
Appeal Decision

Hearing held on 9 May 2017

Site visit made on 9 May 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 17 July 2017

Appeal Ref: APP/L3245/C/16/3159207

Grindle House Farm, Grindle, Shifnal, Shropshire TF11 9JR

- 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 Apley Estates against an enforcement notice issued by Shropshire Council.
 - The enforcement notice, numbered 14/04242/ENF, was issued on 24 August 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of land from agricultural use to a use for the importation, storage and distribution of new and reclaimed building materials for wholesale, display of building materials with ancillary retail sales. The use of the land for the importation, storage and distribution of kiln dried firewood/ kindling for internet based sales with ancillary retail sales. The use of the land for the importation, storage and distribution of building bricks, the surface treatment of said building bricks and manufacture of 'brick slip' display panels (Sui Generis).
 - The requirements of the notice are: (i) Cease the use of the land for the importation, storage and distribution of building bricks, the surface treatment of said building bricks and manufacture of 'brick slip' display panels. (ii) Cease the use of the land for the importation, storage and distribution of new and reclaimed building materials for wholesale, display of building materials. (iii) Cease the use of the land for importation, storage and distribution of kiln dried firewood/ kindling for internet based sales. (iv) Remove from the land all stock, materials and equipment brought onto the land in connection with the use identified in 5(i), 5(ii) and 5(iii)
 - The period for compliance with the requirements is 8 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

1. In advance of the Hearing, the appellant had questioned whether the officer who signed the enforcement notice did, in fact, have the delegated authority to do so. In particular, those concerns related to the status of a scheme of onward delegation to officers¹, with regard to how that document related to the wider scheme of delegation that is set out in the Council's constitution. The

¹ Shropshire Council Business Support and regulatory Services *Delegations for Planning Services*, dated 01 July 2016

onward scheme of delegation was revised on 01 July 2016 and again on 17 August 2016. The latter was therefore the up to date version at the time the notice was served.

2. The onward scheme of delegation was signed by G Chandler, Director of Place and Enterprise and, under section 2 of the scheme, the authority to issue enforcement notices is delegated to planning and enforcement officers or conservation officers, or officers above that level, "in consultation with Legal". In this case, the notice was signed by Mr Julian Beeston, an enforcement officer, on behalf of Mr Tim Rogers, an Area Planning Manager. In other words, the signatories were in positions that entitled them to sign the enforcement notice.
3. Ms Garrard, the Council's solicitor, attended to Hearing to explain the scheme of delegation and she provided further details regarding the relevant sections of the Constitution and scheme of delegation. Under Part 8 of the Constitution "Delegations to Officers" the authority to issue enforcement notices is delegated to the Director of Place and Enterprise. Paragraph 3 of the preamble to Part 8 states that any officer named within that section may authorise officers in his/her service area to exercise functions delegated to him/her. The onward scheme of delegation accords with those powers.
4. The Constitution was formally approved in 2009 and the document has been revised numerous times since that point. Under Article 15(a) the Head of Legal and Democratic Services is authorised to make routine revisions. Such revisions were made on 01 July and 16 August 2016 to reflect changes in job titles and personnel outwith the planning service. On the information provided it is clear that none of the changes altered the delegated authority of the Director of Place and Enterprise with regard to planning matters and, more specifically, the issue of enforcement notices. Thus, the onward scheme of delegation, which had been signed by the relevant director on 17 August, was in force at the time the notice was served. That scheme gave the authorised officer the delegated authority to sign and issue the notice and I am satisfied that it was correctly served in that regard.

The Appeal on Ground (a)

Main Issues

5. I have identified four main issues below. The first three relate to the consideration of whether planning permission should be granted for the matters stated in the notice. The fourth stems from the appellant's suggestion that, if I were minded to refuse to grant planning permission for the entirety of those matters, it would be possible to overcome any planning objections through the grant of planning permission for part of the matters stated in the notice, with reference to the terms of section 177(1)(a) of the Town and Country Planning Act 1990 (the Act).
6. More specifically the suggestion is that planning permission be granted for *the use for the importation, storage and distribution of new and reclaimed building materials for wholesale, display of building materials with ancillary retail sales*. I have considered the appellant's suggestion in that regard as a fourth main issue.

