MA/09/1629
APPENDIX 1

Appeal Decision

Inquiry held on 13 and 14 February 2007
Site visit made on 13 February 2007

by David Harrison BA Dip TP MRTPI

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

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Date 4th April 2007

The Barn, Mount Farm, Greenway Forstal Lane, Harrietsham, Kent ME17 1QA

Appeal A : APP/U2235/C/06/2012263

- 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 Ian Ivor Williams against an enforcement notice issued by Maidstone Borough Council.
- The Council's reference is ENF89402. The notice was issued on 28 February 2006.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agriculture to a mixed use for agriculture, storage and distribution of pallets (B8) and vehicle repairs and vehicle spraying (B2).
- The requirements of the notice are (i) Cease permanently the use of the land for the storage and distribution of pallets. (ii) Cease permanently the use of the land for vehicle repairs and vehicle spraying. (iii) Remove permanently from the land all materials, vehicles, plant and machinery unconnected with the agricultural use of the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) [a] [b] [c] [d] [f] and [g] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with an increased compliance period.

Appeal B : APP/U2235/C/06/2012262

- 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 Ian Ivor Williams against an enforcement notice issued by Maidstone Borough Council.
- The Council's reference is ENF89402. The notice was issued on 28 February 2006.
- The breach of planning control as alleged in the notice is without planning permission, operational development comprising of the laying of an area of hard surfacing and a hard surface access track.
- The requirements of the notice are (i) Excavate and remove permanently from the land the area of hard surfacing and the hard surface access track as shown hatched in blue in the approximate position on the attached plan. (ii) Remove permanently from the land all materials, waste and debris resulting from compliance with step (i) above. (iii) Following compliance with steps (i) and (ii) above, restore the surface of the site by ripping in two directions to a depth of 30 cm and re-spreading topsoil over the ground to a depth of 15 cm, or more where necessary, to fill in depressions left by the hard surfacing and the hard surface access track, grade the spread topsoil to leave a level surface and seed the spread topsoil with grass. (vi) Following compliance with step (iii) above, replant the frontage hedgerow using indigenous species of Field Maple (10%); Hawthorn (70%); Hazel (15%); and Holly (5%) as whips with spiral guards secured by canes, with the whips to be planted in double staggered rows 30 cm apart with 45 cm between the plant centres.
- The period for compliance with requirements (i), (ii) and (iii) is 3 months, and requirement (iv) is

twelve months.

- The appeal is proceeding on the grounds set out in section 174(2) [a] [c] [d] [f] and [g] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld as varied and with an increased compliance period.

Procedural matters

1. The appellant did not indicate on the appeal form that ground (d) was to be pursued in relation to Appeal A, but arguments about immunity from enforcement action due to the passage of time were included under the heading of ground (b). The Council raised no objection to the addition of a ground (d) appeal and I have considered it.

2. As the facts are in dispute the witnesses gave evidence on oath, with the exception of Mr Lewis, the appellant's witness on highway matters.

3. The notices refer to Forstal Lane but it is also known as Greenway Forstal, Greenway Lane and Greenway Forstal Lane. I will use the latter name.

Site description and background to the appeals

The building and its surroundings

4. The building the subject of Notice A is a former Dutch barn about 13 m by 26 m situated in an elevated position to the north of Greenway Forstal Lane. It was originally part of a complex of farm buildings at Mount Farm, the former farmhouse now being known as Mountview House. Before the new access the subject of Notice B was constructed, access to the building was via the farm entrance further to the west along Greenway Forstal Lane. I will refer to this as the original access. Although at the time of my visit there was a locked gate and a pile of pallets blocking the way there is, (subject to any right of way) a physical link between the site the subject of the notices and the land to the west.

5. The area within both the notices includes the barn, the major part of the hardstanding to the north and west of it, the access track and a triangular area of grassland between the track and Mountview House.

6. Greenway Forstal Lane is a single track road with occasional passing places which runs to the north of and roughly parallel with the A20 Ashford Road, the Channel Tunnel Rail Link and the M20. The lane also gives access to the Garden of England mobile home park and about half a dozen residential properties. The site lies in open countryside which is included within the North Downs Special Landscape Area (SLA) as designated in the current development plan.

Planning history

7. In July 1999 the Council became aware that an access track was under construction to the east of Mountview House. A retrospective application to construct a new 4 m wide track along 2 sides of a field using an existing gated access was refused on 21 December 1999 (Ref: MA/99/1605).

