alleged have not occurred, as a matter of fact. This ground is often used to raise minor errors or discrepancies. In this case the appellant drew the Council's attention to an error in the plan attached to the notice whereby the hardstanding was incorrectly shown. That much was agreed, and so the appeal on this ground succeeds to that limited extent. Eventually a new plan was agreed and provided to me at the Inquiry. I shall correct the notice by attaching a new plan, but it will be slightly different to the final version agreed at the Inquiry since I noted a discrepancy while looking more closely at some of the evidence under ground (d). I have a duty to get the notice in order, and I am in no doubt that had I raised this in the course of the Inquiry it would have been agreed by the parties, hence I consider no injustice arises.

## Ground (c)

7. An appeal on this ground is that the matters stated in the notice do not constitute a breach of planning control. It is pleaded in respect of the overall use of the site, and separately, the weighbridge, the hardstanding, and the re-fueling facility.

### Use

8. Dealing first with the use, in essence the argument is that the use by Earthline as its depot and administrative base, a *sui generis* use, is not materially different from what the appellant says was the existing lawful use of the land when Earthline took up occupation and commenced the current use. It describes the immediately previous use by Network Rail as being predominantly for storage purposes falling within Use Class B8<sup>1</sup>, with associated or ancillary activities including vehicle storage and maintenance and office use, and it claims that use of the site for Class B8 purposes had subsisted since 1995 and accordingly was a lawful use.
9. Aside from a 1 year temporary planning permission for grain storage in 1978, no express planning permission exists for the site, so the characterisation of the lawful use of the site relies upon its history of use since its military use ceased in 1978. That use has not been affirmatively established. An application<sup>2</sup> for a Lawful Development Certificate (LDC) seeking to establish the lawful use of Hangar L6 and surrounding land as Use Class B8 was refused by the Council in July 2020 and has not been appealed. However, the appellant relies primarily on the documents submitted in support of that application to establish the lawful use of both hangars and the surrounding land, which it is agreed comprises the appropriate planning unit for the purposes of these appeals.
10. The LDC application focussed on the use of the site while leased to Trade Storage Ltd from 1995 until its sale to Earthline in 2014 following insolvency and liquidation. Trade Storage Ltd's core business appears to have been storage, but it is evident that the site was used by numerous other companies. Some of these were in the removals and storage business, but it is unclear whether they were using the site primarily for storage or as a logistics base. Two operators from the site provided descriptions of their operations from the site, from 2008 to 2013 in one case, and provided as a statutory declaration for the appeal, and from 1999 to 2014 in the other case, and what they knew of others' use. From these it appears that the site provided facilities or services such as vehicle and driver hire, packaging sales, vehicle maintenance and waste disposal as well as internal and external storage. Some users also had their offices at the site and kept their vehicles there, and companies registered as trading from there, some associated with a director of Trade Storage Ltd, were involved in transportation, logistics, lorry and driver hire, fleet hire, shipping container hire, and trailer and vehicle hire. A motorcycle training school also operated from the site from 2003 to 2013, using the airfield roads for practical training. Hangar L6 was apparently used in 2014 and 2015 by a neighbouring business for storing HGVs, trailers, agricultural machinery, grain, and associated paraphernalia.

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987. Class B8. Storage or distribution - Use for storage or as a distribution centre.

<sup>2</sup> Council ref. S/LDE/20/0507/RACH

11. Many of the uses described above may be primary uses themselves, though with a component of storage and distribution, and at least some may also be ancillary or merely incidental to a primary storage or distribution use. However, on the very limited evidence available, that provided in support of the LDC application for the use of Hangar L6, in the course of the appeals, or given at the Inquiry, it is not possible to establish the extent, composition and duration of activities. Certainly some, motorcycle training, fleet, vehicle and trailer hire for example, are not, or would not normally be considered as, B8 uses, such that it is more likely than not that there were periods at least when the site was in a mixed use.
12. The basis of the proposition that the site has a lawful B8 use is that it was used for that purpose alone, rather than for purposes including storage or distribution but also other primary uses, for a continuous period of 10 years, such that it is now immune from enforcement action and hence lawful by virtue of section 191(2). But the proposition is not supported by evidence that is precise and unambiguous. From the evidence provided it is not possible to identify a single 10 year period from 1995 until 2019, while leased to Trade Storage Ltd or subsequently to Network Rail, when I could conclude, on the balance of probabilities, that there was a primary use of the site for B8 storage or distribution with all other activities being ancillary or incidental to that use.
13. But in any case, I consider that the occupation of the current appeal site by Network Rail brought about a material change in the character of the use of the land. The LDC application supporting statements made reference to some outside storage, one mentioning that periodically shipping containers would be sited outside for extra storage. External caravan storage was also mentioned, as was the use of external areas for trailers, vehicles and equipment, along with portacabins for storage or office use. However, aerial photographs taken between 2002 and 2015 indicate that use of the land outside of the hangar buildings was very limited, the only areas of consistent usage being the relatively small concrete aprons outside the hangar doors and a bunded area in the south-east corner where what may be shipping containers can be seen between 2005 and 2014. The concrete aprons, access roads and the bunded section in the south-east corner aside, the land outside of the hangar buildings appears to have remained as grassland with little, if any, use prior to Network Rail's occupancy.
14. Network Rail's requirements included both internal and outside storage. To this end large areas of hardstanding were laid in 2016, including almost all of the land between the hangars, which was subsequently used for storage of rail upgrade materials and components. The predominant character of the use thus changed from use concentrated on the hangar buildings, almost all of it internal and, in view of the windowless nature of the buildings being relatively discreet in terms of evident on-site activity, to landscape use of much of the site for storage and related activities. I consider that this is likely to have resulted in considerable changes in the character of the use and the appearance of the site, which would have been evident from within the airfield and from the by-way passing the site.
15. Earthline uses the site in a different way to Network Rail. No external storage takes place or is required, the relatively limited storage that takes place being largely confined to one hangar, the other being used for overnight parking of its main HGV fleet, most of which comes and goes on a daily basis, weekends