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7. Therefore, the main issues in the determination of the appeal on ground (a) are:
- i) The effect of the development on highway safety and the free flow of traffic on the highway network;
 - ii) Whether any harm arising from the first main issue could be adequately mitigated through the imposition of planning conditions;
 - iii) Whether planning permission should be granted for the use as described in the breach of planning control, having regard to the effect on highway safety, any economic benefits that arise from the development and any other matters; and
 - iv) If, having regard to the balancing exercise in the third main issue, I conclude that planning permission should not be granted for breach of planning control, as stated in the notice, whether a grant of planning permission in respect of part of those matters would overcome the objections in planning terms.

Highway Matters

8. The stated reasons for issuing the enforcement notice allege that the traffic associated with the use has caused harm by way of the impact on the free flow of traffic, with subsequent inconvenience to other road users, and had an adverse effect on highway safety. Whilst the two matters are linked, the first issue relates primarily to capacity on the road network to accommodate traffic flows associated with the development and the second relates to matters of highway safety associated with the nature of the road network and the impact of use by traffic associated with the development. I shall address those matters in turn.

Highway Capacity and the Free Flow of Traffic

9. The site is located in the village of Grindle within a rural area to the south-east of Telford. The B4379, the closest classified road, is located to the west. That road provides access onto the A442 and the A4169 which serve Telford and provide onward access to the M54 to the north. The most direct routes onto the B4379 from the site are via Grindle Road, which passes through Kemberton, or Havenhills Road which runs on an east-west axis to the south of the site. The classified highway is over 3km from the site whichever route is used. Hinington Road leads from the village to the larger settlement of Shifnal which is a few kilometres to the north and rural lanes also lead to Ryton and Beckbury to the east and south-east.
10. Four routes to the site were assessed by the Council during the consideration of previous applications². I took the opportunity to drive along all of those lanes. Of the four that were assessed Route 4, from the site to the B4379 via New Houses and Havenhills Road was considered to be the most suitable, or one could say the least worst, option by the Council. Since that time I understand that the operator has sought to operate an informal routing agreement with the aim of directing haulage contractors along that route.

² As described at paragraphs 6.2.13 to 6.2.15 of the Council's Statement of Case

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11. All of the routes are narrow single lane roads, predominantly enclosed by hedgerows. Informal passing places are created where features allow, for example where field entrances provide a gap between hedgerows onto which vehicles can pull to the side of the carriageway, or where the width of the carriageway is wider than average. Commonly, those passing places are unmade and are formed of compacted earth created by the passage of vehicles. Setting aside the traffic associated with the use of the appeal site, the volume of traffic using the surrounding is not substantial. Grindle and the surrounding villages are small I would expect the level of traffic generated by trips to and from those settlements to be relatively light.
 12. In terms of the current use the appellant suggests that up to five articulated HGV visits could be expected on a typical day between Monday and Friday in addition to between 0 and 5 rigid HGVs, resulting in a total of 20 HGV movements on the network. That is in addition to the car journeys associated with staff employed at the site and vehicles from customers who purchase directly from the site. As acknowledged within the October 2015 Transport Statement, those vehicles could include smaller HGVs associated with builder's merchants.
 13. The average number of daily traffic movements related to the site was 78. The majority of trips were generated by cars or light goods vehicles. An average of 4.1 articulated HGVs and 2.4 rigid HGVs visited the site per day which would equate to an average of 13 HGV movements. I note that the survey period was chosen to coincide with the peak trading period of the company based on a monthly breakdown of annual turnover. Without a full understanding of the operating model and accountancy procedures of the company it is not certain that the period of highest turnover would relate to the period with the highest number of visits to the site. In other words, there may not be a direct correlation between the point at which financial transactions take place and the number of vehicular visits to the site. Thus, it may be that the number of vehicular trips, particularly HGV trips to transport building materials and bricks to and from the site may be subject to variations during the course of the year.
 14. In addition Mr Hughes, the Managing Director of Ren-New, stated within his appeal statement that the company has steadily grown in the last 7 years and it may be that the number of journeys associated with the use may have increased between the point at which the surveys were undertaken and the point at which the notice was served in August 2016 and again beyond that point. However, no surveys have been undertaken by any party since June/July 2015 and those figures remain the most up to date and comprehensive assessment of the traffic generated by the use of the site and of the level of traffic on surrounding roads.
 15. The appellant accepts that the level of traffic, including the number of HGV movements represents an increase on the level of traffic generated by the former agricultural use when averaged out on an annual basis. However, in terms of peak daily activity Mr Hurlstone estimates that peak agricultural activity was likely to have generated similar, if not greater numbers of vehicle movements. Given that no survey information relating to the former use is available that assessment is not supported by any firm evidence. It is likely that agricultural activity increased during harvest times but the precise level of that use is uncertain.