8. An application to change the use of the barn to B8 storage use and to construct a grasscrete track in the same position as the previous refused application was refused on 22 September

2000 (Ref: MA/00/1051). An Enforcement Notice alleging construction of a track way was issued and both decisions were appealed by way of written representations. The appeals were dismissed on 6 August 2001 (the 2001 appeal). The Inspector identified three issues; highway safety, the effect on residential amenity, and the impact on the rural landscape. He concluded on the first issue that the proposed storage use (the storage of pallets) would be "likely to generate additional traffic movements by HGVs which would be beyond the capacity of the lane, and could be detrimental to highway safety", and that the "remote location would preclude the use of public transport, walking or cycling" and there was therefore a conflict with development plan policies. On the second issue he concluded that there would be a loss of residential amenity due to noise and disturbance because of the proximity of the track to the farmhouse, and on the third issue he concluded that the track (which was proposed to be grasscrete) "would not have an adverse visual effect". This track has since been removed.

9. Two enforcement notices were issued in September 2002 both alleging a change of use of land to B8 storage use, (the storage of vehicles). The notices were quashed on 12 May 2003 following an Inquiry, because the Inspector was concerned about the definition of the planning unit (the 2003 appeal). The plan attached to these notices included the whole of the area within the current notices plus land to the east and west which included the farmhouse and its residential curtilage.

Background information

10. There are two outstanding appeals against enforcement notices on land immediately to the west of the current appeal site, outside the ownership of the appellant. These appeals are not before me for my consideration but I mention them for completeness. Notice A alleges a material change of use to a mixed use comprising agriculture and B8 and B2 uses (vehicle repairs and spraying), and Notice B alleges operational development including the erection of a building, the alteration of another building and the laying of hard surfacing.

11. The appellant has a Vehicle Operators Licence to operate 3 HGVs from the appeal building. There is a condition restricting the movement of these vehicles to between the hours of 0700 and 1700 Monday to Friday, and 0700 and 1200 on Saturdays. The licensed vehicles are required to approach and leave the site from the north-west along Greenway Forstal Lane (i.e. without passing by the mobile home park which lies to the east). This requirement does not apply to any of the other vehicles using the site.

Suggested correction to the allegation in Notice A

12. The appellant argued that no agricultural use was being carried out on any of the land covered by Notice A. The use of the triangle of grass to the west of the access track for the grazing of 2 horses was *de minimis*. Whilst there is no agricultural activity in the former farm buildings this triangle of grassland does not appear to have been the subject of a change of use and remains available for agricultural use. I do not consider it necessary to correct the allegation in the notice to exclude the reference to agriculture.

APPEAL A : The B8 storage use and the B2 industrial use

The appeals on grounds (b), (c) and (d)

13. For the appeal on ground (b) to succeed the appellant must demonstrate that the alleged unauthorised development has not occurred as a matter of fact, and for the appeal on ground (c) to succeed it must be demonstrated that there has been no breach of planning control. If ground (d) is to succeed, any breach of planning control that may have occurred must have taken place more than 10 years before the notice was issued, i.e. before 28 February 1996.

14. The Council considers that the only lawful use of the building and the adjacent land is for agricultural purposes. The area of land included within the notice reflects the correct planning unit and overcomes the difficulty identified by the Inspector at the 2003 appeal.

15. The appellant, Mr Williams, maintains that the lawful use of the building is for a mixed use of B2 and B8. He purchased the Dutch barn 1998. He used it for pallet storage but "in the middle of 2001" due to difficulties he was having with the Council, he decided to relocate his business to another site and rent the building and yard to Bob Sharpe, another pallet dealer, who continued the same use. Mr Williams subsequently sold the building to Mr Lee (who owns other land in the vicinity) in October 2001. In October 2003 he rented the barn and yard back from Mr Lee and resumed the use for pallet storage. He subsequently bought it back from him.

16. It is accepted by the appellant that the pallet storage repair and distribution business did not start until 1998, but it is argued that the barn had previously been used for the storage of vehicles which falls within the same B8 Use Class. The type of storage may have changed over the years but there was no significant interruption of the storage use during the relevant 10 year period. There has also been a long-standing B2 use for car repairs and spraying albeit associated with the use of other buildings on adjoining land to the west.

17. The appellant also argues that the findings of the Inspector at the 2003 Inquiry supported the case for a B2 use being established in the former Dutch barn. However, the Inspector's conclusion was not that the B2 use was established. What he said was "Any description of the mixed use of the site probably should also include Class B2 use. I say that having regard not only to the evidence but also to the fact that a major plank of the Council's case on ground (d) is that a "primary use" of the site over the years has been for vehicle spraying and ancillary vehicle storage, which is a B2 use". The Inspector's reference to "the site" was to the larger site which included land and buildings to the west, and was not a specific reference to the Dutch barn.

18. I heard a considerable amount of conflicting evidence about changes in ownership of the buildings and land and about different activities that have taken place in and around the barn during the relevant 10 year period. I will not rehearse it all here, but I will refer to the statement (with photographs) made by Mr Byrne, a former Planning Enforcement Officer with the Council, which I find particularly clear.