excluded. But it requires office accommodation for 24 staff, which it has met by erecting a separate building in front of Hangar L6, and it has erected a further building to the rear, linked to Hangar L6, which is used for tyre fitting and vehicle maintenance. While Network Rail apparently had temporary office accommodation on the site, and some remains, the presence of these new buildings, and the active character of the office building in particular, is likely to have materially changed the character and appearance of the site.

16. The current use also appears to be materially different in terms of vehicle use to that of Network Rail. Between 32 and 38 HGVs leave the site daily between 0600 and 0700 hours and return between 1500 and 1600 hours. Almost 80 people work from the site, and most arrive and leave in private vehicles. Network Rail was estimated to have begun at about 2-4 HGV trips per day and gone up to about 20-40 HGV trips per week once established, movements being spread throughout the day. I heard no evidence on the level of private vehicle trips associated with the Network Rail use, but I consider the differences in HGV movements, in quantity and pattern, to be considerable and material in planning terms, and indeed there has been considerable public objection to the appeal development on this basis alone.
17. So far as the use of the site is concerned, the appellant's case on ground (c), which incorporates arguments of immunity from enforcement that may be made on ground (d), relies on establishing a lawful use of the site, specifically that of B8 use, and then establishing that the current use is not materially different. I have found that a lawful B8 use has not been demonstrated, in fact no lawful use has been demonstrated, and it follows that the appeal on this ground, so far as the use is concerned, must fail.

### *Weighbridge*

18. This concerns a weighbridge just in front of Hangar L6. It comprises a concrete supporting base and ramp with guiding bollards on either end, and the weighbridge mechanism or deck itself. Analysis of the concrete indicates that there has been a weighbridge on the site from the early 1970's. At some point the original weighbridge deck was removed. It was not there when the Council visited the site in March 2015. The current weighbridge structure or deck was installed in April 2020.
19. The Council consider that the installation of the new deck is operational development that requires planning permission, whereas the appellant maintains that it amounts to repair and maintenance, which does not amount to development<sup>3</sup>. Although the deck is a very sizeable structure, on its own I think it would normally be considered to be plant. What makes it a building in this case is that it is installed and fixed within a built structure. To remove the deck and replace it is a significant operation, but it is in the nature of the overall structure, comprising fixed and moveable parts, that where the moveable parts, the weighbridge deck, need replacement, and they comprise a single piece of plant, such replacement may properly be considered to be repair of the weighbridge as a whole.
20. If the replacement was carried out as a single operation I doubt that there would be any argument about this, but the passage of time between removal of the former deck and installation of the current one can be a relevant factor

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<sup>3</sup> section 55(2)(a) of the 1990 Act

where abandonment of a building is under consideration. However, abandonment has not been alleged in this case, and in any case, of the other relevant factors, there has been no intervening use, significant deterioration of the fabric of the fixed structure or any indication of an intention to abandon or put it to another use.

21. I concur accordingly with the appellant's view that replacement of the weighbridge deck is not development in the circumstances, and the appeal on this ground succeeds to that extent. I shall therefore correct the notice and requirements as necessary, and the related matters raised under grounds (d) and (f) require no further consideration.

#### *Hardstanding*

22. So far as the hardstanding is concerned, the argument on this ground is that it is development permitted by Article 3(1) and Class J of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). This relates to the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned, or the replacement in whole or in part of such a surface. However, while Article 3(1) grants planning permission for the classes of development set out in Schedule 2 to the Order, Article 3(5)(b) provides that the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful.
23. As set out above, I consider that neither the use by Network Rail or the current use was or is lawful, so the land does not, and did not, benefit from Schedule 2 permitted development rights, and the ground (c) appeal fails so far as it relates to hardstanding.