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16. In any event, the appellant notes that there was a 'significant reduction' in activity at Grindle Farm after 2011 as a result of a change in the pattern of operations which resulted in fewer vehicular movements to and from the site. Therefore, immediately prior to the commencement of the current use it would appear that the level of agricultural activity and associated vehicular trips was significantly less than had been the case in the past.
 17. Whilst there is a theoretical possibility that agricultural activity could return to the site at historic peak levels the likelihood of that scenario materialising is not clear. There is nothing to indicate that the operational requirements or farming practices of the Estate have altered since the notice was issued, thus, I find little to indicate that the use would return to pre-2011 levels if the current use was to cease. Rather, it seems more likely that the level of agricultural activity would return to the comparatively modest level that existed immediately prior to the point at which the breach of planning control took place.
 18. Consequently, I find that the level of vehicular activity associated with the current use is likely to be significantly greater than the previous agricultural use, both in terms of the yearly average of vehicular movements and the daily pattern. Moreover, unlike farming activity, the use operates throughout the year and nothing has been presented to indicate that there is any noticeable fluctuation in the rate of vehicular activity.
 19. Nonetheless, when the figures from each of the six Automatic Traffic Counters (ATC) are examined the maximum combined hourly flow at any of the counters during a weekday was 40. Hourly flows of between 20 and 30 vehicles were common across the 6 ATCs. Those recorded figures would indicate that the overall volume of traffic on local roads is not high. Consequently, in terms of the free flow of traffic, I find little to suggest that the use of the site has had any significant impact on the free flow of traffic along the network.
 20. Should two vehicles meet on any of the lanes it will be necessary for one of them to reverse to an available passing place. The complexity of that manoeuvre will depend on the nature of the vehicle involved. For two cars, it would be relatively straightforward and often it would be possible to pass by mounting the grass verge. If a HGV and a car were to meet, or two HGVs travelling in opposite directions, the manoeuvre would be more complex due to the absence of formal passing places and limited opportunities to pass. That may cause some delay for any drivers caught behind a HGV on the network. However, given the low volumes of traffic, any delay is unlikely to be significant or lead to any noticeable congestion or backing up of traffic. In that sense, the Council's concerns regarding the impact on the free flow of traffic are unsubstantiated.

Highway Safety

21. However, there is a significant distinction between matters relating to the free flow of traffic and highway safety issues which relate to the suitability of the local roads to accommodate the volume and type of traffic associated with the use of the site. As described, all of the local roads leading to and from the site are essentially narrow country lanes with insufficient width to enable two vehicles to pass side by side. Forward visibility is often limited due to the alignment of the roads, local topography, and the presence of hedgerows which, by and large, enclose both sides of the carriageway. As such, it is

difficult for a driver, cyclist, pedestrian, horse rider or other road user to gauge whether another vehicle is travelling in the opposite direction.