19. In his Statutory Declaration Mr Byrne refers to a visit to the barn on 12 July 2002 in connection with the alleged storage of vehicles. He states that there was an area of newly laid hardstanding to the north of the barn which he estimated to be between 800 m^2 and 1000 m^2 in area. The sides of the barn had been enclosed with brickwork and sheeting. A rough track had been created from the barn to Greenway Forstal Lane, but it had not been surfaced. Access to the building was via the "original" access from the west via the farm. There were about 20 cars stored in the barn and Mr Lee said he was operating a business called "Specialist Cars and Commercials". There was no evidence of any workshop area or

repair or spraying activity in the building itself or within the area now included in the enforcement notice.

20. In my view there is no evidence of consistent use of the barn for any specific purpose or purposes throughout the relevant 10-year period from 28 February 1996. The barn was divided internally and two separate entrances were formed after 2002. Whatever use (or uses) may have been made of the barn before that date I consider that a new "chapter" in the planning history began then. The material change of use of the western part for car repairs (as opposed to vehicle storage) began after 12 July 2002, after the west facing roller shutter door was installed. Any activity prior to and including Mr Lee's storage use in July 2002 was ancillary to or connected with the use of other land and buildings further to the west.

21. It seems to me that the current notice correctly identifies the maximum extent of the single planning unit which the Council considers to comprise a mixed B2 and B8 use, but I believe there are now two separate planning units; one B2 (vehicle repair) use in the western third of the building (13 m by 9.2 m) and a separate B8 (pallet storage) use in the eastern two thirds of the building (13 m by 16.8 m), with a shared access via the unauthorised track.

22. For these reasons I conclude that both of the alleged unauthorised uses have occurred as a matter of fact and the appeal on ground (b) therefore fails. The change of use of the Dutch barn and the associated land from agricultural use to two separate B2 and B8 uses is a material change of use requiring planning permission. There has been a breach of planning control and the appeal on ground (c) fails. This material change of use occurred after July 2002 and is not immune from enforcement action through the passage of time. The appeal on ground (d) therefore also fails.

The appeal on ground (a)

Introduction

23. The deemed planning application is to continue the use of the site for two separate purposes, i.e. the western part of the building as a vehicle repair workshop and the eastern part for the storage repair and distribution of pallets.

24. Mr Williams' main concern is the pallet business (N I Pallets), but he has a financial interest in the vehicle repair operation (N I Coachworks) which is mainly the responsibility of his brother Nicholas. His brother also has an interest in the pallet business.

25. The plan attached to Notice A includes the access track the subject of Notice B and I will consider the impact of the two uses on the basis that the track is available for use by both businesses. I will assess the "highway" aspects of the development (including the use of the track) as part of my consideration of the appeal against Notice A and will not repeat this in relation to Notice B.

26. The focus of the evidence of both parties is upon the B8 pallet storage use. Neither party makes anything other than a fleeting reference to the impact of the B2 use. Neither of the Council's witnesses referred to the impact of the B2 use in their proofs, and even when lists of possible conditions were being drawn up, regard was only paid to the B2 use after prompting from me.

Planning policy

27. The development plan comprises the Kent and Medway Structure Plan adopted on 6 July 2006 and the Maidstone Borough-Wide Local Plan 2000. The main parties referred to a number of policies and I set out the most relevant below. The parties also referred to PPS1, PPS7, PPG4 and PPG18.

28. Policies in the structure plan aim to support the rural economy and to protect the quality and appearance of the countryside. Development which generates significant traffic, and in particular HGVs, will need to be well related to transport routes. Policies in the local plan develop these general principles in more detail.

29. Local Plan Policy ENV28 seeks to protect the character and appearance of the countryside. Local Plan Policy ENV34 requires that particular attention should be given to the protection and conservation of the scenic quality and distinctive character of the North Downs Special Landscape Area (among others), priority being given to the landscape over other planning considerations. Local Plan policy ENV44 was not cited in the reasons for issuing the notice, but it was referred to by the Council at the Inquiry and I consider it to be particularly important. This policy allows for the reuse and adaptation of existing rural buildings where a series of nine criteria are met. Three of the criteria are contentious. Criterion (5) is that the traffic generated by the new use can be safely accommodated by the site access and local road system, will have no adverse effect upon the amenities of local residents, will not result in the erosion of roadside verges, and is not detrimental to the character of the countryside. Criterion (6) is that the proposed use should not harm the local environment or the amenities of local residents through the creation of noise, dust, smoke, fumes and other forms of pollution. Criterion (8) is that, among other things, no industrial activity or storage of raw materials or finished goods shall take place outside the building.

30. Local Plan Policy T21 seeks to ensure that development likely to generate significant traffic, especially HGVs (outside designated or allocated areas) is well related to the existing transport network. Development in Use Classes B2 and B8 will only be permitted where it is "adjacent to railway lines" or well related to the primary or secondary road networks and provides opportunities for transport choices.