#### *HGV fuelling area and the ancillary slot drain and fuel/oil separator*

24. The HGV fuelling facility comprises a modular fuel bowser on a purpose-built concrete base. The argument made on this ground is that the bowser itself is a mobile structure that is merely stationed on the land, and is therefore a use of land rather than operational development. Being ancillary to the use of the appeal site as a whole, it is submitted therefore that it is not development.
25. Generally speaking, the siting of mobile structures is not considered to be operational development, but in certain circumstances they can be considered to be buildings for the purposes of the 1990 Act. The relevant tests are well established<sup>4</sup>. They relate to size, physical attachment to the land, and permanence. The modular bowser itself is substantial and requires specialist equipment to move or reposition it, and it can reasonably be considered to be affixed to the ground by its own weight. It sits on a purpose built base of considerable size with use-specific drainage specification, it has not been moved since installation, and is unlikely to be moved within the site given its purposes and relationship to the site infrastructure, all of which suggest a significant degree of permanence. Taking all of these factors into account, I am satisfied that it should be regarded as a building for planning purposes, and hence operational development requiring planning permission.

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<sup>4</sup> Cardiff Rating Authority v Guest Keen Baldwin Iron and Steel Co Ltd [1949] 1 KB 385 and Skerritts of Nottingham Ltd v SSETR (No.2) [2000] EWCA Civ 5569

26. So far as the facility might be seen as ancillary to the current use, that use is not lawful, though in any case as operational development it would require express planning permission. This aspect of the ground (c) appeal cannot therefore succeed.

#### **Ground (d)**

27. The basis of an appeal on this ground is that it is too late to take enforcement action. It concerns some of the hardstanding and the weighbridge. So far as the weighbridge is concerned, in view of the success on ground (c) and the consequent correction to the notice, it is not a matter that I need consider further.

28. The hardstanding in question is that laid at the request of Network Rail in the early stages of its occupation, and the land south of the bund in the south-east corner. The Network Rail works comprise much of the land between the two hangars and a discrete area to the west of the access road to Hangar L6, and is most clearly shown in an aerial photograph apparently taken on 19 July 2016 and submitted as Drawing No. DR-0007 with the Hangar L6 LDC application. That photograph shows the works almost complete, and it is submitted that it is hardly likely, given the advanced state of the works in July 2016 that it would not have been completed by 16 September 2016, that is 4 years before the date the notice was issued. As it happens, the aerial photograph dated 13 March 2017 indicates the works still on-going, though extended slightly, most of that shown as incomplete in 2016 being similar in 2017. Mr Blakeley and Mr Malachi gave evidence nonetheless that it was completed in 2016, and Mr Blakeley, in his Statutory Declaration, showed what he claimed was the extent of the 2016 surfacing by reference to a plan, Drawing WRO-001-016. However, perhaps unsurprisingly given the passage of time, his recollection is clearly not entirely accurate because some areas shown in that plan are clearly still not surfaced in 2017.

29. The 2017 photograph shows extensive storage of materials on the land that is shown as being, or having been, surfaced in July 2016. I consider, on the balance of probabilities, that what can be seen to be complete or almost so, in the July 2016 photograph, was substantially completed 4 years before the notice was issued, and hence is immune from enforcement by virtue of sections 171B(1). I consider Drawing WRO-001-016 to be inaccurate in some respects however, and I shall set it aside. Drawing No. DR-0006, submitted with the Hangar L6 LDC application accurately shows the extent of hardstanding evident on the July 2016 aerial photograph, submitted as Drawing No. DR-0007 with that application, and I shall amend the enforcement notice plan to reflect that, and the success otherwise on this ground.

30. Although more of a ground (f) point, the Council argues that, notwithstanding that the time for enforcement action against that hardstanding as operational development has passed, it's removal can still be required. That would be the case if it were integral to, and part and parcel of, a change of use enforced against. In this case however, its association was with the Network Rail use. While the appellant clearly purchased the site with the intention to relocate there, and in fact carried out the works requested by Network Rail, the material change of use at which the notice is directed is the specific change to the current use, and the most that a notice can seek to achieve in those circumstances is to restore the land to its condition before the breach took



place. Hence the hardstanding that was laid and completed for Network Rail's use by 16 September 2016 is now immune from enforcement in its own right, and its removal cannot be required through its association with the material change of use the subject of the notice. I shall amend the relevant plan to exclude it from the requirements of the notice.

31. For clarity, the hardstanding that was laid less than 4 years before the notice was issued, but before the change of use to the current use, can be required to be removed since the notice as corrected is a hybrid notice that enforces against material change of use and operational development separately.

### **Appeal A: Ground (a) and the deemed planning application**

32. This ground is that planning permission should be granted for the developments enforced against, as described in the enforcement notice as corrected, and it is accompanied by a deemed planning application. Essentially it is an application for planning permission for the use of the site as Earthline's administrative and operational base, along with the operational development that has taken place. I do not treat the operational development separately on this ground since it is integral to, and part and parcel of the use, and the appellant's case has been put on the basis of the development as a whole. The main issues are:

- Whether the location is suitable for the development, having regard to local and national planning policies;
- The effect of the development on the character and appearance of the North Wessex Downs Area of Outstanding Natural Beauty (AONB); and
- Whether there are likely to be adverse impacts on highway safety and functioning.