22. I am also mindful of the distance between the site and the closest classified highway; over 3km on the preferred route. Thus, vehicles are required to travel a considerable distance on what are single width lanes, unsuited to heavy traffic. The longer the distance travelled on narrow lanes, the greater the length of time a HGV will occupy space on those lanes. Consequently, the length of the route increases the likelihood of a HGV meeting a vehicle passing in the opposite direction, if compared to a shorter journey length.
23. That raises the very real possibility of vehicles meeting at blind bends with limited advance warning with the potential for collisions or the need for vehicles to leave the carriageway and mount the verge, with potential for damage to vehicles and the highway network itself. Alternatively, any vehicle reversing in order to find a suitable passing place will often be required to do so without a clear view of whether an oncoming vehicle is approaching to the rear. That would particularly be the case for HGV and articulated HGV drivers if reversing around a bend with restricted rearward visibility.
24. There is clear visual evidence of the effect of vehicular traffic on the physical condition of the highway and its associated verges, particularly on Route 4 which has been the preferred route for HGVs entering and leaving the appeal site. Photographs provided by interested parties depict deeply rutted tyre tracks within the informal passing places with poor drainage due to the compacted earth. In times of heavy rainfall it is apparent that those areas fill with water, creating an uneven and unsuitable surface for use by most vehicles. Vehicles forced to use those passing places in wet conditions are also likely to drag mud and debris onto the carriageway, with consequential risk to vehicles braking at short notice. The weather was dry at the time of the Hearing but the condition of the informal passing places along Havenhills Road remained poor. The metalled part of the carriageway had also been eroded in sections directly adjacent to informal passing places.
25. The appellant contends that there is no evidence to suggest that the damage to the highway and the erosion of the informal passing places is associated with the use of the site. The Council acknowledge that not all of the damage will have been caused by vehicles visiting the appeal site but I find it implausible to suggest that the associated traffic has had no effect. Having viewed all of the local roads surrounding the site the condition of the informal passing places, the degree of compaction of grass verges and the damage to the edge of the carriageway itself was noticeably greater on route 4 than other local roads. To my mind that would suggest that the level of heavy traffic visiting the site has contributed significantly to the degradation that has clearly occurred.
26. That damage and degradation is of concern of itself, in terms of the effect on the integrity of the highway, but will also have knock on implications for road safety. Mud and debris being dragged onto the carriageway from unbound verges is likely to affect braking conditions, particularly in wet weather and the heavily rutted condition of the informal passing places renders them unsuitable for use, particularly in wet weather conditions where large puddles of water are retained in the compacted and rutted depressions. Such conditions do not represent a safe or suitable place to pull off the highway if meeting a vehicle approaching in the opposite direction.

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27. Photographs provided by interested parties also depict damage to roadside signage and reference was made at the hearing to recent damage to a telegraph pole adjacent to Keepers Cottage. There is no direct evidence linking those incidents of damage to vehicles visiting the appeal site. However, the incidents are symptomatic of the issues that are likely to arise through the use of unsuitably narrow lanes by HGVs, particularly where those vehicles meet traffic travelling in the opposite direction. Whilst the enforcement notice refers particularly to articulated HGVs the issues identified above would apply to any HGV using the routes around the site. Clearly, the larger the vehicle, the more difficult it may be to manoeuvre around other vehicles but the width of the carriageway is such that any HGV would be unable to pass another vehicle without one or the other leaving the carriageway onto unmade ground.
28. I note that there are no records of any accidents within the vicinity of the site and that vehicle speeds may be moderated by the width and alignment of the carriageway. Nonetheless, the fact that no recorded accidents have occurred to date does not indicate that the roads are suitable to accommodate the additional heavy traffic associated with the use of the appeal site, or that accidents are unlikely to occur in future. Having regard to the nature of the highway network, as described above, I find that the increased use of local roads, particularly by HGVs associated with the site, brings with it an increased risk of accidents, an increased risk of vehicles being forced to leave the carriageway onto unsuitable passing places, and increased risk of damage and degradation to the highway itself.
29. Moreover, it is clear from the considerable volume of objections, including local residents, elected representatives and parish councillors who spoke at the Hearing, that the traffic associated with the use of the site has impacted upon the way in which people use the roads surrounding the site. Those representations included local horse riders who noted that they deliberately avoid Havenhills Road due to fears of the impact of heavy traffic on rider safety. The agent for the appellant sought to dismiss those views as anecdotal evidence not supported by fact.
30. However, the views were consistently expressed by numerous local residents and those who are perhaps best placed to observe the impact of traffic associated with the site. For anyone travelling along Havenhills Road the visible signs of heavy traffic are obvious in the form of compacted verges and rutted passing places at wider points on the road. I have no doubt that local road users will feel uncomfortable using the road as a result of fears for highway safety. That could apply to all road users but pedestrians, cyclists and horse riders will feel particularly exposed to the impact of heavy traffic passing by in close proximity on a single width carriageway.
31. Consequently, I find that the safety related fears are well-founded and are likely to have affected the way that highway is used by local residents, particularly non-motorised forms of traffic. Whilst heavy traffic not associated with the site will use the lanes any agricultural activity is likely to be seasonal and less intensive and I find that the daily use associated with the appeal site has led to an increase in the volume and regularity of HGV movements along the lanes, particularly Havenhills Road. That traffic has altered the quiet character of the road to the detriment of the enjoyment of the countryside for recreational purposes. Although the overall quantum of traffic using the local network remains low it seems to me that the quiet character of the local roads