Main issues

31. It is agreed between the parties that the former Dutch barn is of substantial construction and is redundant for agricultural purposes. There is no planning policy objection to the re-use of the building itself, provided various criteria are met. In the case of both the B2 (vehicle repair) and B8 (pallet storage) uses the main issues are firstly, whether the development is harmful to the character and appearance of the North Downs Special Landscape Area (SLA) in terms of the impact of the use itself and the traffic generated by it, and secondly, highway considerations, including the availability of a suitable access. In the case of the B2 use, the impact upon residential amenity also needs to be considered.

Assessment

The B8 pallet storage use

The effect upon the character and appearance of the SLA

32. The SLA designation predates the building of the M20 and the Channel Tunnel Rail Link, both of which pass a short distance to the south of the site. The Council acknowledged that these transport links have had a major impact on the landscape but maintains that the importance of protecting the SLA is not weakened by this development. I agree with this.

33. The appellant argues that the use is not harmful to the SLA. The activity within the building has no impact and the pallets can be stored outside in such a way as not to be visible in the landscape. The yard is enclosed by fencing and largely screened from the south by the building itself.

34. The Council maintains that the pallet use has spread out of the building and changed the character of the former farm to that of an industrial estate. The high stacks of pallets and the increased vehicle movements have created visual intrusion into an unspoilt area of open countryside which is recognised for its special landscape value.

35. The number of pallets stored on the hardstanding varies considerably according to the needs of the business. At the time of the Inquiry numbers were much lower than shown in various photographs submitted by the Council and by the occupier of Mountview House, in which pallets are clearly visible, stacked to a height of about 5 metres. Those nearest the building are screened from views from Greenway Forstal Lane, but the stacks of pallets have extended to the north and east where they are clearly visible from Greenway Forstal Lane and amount to a significant intrusion into the rural landscape.

36. The Council initially suggested that the visual harm could only be overcome if a condition was imposed prohibiting all outside storage of pallets, but later agreed that if pallets were stored within 10 metres of the north wall of the building and not to the east of the building, and were stacked no more than 4 m high, they would not be visible. However, the Council expressed strong reservations about whether the appellant would be able to comply with such a condition in view of past experience of the way in which the business operates.

37. Although he raised no objection to this condition it seems to me that it would be unrealistic to expect Mr Williams to be able to comply with a condition limiting the height and extent of stored pallets. The nature of the business means that there are periods when there may be a major influx of pallets and a breach of condition would be likely to occur. The Council would have a remedy in the form of a breach of condition notice, but harm could be caused before such a notice came into effect. In my view there is a conflict with policies ENV28, ENV34 and ENV44 (8) which cannot be overcome by the imposition of such a condition.

38. The HGV traffic generated by the use also has an effect upon the character and appearance of the SLA. Policy ENV44 (5) specifically refers to the need to control development giving rise to traffic which causes erosion of roadside verges. There is evidence from photographs and from local residents that such damage is, in part, attributable to HGVs connected with the pallet storage use. The damage to the verges is caused by the HGVs themselves and by other vehicles attempting to pass them. I accept that the position may have improved now that the large HGVs from Holland no longer visit the site due to a change in the running of the business, but this situation could change again. There are other vehicles including refuse collection vehicles etc. which need to use this narrow road and some damage will be caused by them. There are also vehicles associated with other commercial activities at Mount Farm. Nevertheless, it would be inappropriate to add to the degradation of this narrow rural lane by approving development that is in direct conflict with this aspect of policy ENV44.

The effect upon highway safety and the free flow of traffic

39. The Council did not bring any evidence of its own relating to highway safety and the capacity of Greenway Forstal Lane to accommodate additional traffic. The County Highway Authority has not raised any objection to the deemed application on grounds of harm to highway safety or the free flow of traffic and the traffic impact was not identified as a reason for issuing the notice.

40. The appellant argues that the presence N I Pallets does not cause any harm to highway safety. Greenway Forstal Lane is subject to the national speed limit of 60 mph. The appellant's highway witness, Mr Lewis, acknowledged that forward visibility is below the required standard. He argued, however, that because of the alignment and width of the lane traffic is likely to travel at relatively low speeds (estimated at less than 30 mph during his visit to the site). Records indicate that there have been no personal injury accidents in the locality. The appellant's traffic survey indicated a two-way flow of 83 vehicles during a 12 hour period. Traffic generated by N I Pallets accounts for nearly one third of all recorded traffic in the lane. Analysis shows an average of 5.2 HGV arrivals and 5.2 departures per day plus 7 staff vehicle arrivals and 7 departures. Based on the low number of traffic movements overall, Mr Lewis maintained that the probability of two vehicles meeting head-on would be very low.