#### *Location*

33. The sustainable development strategy for the borough is the subject of Policy SD2 of the adopted Swindon Borough Local Plan 2026 (LP), which directs most residential and economic development to Swindon's urban centre and allocated strategic sites. Outside Swindon, rural development is to be located primarily at Highworth and Wroughton, considered to be the most accessible rural settlements and with a range of facilities. One argument raised in support of the proposal is that the appeal site can be considered to be **at** Wroughton. I accept that the terminology allows a degree of flexibility insofar as development at Wroughton need not necessarily be confined to the area enclosed by the settlement boundary. Nonetheless, reasonable proximity would be expected, whereas the appeal site lies some 2.7km from the settlement edge, well beyond the reach of public transport and in an area devoid of services and whose overall character is distinctly rural. It has none of the characteristics that justifies Wroughton's strategic role and hence cannot be considered to be **at** Wroughton for the purposes of LP Policy SD2.

34. So far as Policy SD2 is concerned, the appeal site lies in the countryside, where support for new development is limited to specific categories. Only one of these is claimed to be relevant, namely where development is in accordance with other LP policies permitting specific development in the countryside. LP Policy EC4 supports the conversion of buildings to employment use. However, in this case the development concerns not just the conversion of existing buildings,

but also the erection and use of new buildings to accommodate aspects of the use for which the existing buildings were not suitable. It goes well beyond mere conversion of buildings to employment use. The policy does make clear that there would be policy support for the employment use of the hangars themselves, but the supporting text to Policy EC4 indicates that transport implications would also require consideration.

35. LP Policy TR2 expects new development to be located and designed to reduce the need to travel and to encourage the use of sustainable transport alternatives. The appellant's transport consultant considered that the development complies with this aspect of Policy TR2, but this conclusion is largely predicated on comparison with use of the site as a B8 storage warehouse and distribution land use, which it is concluded could generate more traffic than the appeal development. This is not a valid comparison in my view since the use of the hangars for employment purposes does not necessarily equate to unrestricted B8 use, and there is no evidence that the previous uses of the hangars generated anything like the numbers of traffic movements now being generated.
36. The current use generates considerable traffic. HGV movements amount to about 27-30 movements in and out per day, but most of the approximately 60 employees commute to the site by private car daily, typically from the Swindon area. The site is not well served by public transport, and while there are measures in place or proposed to reduce the use of private transport by promoting more sustainable modes, detailed in a Travel Plan, it seems more likely than not that private car use would remain substantial, and indeed the principal means of access to the site for employees, contrary to the aims of Policy TR2.
37. The use is not one which requires a countryside location. The availability of alternative locations was discussed at the Inquiry. It is evident that the borough has a good range of available employment sites, and both the LP and the emerging LP allocate more land for employment uses than has been assessed as necessary to meet the borough's needs up to 2036. Numerous identified sites were discussed. Though a site to meet the appellant's criteria was not agreed to be immediately available, it was evident that suitable sites, or sites that could be appropriately adapted, in far more sustainable locations, and with far better strategic highway network access, do come on the market with reasonable frequency.
38. So far as LP Policy SD2 is concerned, the development is not within any category of development that will be supported in a countryside location. While there is policy support for use of the hangars for employment purposes, and indeed the airfield as a whole is considered to be previously developed land, whose re-use should be encouraged, the specific use does not have broad policy support in this location, and it is clearly contrary to the objectives of Policy SD2.

#### *Character and appearance*

39. Wroughton Airfield, in common with other such now disused military airfields, is a recognisable landscape feature with characteristic runways, large scale hangars and related infrastructure. However, the well-dispersed nature of the buildings, their utilitarian scale and appearance, and the open grassland areas surrounding them give the southernmost part of the site, and particularly the

appeal site which lies in the southwest corner, a distinctly rural character, with human influences, the appeal development aside, far less evident than on the core runway section and the northern and eastern margins of the airfield. Approaching the site from the western side, I consider that those unfamiliar with the area would, more likely than not, be unaware of the presence of an airfield.

40. Its position in the landscape is at the foot of an escarpment on top of which runs the Ridgeway National Trail. At various points along the local section of the Ridgeway there are panoramic views across the airfield towards Swindon and the surrounding countryside, but little if any of the recent development of the appeal site is evident. The visual impact of the development is, in the main, confined to views from within the airfield or from the public right of way running along the southwestern boundary, a Byway Open to All Traffic (BOAT), designated BHIN18.
41. BHIN18 is sealed between the airfield access and the highway network and is used by the appellant as one of the two main approaches to the site. It joins the quiet rural road network just outside Uffcott and is evidently well used by locals, notably as a particularly valuable route for horse riders. On the approach to the appeal site from the Uffcott side the hangars are a dominant, though not incongruous, feature, but closer to the site, and in passing it, the modular office building intrudes as an uncharacteristic and discordant structure. The new building linked to Hangar L6 is less discordant, its form partly following that of the hangars, but its siting in close proximity to the byway and its scale detract from views across the site and diminish the sense of openness. The hardstanding close to the byway is also evident, uncharacteristic and jarring.
42. Much of the visual harm in closer views of the site from BNIN18 can, however, be mitigated by a proposed scheme of landscaping which includes hedgerow enhancement along the byway boundary with the site and across its southern boundary, and the replacement of the hardstanding to the west of Hangar L6 with grassland. The more direct visual impact of the site can therefore be kept, or brought, within acceptable limits.
43. However, among the AONB's special qualities, as set out in Theme 6 of the NWDMP, is the sense of remoteness and tranquillity that comes from an undeveloped and rural quality with only limited human intervention. From the evidence of local residents, that appears to have been an accurate description of the environment around Uffcott and the western fringes of the airfield prior to the acquisition of the appeal site by Earthline, a period when the hangars were in some form of commercial use. However, the current use has undoubtedly resulted in a significant increase in traffic generation by the site, both HGVs concentrated in discrete periods and cars and delivery traffic throughout the day, to the detriment of the quality of remoteness and tranquillity.
44. Furthermore, in the darker months, much of this traffic would be using headlights in the morning and evening, and light spill from the modular office building, and around the appeal site, later in the day during normal working hours, would also be evident. This would intrude on the characteristic dark environment, both locally and in the wider area. The proposed landscaping would be most unlikely to effectively mitigate lightspill from the office building