and the low baseline of traffic makes them vulnerable to change as a result of the increase in traffic associated with the development.

32. Taking all of the above into account I find that the local road network is wholly unsuitable to accommodate the level and nature of traffic associated with the use of the site. The increase in the use of the road network has been detrimental to highway safety and to the way in which the road network is used by all forms of traffic. For those reasons the development is contrary to the aims of policy CS6 of the Shropshire Council Core Strategy (2011) (the CS) which, amongst other things, requires that proposals likely to generate significant levels of traffic be located in accessible locations where opportunities for walking, cycling and the use of public transport can be maximised.
33. Insofar as it relates to highway matters I am satisfied that Policy CS6 is broadly consistent with the aims of the National Planning Policy Framework (the Framework). Accordingly, in line with paragraph 215 of the Framework, I attach significant weight to the relevant aspects of the policy in that regard. Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev) is related to policy CS6 of the CS. The policy post-dates the publication of the Framework and is consistent with it. Paragraph 6 of that policy states that development should ensure that there is sufficient infrastructure capacity, in line with policy MD8. Paragraph 1 of that policy states that development should only take place where there is sufficient existing infrastructure capacity.
34. The explanatory text to policy MD2 states that developments must be designed to ensure that they do not result in an unacceptable adverse impact on local infrastructure, for example, by providing sufficient on-site car parking to ensure that overspill parking does not impact negatively on the surrounding network. Whilst I have concluded that the development has not led to any undue delay or congestion on the network it is clear, for the reasons set out above, that the character of the local road network is unsuitable to accommodate the additional heavy traffic associated with the use. The lack of passing places and restricted width of the highway has led to degradation of the highway infrastructure surrounding the site. In that sense, I find that the development has had an unacceptable adverse impact on local infrastructure, contrary to the aims of policies MD2 and MD8 of the SAMDev.
35. The development also contravenes the aims of paragraph 32 of the Framework, which identifies that plans and decisions should take account of whether safe and suitable access can be achieved for all people, and paragraph 35 which states that developments should be located and designed, where practicable, to accommodate the efficient delivery of goods and supplies and to create safe and secure layouts which minimise conflicts between traffic and cyclists and pedestrians.
36. I note that the third bullet point at paragraph 32 of the Framework states that development should only be refused on highway grounds where the cumulative residual impact would be severe. There is no definition of the word severe in the Framework but that is clearly an extremely high bar. However, it appears to me that paragraph 32 of the Framework in that regard is referring to matters of highway capacity and congestion, as opposed to matters of highway safety. The Courts have held that paragraph 32 should not be interpreted to

mean that anything other than a severe impact on highway safety would be acceptable and I have viewed the paragraph in that context³.

37. In any event, it strikes me that the risk of accidents, damage to the highway network, and the overall change in the character of the preferred route are factors that, in combination, have had an extremely significant, and one could say severe, impact on local road users. Accordingly I attach significant weight to my concerns relating to the highway related impacts of the development.