41. Although it produced no specific highway evidence at the Inquiry the Council referred to the decision of the Inspector who dismissed the 2001 appeal, partly on the grounds of the effect of the traffic generated by the pallet operation on highway safety. Mr Lewis, argued that the Inspector had been given written evidence by the Council which overstated the volume of traffic generated by the pallet storage use, because of an error in the calculations. It seems to me that the Inspector's conclusion was on the basis of a general concern about the type of traffic generated in connection with the use rather than a precise and detailed analysis of traffic generation.

42. The Council also made reference to the appeal decision at the Garden of England mobile home park in June 2005 (Ref: APP/U2235/A/05/1175304) where the Inspector concluded that the traffic generated by an additional 15 residential mobile homes would give rise to conditions that would prejudice highway safety and the free flow of traffic. He noted that the lane is of single vehicle width and there are no dedicated passing places. He concluded that the narrow carriageway would be likely to give rise to vehicular conflict due to the inability of vehicles to pass each other, which could give rise to unsafe and relatively lengthy reversing movements, as well as the possibility of collisions.

43. Mr Honeywood and Mr Harris who both live in the lane referred to the traffic problems they had experienced in recent years. It was accepted that the situation had improved since the large Dutch pallet lorries no longer visited the site.

44. My own conclusion is that the site is not well related to the existing transport network. The need to use a narrow rural road with limited forward visibility and no formal passing places to gain access to the site means that there is an increased risk of accidents occurring, despite there being no records of accidents to date. I also consider that the relatively remote location of the site means that there are only limited opportunities to travel by means other than private transport. Mr Lewis pointed out the public transport options in the locality but there

is no evidence that these are used by employees. There is, therefore, a conflict with the aims of Policy T21 and with criterion (5) of Policy ENV44.

45. There is another matter to take into account. Even if I had been minded to approve the B8 storage use, there is a fundamental difficulty in granting permission on this part of the deemed application because I have decided to uphold Notice B which requires the complete removal of the access track to the east. Once this is removed there may be no practical means of reaching this building in a vehicle. The "original" access via the former farm yard may be made available, but there are questions of ownership and right of way that may not be capable of resolution. I have to determine the deemed application before me, which does not, in the light of my decision on Appeal B, include a viable means of vehicular access.

Conditions

46. In addition to the conditions already referred to, conditions limiting the hours of operation of the business, restricting the use to that applied for, restricting permitted development rights, prohibiting the burning of pallets in the open, controlling external lighting and requiring further landscaping were all discussed. However, such conditions would not render the unauthorised development acceptable in my view.

Other matters

47. In reaching my conclusion I have taken into account the history of commercial use of the building and the fact that an agricultural use is unlikely to resume. I have also taken account of the possibility of job losses arising if the business is required to cease operating at the site. I have some sympathy with the employees who wrote to explain the effect that closure would have on them, but I note that Mr Williams has previously relocated the operation away from the current site without apparent harm to the employment prospects of his workers. I will, however, increase the compliance period in the notice to allow more time to find an alternative site.

The B2 vehicle repair use

The effect upon the character and appearance of the SLA

48. Not all the vehicle repair and spraying takes place within the building, but the area to the west where it does occur is not open to public view. The owner of Mountview House has submitted photographs of spraying taking place outside, but the appellant is willing to accept a condition confining activity to within the building. In my view this would overcome any visual harm caused by the use itself.

49. The Council produced no evidence that HGVs associated with the B2 use have caused damage to the verges in Greenway Forstal Lane. Mr Honeywood and Mr Harris who both live in the lane spoke against the (B8) pallet storage use but made no specific mention of the B2 use.

50. I conclude on this issue that subject to conditions, the vehicle repair use need not conflict with the aim of protecting the character and appearance of the SLA.

The effect upon highway safety and the free flow of traffic

51. I have concluded that the traffic generated by the B8 storage use gives rise to a conflict with Policy T21 and ENV44. No information relating to the traffic generated by the B2 use was produced by either party. The two local residents who spoke against the (B8) pallet storage use made no mention of any traffic problems specifically associated with the B2 use. The part of the building used for vehicle repairs and spraying is some 120 m^2 in area but I do not have any information about the intensity of the vehicle repair and spraying operation and the likely traffic generation. On the evidence before me I cannot reach a conclusion on this issue, and this consideration does not therefore amount to a reason for refusing this part of the deemed planning application.

The effect upon residential amenity

52. The Council's objection to the B2 vehicle repair use appeared to be an afterthought. The matter was not properly addressed in its written evidence, such evidence as there was being drawn out in examination-in-chief of the Council's planning witness, Mr Thurlow.

53. Mrs Hall who lives at Mountview House says in her letter that the western part of the building is used for vehicle repairs and spraying "much of which is done outside". Mrs Hall submitted a photograph dated 10 May 2006 which shows someone working with a spray gun in the open to the west of the barn, and says that this shows "both the visual effects and the environmental ones". The complaint is no more specific than this, and there is no evidence from the Council's Environmental Health Officer.