in the hours between dusk and the end of the working day. Lightspill from the site, and the vehicle headlight movement around the site and coming and going to the west and to the east along Hackpen Lane, would draw attention to the relatively intensive use of the site in mid- to long-range views and would also serve to diminish the quality of remoteness and tranquility.

45. LP Policy EN5 aims to protect landscape character, including qualities such as tranquility and light pollution, and expects proposals within the AONB to accord with relevant criteria in the North Wessex Downs AONB Management Plan (NWDMP). However, the development conflicts with NWDMP Policy LA 06 of Theme 1, which seeks to conserve and enhance the character, qualities and heritage of the North Wessex Downs landscape, and with Policies DE 01, DE 08 and DE 20 of Theme 6, which seek to protect the AONB special qualities. It is national policy that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. For the reasons above I consider that the development fails in this respect. It is therefore contrary to LP Policy EN5.
46. The Council and the AONB Unit also argue that the development comprises major development in the AONB, which should only be permitted in exceptional circumstances and where it can be demonstrated that it is in the public interest. However, while I have identified harm to the AONB, I do not consider that the scale, character and nature of the development is likely to have such a serious adverse effect on the purposes for which the AONB is designated that it could only proceed in the public interest.

#### *Highway safety and functioning*

47. The appeal seeks permission for use of the site by up to 50 HGVs, limiting trips to no more than 50 per day. Currently 37-39 HGVs use the site for daily or weekly journeys to and from the operational sites served in the wider area. The Council's highways objections focus on these HGV movements, although there is also considerable car and van or light goods vehicle (LGV) traffic generated by the use. HGVs access the strategic highway network from the site either heading east or west, depending on their destination. During the period of monitoring by the appellant's highways consultant, 6-12 July 2021, 25-35 HGVs left on weekdays, with 24-34 returning. There was little or no HGV movement at the weekend. In that period 88% left eastwards, with 68% returning from that direction. Light vehicle traffic to and from the site from each direction was roughly equal. While I refer to the data collected in the monitoring period, the frequency and directional distribution of traffic to and from the site will undoubtedly vary over time.
48. Eastbound traffic from the site will generally be heading for the A346 just south of M4 Junction 15, or northward through Wroughton. A346 bound traffic must pass through Chisledon along the B4005 where the footways and carriageway are narrow in many places and with road frontage development, particularly on the approach to and from the mini-roundabout leading onto New Road from Hodson Road. Development traffic is estimated to be 2% of all traffic on New Road, but 25% of HGVs. The timings of HGV departure from, and return to, the appeal site means however that these movements will be experienced over short periods of time. During monitoring, 27 HGVs from the site passed through Chisledon between 0600 and 0700 on Tuesday, with 10 returning between 1500 and 1600, and local experience is that the appellant's HGVs

often travel in convoy. Carriageway width in the urban area would enable 2 HGVs to pass, but with difficulty, and pedestrians using the narrow footway, and so in very close proximity, at these times are likely to feel unsafe or intimidated, and particularly so if the HGVs are grouped or there is large vehicle traffic in both directions, or both. Though not attributable, verge damage from vehicle overruns along Hodson Road have been cited by local residents, indicative of marginal carriageway capacity.