Whether any harm could be mitigated through the imposition of planning conditions

38. The appellants have put forward a suggested condition that would require the creation of up to 5 passing places between the site and the B4379, in locations shown at Appendix C of the October 2015 Transport Assessment. Considering that the length of the route to the B4379 along Havenhills Road is over 3km I find that the creation of 5 formalised passing places would not compensate for the inadequacies of the road in terms of its lack of width and forward visibility.
39. The distance between the passing places would be significant and, having looked at the proposed locations I find that drivers would have difficulty in seeing between one space and the next, with the exception of points 1 and 2, such that they would not know if an oncoming vehicle was heading towards them before they advanced past the formalised space. In effect, whether vehicles met at a point on the highway adjacent to a formalised passing place would be largely down to chance. If vehicles met elsewhere on the road, the distance to the formalised passing place may be significant due to the infrequency of those spaces. That would either lead to lengthy reversing manoeuvres with limited visibility or a continuation of the current practice of over-riding the verge and/or using informal passing places, with resultant damage to the carriageway, creation of compacted and rutted surfaces and dragging mud and debris onto the carriageway, to the detriment of highway safety. For those reasons I find that the formalisation of 5 passing places would not be sufficient to overcome the harm identified in the previous paragraphs.
40. It follows that I am not satisfied that a condition that would seek to restrict deliveries to the Havenhills Road access, through a routing agreement, would overcome my concerns relating to highway safety and the resultant impact on the character of the highway. That suggestion is predicated on an assumption that the preferred route is acceptable to accommodate the traffic associated with the development. For the reasons given I find that the route is inherently unsuitable and could not be made so through the suggested passing places.
41. I also have concerns relating to the enforceability of the suggested condition relating to vehicle routing. The Planning Practice Guidance notes that unenforceable conditions should not be imposed, including those for which it would, *in practice* (my emphasis), be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control. I appreciate that modern vehicles will often be fitted with tracking devices that enable the route taken by the vehicle to be monitored. It may be possible for the operator of the site to exert control over HGVs that are contracted by them to deliver or collect goods but it is not clear

³ Mayowa-Emmanual v Royal Borough of Greenwich [2015] EWHC 4076 (para. 29)

how any control could be exerted over other users of the site, including builders' merchants for example, who would be free to use whichever public highway they wished.

42. Moreover, should a member of the public see a HGV on a route other than the preferred route that person would not know whether the vehicle did, in fact, visit the appeal site unless another person was at the entrance/ exit from the site. The feasibility of that kind of monitoring over the lifetime of the development is not practical. In reality it would be unclear and would require the operator to be contacted to check tracking records, if available, every time a HGV was observed on the local network. I find such monitoring would place almost impossible burdens on those living around the site and possibly on the operator themselves.
43. Any condition that seeks to control the number of HGV movements to and from the site the site would be similarly difficult to enforce, particularly given that the site is open to visits from members or the public and merchants in the building trade. For example, if a small rigid HGV set off to the site from a builders' merchants the driver would have no way of telling how many other HGVs had visited the company on that particular day and no way of understanding whether any condition relating to the number of visits had been breached.
44. Consequently, no conditions have been put forward that would mitigate for the harm to highway safety and the impact on the character of the highway network described above.

Whether planning permission should be granted for the matters stated in the alleged breach, having regard to the effect on highway safety, any economic benefits that arise from the development and any other matters.

Economic Benefits and Alternative Premises

45. At the time of writing the written statement for the appeal the appellant stated that 27 people were employed by Ren-new. That included 8 full time employees in relation to the brick reclamation part of the business, 4 people were employed in the yard, 6 were employed to cut bricks and make display panels, 8 employees were based in the office and one person was employed for two days a week in winter in relation to firewood supplies.
46. Thus, it is clear that the business brings benefits to the local area in terms of direct employment opportunities. I have no doubt that the business also has knock on benefits for associated businesses, such as haulage contractors, and I note that most of the employees live within a 10 mile radius of the site such that a proportion of the money earned by those employees is likely to be directed back into the local economy through associated spending.
47. Paragraph 28 of the Framework notes that planning should support economic growth in rural areas in order to create jobs and prosperity and that local plans should support sustainable growth of all types of business and enterprise through the conversion of existing buildings. Policy CS5 of the CS also provides support for the conversion of rural buildings for small scale economic development, albeit that no definition of small scale is provided. It is debatable whether the proposal in this instance could be described as small scale. I note reference to the European Union definition of small to medium sized

enterprises but the context within which that definition was drawn up is not clear. In planning terms I am not convinced that the development is small scale based on the size of the site, the number of employees and the associated vehicle movements.