54. When the lists of conditions were prepared neither party made reference to conditions which might mitigate the effect of the use on the nearby residential property. Conditions could be imposed requiring the external door on the western elevation to be closed when work is being carried out and for no work to be carried on outside (which has already been referred to in connection with the visual impact of the use). Provided suitable restrictive conditions were applied, this activity might be acceptable in terms of its impact on residential amenity.

55. However, this part of the deemed planning application is also affected by my decision to require the removal of the eastern access track. It seems to me that the suitability of this part of the building for B2 vehicle repairs should be assessed by way of a planning application incorporating a viable means of vehicular access other than by way of the track that is to be removed.

Overall conclusion on ground (a)

56. For the reasons given above and having regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed in relation to either the B8 use or the B2 use.

The appeal on ground (f)

57. It was argued by the appellant that the requirement to cease vehicle repairs and spraying and ancillary storage should be deleted (or that the notice should be cut down to exclude the western part of the building i.e. the vehicle repair area) but this argument was dependent upon success on ground (d) or ground (a) in respect of that use. No alternative requirement is put forward. In my view the requirements of the notice are reasonable and necessary in

order to remedy the breach of planning control and I do not intend to vary them. The appeal on ground (f) therefore fails.

The appeal on ground (g)

58. The appellant's case on ground (g) relates to the B8 pallet storage use and not to the B2 use. The appellant requests an increase in the 3 month compliance period to 18 months or 2 years, as it is expected that it will be difficult to find a suitable alternative site. A conventional industrial estate would be unlikely to have enough outside storage space for a pallet business, and the fire risk also needs to be considered.

59. The Council argued that Mr Williams had previously relocated his pallet business away from Mount Farm without any apparent difficulty and there was no reason why he could not do it again within the 3 month period. I appreciate that an open storage use is not easy to accommodate on a conventional industrial estate and I intend to increase the compliance period to allow more time to find a site. I consider the 18 month/2 year period requested is excessive, and I will increase it to 6 months. To this extent the appeal on ground (g) succeeds.

APPEAL B : The hard surface and the access track

The appeals on ground (c) and (d)

60. I will consider these grounds of appeal together, firstly in relation to the track and then in relation to the hard surface to the north of the building.

The track

61. At the time of the Inquiry the track was about 3.5 m wide with a verge about 1 m wide planted with trees running along its east side. The track widens into a bell-mouth with a maximum width of about 31 m where it joins Greenway Forstal Lane. There is a post and rail fence along either side of the track.

62. For the appeal on ground (c) to succeed it is necessary to demonstrate that there has been no breach of planning control. For the appeal on ground (d) to succeed it is necessary to demonstrate that on the balance of probabilities the development was substantially completed before 28 February 2002 (four years before the notice was issued).

63. The appellant says that the initial work on the track was carried out by Mr Lee in December 2001/January 2002. At this time the "original" access to the barn from the west was not available. The excavation of the track and the laying of road planings amounted to operational development which was completed at this time. The work which Mr Williams subsequently carried out in 2004 was either not operational development or was "permitted development" by way of Class A, Part 9 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

64. Despite submitting a photograph taken in "Approx 2004" marked "Access widened, fence up", Mr Williams argued that he did not actually widen the track. He said he only moved the eastern fence line by about 1 m to include all the land that he owned and planted trees in the "verge" on the east side. This work did not alter the character of the track and reference was made to the case of *Cowen v SSETR and another* [1999] 3 PLR 108.

65. Aerial photographs show that the track was not there in July 2001 but it was there by June 2002. I accept that on the balance of probabilities a start was made on the track before the relevant date of 28 February 2002, but the evidence suggests that the track was not substantially completed until later.

66. Mr Sharpe, (who used the site while Mr Williams was operating his business from another site) says in his letter appended to Mr William's statement that in March 2002 "the track was very rough and damaged my tyres on my lorry and car". The photograph taken in April 2003 (Document 11, CT23) shows no bell-mouth. The track appears to be grassed over and there are two gates closing it off from the lane. The 4 August 2003 photograph (Document 11, CT24) shows an apparently overgrown track and the "original" access from the west appears to be open and in use.

67. The Council argued that in order for the track to be "substantially completed" this must relate to the type of traffic needing to access the site. This would include the need for a wide bell-mouth at the junction with Greenway Forstal Lane and a form of construction capable of bearing the weight of the lorries visiting the site. I saw during my inspection that a lorry arriving from the west needed the full width of the bell-mouth in order to enter the site without encroaching onto the opposite verge.

68. The Council argued that the aerial photographs commissioned by Mr Byrne on 25 June 2002 (Document 11, CT19) show a track that was not "substantially completed", but the June 2004 photographs (Document 10, Appendix K) show that it was substantially complete by then, with a bell-mouth of an appropriate size. Mr Williams cannot have thought it was substantially complete either, as when he returned to the site in October 2003/early 2004 he carried out further work. That work was not "maintenance and improvement" of an existing track as it is part of the creation of a new track which had commenced in December 2001/January 2002 but which had not been completed.