49. HGV traffic on this route also have to negotiate the B4005 at the Toll House by Burderop, whose geometry means that HGVs heading west to the site will have to cross over both lanes turning left. HGVs arriving at the junction from the south may have to wait or even reverse while such manoeuvres are taking place. I observed a non-Earthline HGV making that manoeuvre on my site visit and considered it to be both hazardous and an interference with traffic flow.
50. Although the northerly route through Wroughton is said not to be favoured by HGVs from the site since it leads into Swindon Old Town which can be difficult to navigate, it is evidently used nonetheless. It was not subject to traffic monitoring, but it is clearly not a route suited to HGVs, being relatively narrow, unlit and without footways in the rural section, and with sections within the town where carriageway width and on-street parking means that vehicles coming in opposite directions cannot safely pass. There is also a sharp bend with very limited forward visibility, a very narrow footway and a dwelling on the corner built almost to the highway edge. It is not a route to which additional HGV traffic can be directed without detriment to highway safety.
51. Traffic leaving the site westwards, must use the byway BHIN18, leading onto the C121 Uffcott Road, after which they can turn right onto the A4351 towards Wroughton, then left onto the B4005 towards M4 Junction 16, or cross the A4351 to Hay Lane, which leads to M4 Junction 16 via the B4005. The appellant's monitoring indicates that HGVs travelling to Junction 16 use the A4351 to Wroughton, then the B4005. There is a 7.5t weight restriction on Hay Lane, but the appellant has an operations site on the lane so HGVs will occasionally use it, as I saw on one of my site visits, and it is used by non-HGV traffic to and from the site.
52. The BHIN18 section leading from the airfield road serving the appeal site to the C121 is about 300m long and about 3.8m wide, insufficient to enable 2 vehicles to safely pass. A possible passing place appears to have been created at about its mid-point where a verge overrun has been recently metalled, apparently by Earthline, but I understand this to comprise unauthorised highway works, a point raised by Wiltshire Council, and shall disregard it.
53. Although fewer of the appellant's HGVs use this route, at times there is substantial HGV use. During monitoring 17 HGVs returned to site in the 1500-1600 period by this route on the Friday, one every 3.5 minutes if evenly spaced. The monitoring indicates that the route is normally lightly trafficked, the development representing 27% of all vehicles 2-way and 40% of trucks.
54. The BHIN18 is also used regularly by horses and pedestrians. It provides access to horse paddocks on both sides and to Windmill Stud, a facility which specialises in rehabilitation and recuperation of sport horses. It is evidently part of an important hacking route. The appellants highways consultant considered the likelihood of conflict between other users and development traffic to be low because of the straight nature of the byway, which would enable vehicles

approaching to make a decision as to whether to proceed or not depending on whether there is an opposing vehicle or other road user on the byway, and that if a truck were to proceed along the byway and meet a pedestrian, cyclist or equestrian, there would be sufficient width to pass.

55. However, that does not appear to be how it has worked in practice, Earthline HGVs having evidently encountered other users on the byway. Indeed, in the busier periods, if a HGV chose to wait on the C121 to enable another BHIN18 user to clear the byway, there would, almost inevitably, be other vehicles backed up behind them. The width to pass another road user is said to vary from 0.8m to 1.9m, well below the 2m of passing space for horses recommended by the Highway Code, and the verges are not such that they can be relied upon for refuge, either by riders, cyclists or pedestrians. I consider that a pedestrian or cyclist using the byway would feel vulnerable and intimidated on meeting a HGV, but in the case of a horse rider I think there would be a real risk to the horse and rider. Even when stopping completely, air-brake noise from the HGVs has apparently startled horses. Further, access to the byway from Uffcott for horse riders is by a relatively blind bend, and riders approaching from the direction of the village to use the byway or access the paddocks alongside would be likely to be unaware of an approaching HGV, and vice versa, until they are almost upon each other.
56. Locals have adapted to the situation by simply not using the byway during the periods when they anticipate HGV use because, on their own evidence, they consider it to be unsafe, and they have made other adjustments, such as restricting their use of roadside paddocks to reduce the risk of horses being alarmed by passing HGVs in close proximity. They have also resorted to an ad-hoc traffic calming re-alignment of the junction with the C121 to reduce speeds entering the byway section.
57. Further north along the C121 the road width, so far as other vehicles encountering HGV traffic are concerned, is described by the appellant as inconvenient but not restrictive. The road varies in width from 4.5m to 5m, insufficient to allow 2 HGVs to pass, and in places for a HGV and van or larger car to pass. It is noted by the appellant's consultant that there are 2 places where vehicles can pull in to allow others to pass, but there are long stretches where no such opportunity exists. It is also argued that the likelihood of meeting one of the appellant's HGV is low throughout the day, but at certain times there is a high probability of meeting one or even multiple HGVs. In many instances, when a HGV and other vehicles meet one will have to reverse a considerable distance or mount the verge, or both, and, though not attributable, verge damage is evident in places. Reversing on long sections of narrow laneway, either in a car or a larger vehicle, can be hazardous, and there are sections where wide vehicles such as HGVs would not be able to safely pass a horse and rider or a cyclist.
58. Wiltshire Council, the highway authority for the BHIN18 and C121, have advised that that use of the byway BHIN18 is not appropriate for the level of traffic generated by the development and noted that the accident data and anecdotal evidence suggest that the access to the site via the single-track road (C121) and single-track byway would cause significant highway safety concerns. It adds that byway BHIN18 is not of the condition nor is maintained to the standard necessary to accommodate the volume and type of traffic likely to be generated by the development.