48. In any event, policy CS5 was drawn up with reference to PPS4 which is no longer in force. Paragraph 28 of the Framework does not seek to restrict business development within the countryside to that which is small scale. Having regard to that inconsistency, and the terms of paragraph 215 of the Framework, I concur with the appellant that reduced weight should be attributed to policy CS5.
49. Having regard to the thrust of national policy in relation to the rural economy the economic benefits outlined above are clearly a material consideration in favour of the development. As set out I find that the enterprise is not small scale but is a medium-sized developing company. In the context of the scale of the scale of the business I attach moderate weight to the associated economic benefits.
50. Limited information is before me in relation to the attempts that have been made to find suitable alternative premises. Within his witness statement Mr Hughes indicates that he has looked around to find a site with the same facilities but found it difficult to locate a facility with an open yard with industrial storage and ancillary buildings. However, no details as to how that search was undertaken have been provided and it is difficult to verify the conclusion that no alternative premises are available. Mr Hughes concludes that an alternative farm premises is likely to be the most suitable but suggests that the same problems are likely to exist as in relation to the current site. However, I see no particular reason why that would be the case. The Council does not appear to have an objection in principle to the re-use of farm buildings for economic development but the issue relates to the suitability of local roads to accommodate the development. The same circumstances would not necessarily exist for all farm buildings, some of which may be much closer to the classified highway network.
51. Consequently, the information before me does not demonstrate that the company would be unable to relocate within the area if the notice was upheld. Moreover, there is no indication that the business would cease trading altogether if the notice were upheld. Mr Hughes does note that he may not be able to employ all of the current employees if he has to run the business from a smaller site or one that is further away. Therefore, in circumstances where alternative premises to accommodate all of the current operations could not be found in the local area, it is likely that some of the current employees may not be retained, or that those jobs may be transferred to an alternative premises some distance away.
52. Whether current employees would be able to travel to any alternative premises would no doubt depend to a large extent on the distance from their home or their ability/ desire to move with the employment. Thus it is clear that the requirements of the enforcement notice would have a disruptive effect on the operation of the business. That may lead to some local job losses but those impacts may be off-set by the creation of jobs if the company were to relocate further afield. Some of those jobs may be taken by current employees.

However, it seems unlikely that the company would cease trading or that all of the jobs associated with the business would be lost.

53. Consequently, the possibility that alternative premises could not be secured is a matter that weighs in favour of granting planning permission. However, the weight that I attach to that matter is moderated by the lack of detailed information to indicate that alternative premises could not be found and the fact that the business seems likely to continue trading, albeit in an alternative location or more than one location.

The Planning Balance

54. As set out above I attach significant weight to my concerns relating to highway safety and the highway related impact of the development and find that the current use is contrary to the aims of the Framework and relevant policies of the development plan in that respect. The beneficial economic impacts are matters that weigh in favour of the development, having regard to the terms of the Framework. I attach moderate weight to those benefits having regard to the size of the company and the scale of operations at the site.
55. If I were to refuse to grant planning permission and uphold the notice, the company would be forced to relocate elsewhere, with the potential loss of jobs and impact on the local economy. However, it is possible that alternative premises could be found such that the current economic benefits could be retained. If that were not possible it seems likely that the business would continue to operate with resultant economic benefits, albeit that those benefits may not be felt within the local area. Nonetheless, those factors moderate the weight I attach to the appellant's claims relating to the economic impact of upholding the notice.
56. I have acknowledged that the CS is not fully in accordance with the Framework in terms of the approach to economic development within the countryside. Where relevant policies are out of date paragraph 14 of the Framework suggests that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Having regard to that balance I conclude that the highway related impacts should carry significant weight and that the harm I have identified in that respect significantly and demonstrably outweighs the benefits of the development.
57. Consequently, planning permission should not be granted for the breach of planning control, as described in the notice, and the appeal on ground (a) in that respect should be dismissed.

Whether a grant of planning permission in respect of part of those matters would overcome the objections in planning terms

58. The suggestion put forward by the appellant is based on the contention that a large percentage of the articulated HGV movements associated with the current use are made in relation to the brick processing element of the business⁴. I have no reason to doubt that was the case over the particular two week survey period in question. Whether that would be the case for the remainder of the

⁴ Paragraphs 4.3 to 4.6 of Mr Hurlstone's Hearing Statement and paragraphs 130 to 133 of Mr Green's Written Statement

year is less clear. It may be that the number of articulated HGV and other HGV movements associated with the 'non processing' elements fluctuate or were not as significant at the time of the survey as they may be at other periods. The evidence does not give a complete picture in that regard.