69. I conclude that the access track was not substantially completed until Mr Williams carried out work to it in 2004. The work amounted to operational development for which planning permission is required. The work included widening of the track and is not therefore "permitted development" by way of Class A, Part 9 of the GPDO. There has been a breach of planning control and the appeal on ground (c) therefore fails in relation to the track. The work was not substantially completed more than four years before the notice was issued and the appeal on ground (d) also fails in relation to the track.

The hardstanding

70. At the time of the Inquiry the hard surfaced area to the north of the barn had been extended to the north of the land owned by Mr Williams by about 4 m. This extension is onto land owned by Mr Lee's sister Tammy Cook, and it was agreed by both parties that the notices do not relate to this additional strip of land.

71. For the appeal on ground (c) to succeed, the appellant needs to produce evidence that the laying of the hardstanding does not amount to development requiring planning permission. If the hard standing is considered not to be operational development in its own right, but operational development incidental to the change of use of the land to open storage, then the change of use would have needed to have taken place before 28 February 1996 (10 years before the notice was issued). If it is operational development in its own right, the "four-year rule" applies and the work would need to have been substantially completed before 28

February 2002. In my view the area of hardstanding is so extensive that it cannot be reasonably regarded as development which is incidental to the change of use. The "four-year rule" therefore applies.

72. Mr Williams said that when he first purchased the land in 1998 he placed 120 tonnes of road stone around the compound to tidy it up. The 1999 aerial photograph (Document 11, CT 26) shows an established area of hardstanding to the west, north and east of the building. This is excluded from the area hatched blue on the enforcement notice and there is no requirement for any of this to be removed. The notice relates to the extension of this area northwards and, to a lesser extent, eastwards.

73. By 25 June 2002 the area had been extended to the north (Document 11CT19) but it was a rough surface unsuitable for the manoeuvring of fork-lift trucks needed for the movement of pallets. The surface was not finished with tarmac until after this date. The aerial photographs dated June 2004 (Document 10, Appendix K) show a smooth surface capable of facilitating the use of fork-lift trucks. The hard surface was not substantially completed until after June 2002 and the operational development is therefore not immune from enforcement action.

74. The laying out of a hard surface was operational development in its own right. The operation was not substantially completed until the tarmac was laid after June 2002 in order to facilitate the outside storage of pallets. Development requiring planning permission has occurred and there has been a breach of planning control. The appeal on ground (c) therefore fails in relation to the hardstanding. The work was not substantially completed until after June 2002 when the tarmac surface was added and the appeal on ground (d) therefore also fails.

The appeal on ground (a)

Introduction

75. The deemed planning application is to retain the hard surfacing and the hard surfaced access track indicated by blue hatching on the enforcement plan.

Planning policy

76. The relevant planning policies have been outlined in connection with the appeal against Notice A.

Main issue

77. The main issue is the effect of the hard surfacing and the access track upon the character and appearance of the North Downs Special Landscape Area. The effect of traffic using the access has already been considered in the appeal against Notice A.

Assessment

The Track

78. The appellant maintains that the track is not visually intrusive. The track is needed to access the former Dutch barn in any event, even if it was to revert to agricultural use. The Council has taken no action against the fencing alongside it which is all that can be seen.

79. The Council argues that if Notice A is upheld there can be no justification for the retention of this access track because there is no evidence that a track of this high specification is needed in connection with the lawful agricultural use of the barn. There is an alternative access through the farm, notwithstanding that the gate was closed and blocked by pallets at the time of the Inquiry, and there may be constraints on the right of way.

80. The track is screened from the west by the lie of the land and the bend in the road. The track is not particularly intrusive when viewed from the east as it is largely screened by the fences alongside it, and it is likely that it would become less intrusive as the trees and shrubs in the verge grow. However, the large bell-mouth, which is about 31 m wide (and needed to accommodate the size of vehicles visiting the site) is particularly intrusive and out of place in the context of this narrow rural lane. Although the track itself is less intrusive than the wide bell-mouth is, it nevertheless facilitates access by vehicles to what was part of an open field. It seems to me that even a modest degree of use brings vehicles into an otherwise open rural landscape and this is in itself visually harmful while it is occurring. The quality of the landscape in this area is recognised and there are clear policies in the development plan which seek to protect it. To allow the retention of the track would conflict with the aims of these well established policies. Planning conditions would not overcome this harm.

The hardstanding

81. The unauthorised hard standing is not intrusive in itself, but it facilitates the open storage of pallets over a wide area well away from the building. Its presence therefore contributes to the harm to the character and appearance of the Special Landscape Area. Planning conditions would not overcome this harm.

82. The area of hardstanding near to the building that is excluded from the ambit of the notice would be sufficient to allow use of the building for a suitable purpose.