59. The junction with the A4361, a crossroads, has a history of accidents, 8 collisions being recorded in the period 2017-2019. None directly involved a HGV, but all have involved vehicles turning to and from the A4361, and the Council's Traffic Manager has advised against adding to vehicle movements at this junction, particularly larger, slower moving, vehicles. During monitoring, about 30% of all development related vehicle movements went through this junction.
60. HGV traffic entering Wroughton on the A4361 in order to access the M4 at Junction 16 via the B4005 passes road sections within the town where on-street parking would prevent most 2-way traffic, certainly that involving HGVs, and then must make a difficult acute turn to the B4005 at a controlled junction. HGVs using this route have been observed mounting pavements to pass oncoming traffic.
61. Although not used by HGVs because of its 7.5t weight limit, employees driving to or from the site may also use Priors Hill, which is probably the shortest route from Wroughton town centre. This is a road that is steep and narrow in places and acknowledged as unsuited to additional car traffic.
62. Overall, while no accidents have been attributed to HGVs associated with the development, the development traffic must use roads that, in many instances, are not of a standard to which additional traffic should be directed, and particularly HGVs, in the interests of highway safety and their convenience and attractiveness for other road users. In the case of the byway BHIN18 I consider the use the additional HGVs due to the development to be both hazardous and unacceptably detrimental to the amenity of other users. The use of the C121 has a lesser impact, but it is also likely to cause considerable inconvenience and increase risks to other road users. Vehicles travelling eastwards, or coming from that direction, must also negotiate unsuitable roads and junctions, creating conflicts with other road users, and in some sections there is a significant likelihood that vulnerable road users will feel unsafe and intimidated.
63. In coming to this view I have had regard to the application of the Institute of Environmental Management & Assessment (IEMA) Guidelines for the Environmental Assessment of Road Traffic by the appellant's transport consultant, which found among other things, that fear and intimidation of other road users would be likely to be extremely low. However, the methodology is rule-of-thumb and largely based on the length of time that other users may be aware of a HGV. Having regard in particular to the expressed experience of local residents and the specific highway conditions within Chisledon, the byway, and the approaches to Wroughton town centre, I do not doubt that the additional HGV traffic adds to a perception of hazard or experience of intimidation for other users, such that they may feel unsafe or insecure using the public highway when HGVs are travelling through their area, and particularly so when journeys are clustered, as is likely to occur with this type of development. Overall, I find that the development conflicts with LP Policy TR2, which among other things seeks to avoid harm to highway safety and local amenity.

#### *Planning Balance*

64. The appeal site is previously developed land, whose use should be encouraged where suitable opportunities exist, and it contains 2 large buildings for which there is a desire on the part of the Council to find a viable use. Indeed, as set

out above, there is policy support for their re-use. While the use for unrestricted B8 purposes does not represent a valid fallback, any viable use of the site will generate some traffic to and from, and some activity at the site, and I take that into account. The National Planning Policy Framework (NPPF) also recognises that sites to meet local business and community needs in rural areas may have to be found beyond existing settlements, and in locations that are not well served by public transport, and there are wider economic benefits, both in terms of employment and the contribution of the business to the economy that weigh in favour of the development.

65. However, as NPPF paragraph 85 also makes clear, in these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable. While the appellant's travel plan does seek to improve the sustainability of the site in terms of access by non-car modes of transport, I consider it more likely than not that the current use will continue to generate a very considerable number of private car journeys, such that it would remain contrary to the Council's transport and sustainability policies. The harm I have identified to the AONB and to highway safety and the negative experience of other road users also weighs heavily against the development. The highway difficulties I have found demonstrates that the location is not well connected to the strategic highway network, and, in view of the extent of employment land available within the borough I have no doubt that an acceptable alternative site could be found within a reasonable timeframe.
66. I find accordingly, for the reasons above, that the development conflicts with the development plan read as a whole. There are material considerations in favour of the development, but these are not sufficient to justify determination of the deemed planning application other than in accordance with the development plan. It follows that the appeal on this ground should be dismissed and planning permission refused.

### **Ground (f)**

67. The notice in this case is clearly aimed at restoring the land to its condition before the breaches of planning control occurred. This ground therefore is that the requirements exceed what is necessary to remedy the breaches, as a matter of fact. Following the corrections and variations I have made to the notice, either to get it in order or as a consequence of partial success on grounds (b), (c) and (d), the arguments made on this ground have effectively fallen away.

### **Ground (g)**

68. This ground is that the time for compliance is too short. The appellant will need to find an alternative premises and then undertake the remedial works. Once suitable alternative premises have been found, since the development is a *sui generis* use it is highly likely that planning permission would be required. Time may also be required to adapt any new premises to the specific needs of the appellant's business. A period of 24 months is sought.
69. As a significant employer and contributor to the local and regional economy, there is good reason to allow sufficient time for it to relocate, but against that must be weighed the continuing harm while it remains at the appeal site. On



the basis of the estimates discussed for each of the stages required, I consider it likely that it will take up to 12 months to secure and prepare new premises with the appropriate consents, and a further 3 months for remedial work at the current site. A reasonable compliance period in the circumstances is 15 months. The appeal on this ground succeeds to that extent.