59. In any event, if the processing element were to be relocated elsewhere it does not follow that the number of articulated HGV or other HGV movements to the site would reduce. Mr Hughes has indicated that it may be difficult to find an alternative site to house the processing and storage and distribution elements in one place. If the processing element were undertaken on a smaller site nearby there may not be capacity to store the bricks waiting to be processed in any great quantity. That would leave the possibility that bricks could be imported and stored at the appeal site before being transferred to the processing site elsewhere. Once processed they could be returned to the site prior to being transferred. All of those movements could have the potential to actually increase the level of traffic above the existing situation.
60. It appears to me that the terms of the planning permission sought by the appellant would not prevent that scenario from arising. It would all fall under the description of the storage and distribution of new and reclaimed building materials.
61. In addition, the scenario put forward raises the question as to what would happen to that part of the site where brick processing currently takes place. If I were to grant planning permission for part of the breach, as requested, it would result in planning permission being granted for a storage and distribution use in relation to the land identified on the plan attached to the enforcement notice. Any future occupier would be entitled to use the entirety of the site for that purpose and it seems reasonable to assume that Ren-new or any future occupier would wish to make full use of the site. That may well result in an intensification of the storage and distribution element which could have consequential impacts for traffic generation and HGV movements.
62. Therefore, I do not concur with the premise that a grant of planning permission for part of the matters comprising the breach of planning control would result in any significant improvement in highway terms. It may have the opposite effect. Consequently, my conclusions in relation to the third main issue would apply equally to the suggested alternative scenario. The overall planning balance remains the same and I conclude that planning permission should not be granted for part of the matters stated in the breach of planning control. Therefore, the appeal on ground (a) in that respect fails.

The Appeal on Ground (g)

63. The appellant considers that an 18 month period should be allowed to comply with the requirements of the notice on the basis that 8 months would be insufficient to find alternative premises, taking into account the size of the business and the current lack of alternative sites.
64. As set out above, little detail has been provided in terms of the precise steps taken by the operator to investigate alternative sites. I am also mindful of the need to ensure expediency in the enforcement of the planning system and the fact that I have concluded that the development has caused significant harm in terms of highway safety and the impact on the local highway network. Given the potentially serious implications in that regard I find that the period given

for compliance within the notice is reasonable. In other words, there are very strong planning reasons for ensuring that the use of the site ceases without undue delay. Therefore, even if the current occupier may have difficulty in finding alternative premises, which may or may not be the case, I am satisfied that the eight month period is reasonable.

65. Accordingly, the appeal on ground (g) must fail.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Green	Director, Green Planning Studio Ltd
Mr Jeremy Hurlstone BSc(Hons) CMILT MCIHT	Managing Director, The Hurlstone Patnershire
Mr Jason Hughes	Managing Director, Ren-New

FOR THE LOCAL PLANNING AUTHORITY:

Mr Tim Rogers	Area Planning Manager
Mr Kelvin Hall	Technical Specialist Planning Manager
Ms Gemma Lawley	Highways Officer
Mr Julian Beeston	Enforcement Officer
Ms Mirhanda Garrard	Solicitor

INTERESTED PERSONS:

Cllr Michael Wood	Locally elected member
Mr Martin Bidgood	Pemberton Parish Council
Ms Elizabeth Atwood	Sutton Maddock Parish Council
Mr Mark Dady	Ryton & Grindle Parish Council
Ms Susan Evans	Local resident
Ms Hannah Lloyd	Local resident
Ms Ann Dukes	Local resident
Ms Sue Williams	Local resident
Mrs Becky Henley	Local resident
Mr Paul Henley	Local resident
Mrs Betty Bullock	Local resident
Mr Simon Bullock	Local resident

Documents Submitted at the Hearing

- 1) Copy of the Council's constitution, with associated correspondence
- 2) Photographs submitted on behalf of Kemberton Parish Council
- 3) Photographs submitted by Mrs Henley
- 4) Signed witness statement of Mr Jason Hughes