Conclusion

83. In reaching my conclusion I have taken into account all the other matters raised in connection with the ground (a) appeal. The appeal on ground (a) fails in relation to the hard surfaced area and the hard surfaced access track.

The appeal on ground (f)

84. The appellant argues that requirement (iv) is excessive and unreasonable. This requires the planting of a hedge using indigenous species across the whole width of the bell-mouth without allowing for the inclusion of a field gate. There is photographic evidence that there was a field gate beside the road before the unauthorised access was constructed. I agree that provision should be made for the incorporation of a field gate up to 5 m wide to facilitate the agricultural use of the land. I will vary requirement (iv) accordingly, and to this extent the appeal on ground (f) succeeds.

The appeal on ground (g)

85. The appellant requested that the 3 month compliance period for requirements (i) (ii) and (iii) (the removal of the track and the hard surfaced area) should be extended in line with my decision on the compliance period in connection with Appeal A, with an additional 3 months in order to allow the track and hard surface to be used in connection with the removal of plant and equipment as the business is relocated.

86. The Council accepted that the compliance period should be 3 months longer than that of Notice A in order to allow for the removal of plant and machinery and stock from the building via the track and hardstanding. In view of my conclusion on Appeal A I will increase the compliance periods for requirements (i) (ii) and (iii) to 9 months and in order to maintain the same interval between this extended period and the time when the landscaping needs to be carried out in accordance with requirement (iv) I will increase the latter to 18 months. To this extent the appeal on ground (g) succeeds.

Conclusion : Appeal A and Appeal B

87. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should not succeed. In each case I shall uphold the enforcement notices as varied and refuse to grant planning permission on the deemed applications.

Formal Decision

Appeal A : APP/U2235/C/06/2012263 : The B8 storage use and the B2 industrial use

88. I direct that the enforcement notice be varied by deleting "three months" as the compliance period for each of the three requirements in paragraph 5 of the notice and substituting "six months". Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B : APP/U2235/C/06/2012262 : The hard surface and the access track

89. I direct that the enforcement notice be varied (a) by adding to the end of requirement (iv) in paragraph 5 of the notice the words "A gap of 5 m may be left in the hedge to allow for the incorporation of a field gate" and (b) by deleting "three months" as the compliance period for requirements (i) (ii) and (iii) and substituting "nine months" and by deleting "twelve months" and the compliance period for requirement (iv) and substituting "eighteen months". Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Harrison

Inspector

APPEARANCES

FOR THE APPELLANT:

David Lamming	Of Counsel
He called:	
Ian Williams	The appellant
Roger Lee	18 The Courtyard, Seed Road, Newham, Sittingbourne Kent
Jason Lewis MSc HNC MIHT	Principal Transportation Consultant, Scott Wilson
Christopher Atkinson BA MRTPI	Prime Building Consultants Ltd, Maidstone

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	Of Counsel
He called:	
Simon Taylor	Former Planning Enforcement Officer with the Borough Council (May 2005 to January 2007)
Clifford Thurlow BA DipTP MRTPI	C F Thurlow Town Planning Consultancy Ltd, Gravesend

INTERESTED PERSONS:

F C Honeywood FRICS MRAC	Greenway Forstal Farmhouse, Hollingbourne, Maidstone, Kent ME17 1QA
K G Harris	Greenhills, Greenway Forstal, Hollingbourne, Kent ME17 1QA

DOCUMENTS

1 Attendance List
2 Council's notification letter
3 Letters in response to 2 above
4 Statement of Common Ground
5 Appendices to Mr Williams' statement
6 Appendices to Mr Lee's statement
7 Appendices to Mr Lewis' proof
8 Appendices to Mr Atkinson's proof
9 Extract from PLR *Cowen v SSETR and another* [1999] 3 PLR 108, submitted by the appellant
10 Appendices to Mr Taylor's proof
11 Appendices to Mr Thurlow's proof
12 Enforcement Notice A : Land at Mount Farm (to the west of the appeal site) submitted by Mr Thurlow
13 Enforcement Notice B : Land at Mount Farm (to the west of the appeal site) submitted by Mr Thurlow
14 Committee report relating to application Ref: MA/00/1051 submitted by Mr Thurlow

15 Refusal notice Ref: MA/00/1051 dated 22 September 2000 submitted by Mr Thurlow
16 Council's written statement : Appeal Ref: APP/U2235/A/01/1058085 submitted by Mr Thurlow
17 Proof of evidence of Andrew Byrne, Appeal Ref: APP/U2235/C/02/1102699 submitted by Mr Thurlow
18 List of conditions suggested by the Council
19 List of conditions suggested by the appellant

PLANS

A Plan attached to Notice A
B Plan attached to Notice B
C Plan of land ownership at various times in vicinity of the appeal site, submitted by Mr Thurlow