## **FORMAL DECISIONS**

### **Appeal A**

70. It is directed that the enforcement notice be corrected and varied as follows:

71. In Section 2, delete the word "Hanger" and replace it with the word "Hangar".

72. Delete Section 3 in its entirety and replace it with:

#### **3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACHES OF PLANNING CONTROL**

Without planning permission:

- (1) The material change of use to a *sui generis* mixed use comprised of HGV depot, storage, administrative offices, and ancillary uses thereto; and
- (2) The construction of:
  - (a) a two storey modular office building as marked 'two storey office block' on the plan attached to this decision;
  - (b) an extension to an existing hangar building L6 as marked 'extension to Hanger L6' on the plan attached to this decision;
  - (c) a HGV fuelling area and slot drain and fuel/oil separator as marked 'Refuelling area' on the plan attached to this decision;
  - (d) a three brush automated vehicle washing unit and water tank, marked as 'vehicle wash down area' on the plan attached to this decision;
  - (e) areas of hardstanding as marked 'hardstanding' on the plan attached to this decision.

73. In Section 4, delete the words "It appears to the Council that the above breach of planning control has occurred within the last four years." and replace it with the words "It appears to the Council that the breach of planning control set out in Section 3(1) above has occurred within the last ten years and that the breaches of planning control set out in Section 3(2) above have occurred within the last four years."

74. Delete Section 5 in its entirety and replace it with:

#### **5) WHAT YOU ARE REQUIRED TO DO**

(1) Cease the use of the Land as a *sui generis* mixed use comprised of HGV depot, storage, administrative offices, and ancillary uses thereto.

(2) Remove from the Land:

(a) the two storey modular office building together with any associated ancillary development including (but not limited to) pathways, railings and external staircases and disabled parking facilities;

(b) the extension to the existing hangar building L6 including the internal flooring and external hardstanding area;

(d) the HGV fuelling area, fuel tanks, associated hardstanding area and the slot drain and fuel/oil separator;

(e) the three brush vehicle washing unit and any associated ancillary development including (but not limited to) and hardstanding areas, framework and electrical fixings;

(f) the areas of hardstanding identified as 'Hardstanding' on the plan attached to this decision;

(h) Remove any and all resultant debris, rubbish and materials from the Land arising from compliance with the above requirements.

(3) Return the Land to its former state and condition by levelling the ground and re-seeding it with grass.

75. In Section 6, delete the word "Three" and replace it with the word "Fifteen".

76. Subject to these corrections and variations, the enforcement notice is upheld and planning permission is refused.

### **Appeal B**

77. The notice is quashed.

*Paul Dignan*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Paul Brown QC

He called	
David Blakely	Network Rail occupancy
Malachi Chambers	Previous and current use
Robert Spriggs	Highways
Radek Chanas	Landscape
James Gregory	Alternative sites
Chris Heffernan	Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Stinchcombe QC

He called	
Jerry Prodohl	Highways
Charles Potterton	Landscape
Rebecca Davies	Landscape (AONB)
David Dewart	Alternative sites
Louise Moore	Enforcement
Ralph Chakadya	Planning

### INTERESTED PERSONS

Christopher Evans	Local Resident
Matt Harris	Cllr, Chisledon Parish Council
Cathy Martyn	Cllr, Swindon Borough Council
David Martyn	Cllr, Swindon Borough Council
Brian Ford	Cllr, Swindon Borough Council
Jenny Jeffries	Cllr, Swindon Borough Council
Adam Gilmore	Cllr, Broad Hinton and Winterbourne Bassett PC
Sir Robert Buckland	MP, South Swindon
John Hewer	Cllr, Wroughton Parish Council
Liz Parfrey	Local Resident
James Hussey	Local Resident
Lawrence Elliot	Cllr, Swindon Borough Council
Tristan Norman	Local Resident
Julia Norman	Local Resident
James Keith	Local Resident
Ellie Keith	Local Resident

## DOCUMENTS

- 1 Opening submissions - Appellant
- 2 Opening submissions - Council
- 3 Speaking note – Christopher Evans

- 4 Speaking notes – Cllr Harris
- 5 Speaking notes – Cllrs Martyn, Martyn and Ford
- 6 Speaking notes – Cllr Jeffries
- 7 Speaking notes – Cllr Gilmore
- 8 Written submission - CPRE
- 9 Speaking notes – Sir Robert Buckland
- 10 Speaking notes – Cllr Hewer
- 11 Speaking notes – Liz Parfrey
- 12 Speaking notes – James Hussey
- 13 Speaking notes – Cllr Elliot
- 14 Speaking notes – Tristan and Julia Norman
- 15 Speaking notes – James and Ellie Keith
- 16 Additional suggested highways conditions - Council
- 17 Site visit requests – Brian Blackford, Cllr Cathy Martyn, Cllr Brian Ford
- 18 Site visit route request - Council
- 19 Amended enforcement notice
- 20 Amended enforcement notice Plan
- 21 Council’s closing submissions
- 22 Appellant’s closing submissions



# The Planning Inspectorate

**This is the plan referred to in my decision dated: 08 August 2022**

**by Paul Dignan MSc PhD**

**Appeal Ref. APP/U3935/C/20/3261411**

