

GROUNDS OF APPEAL

**Appeal against decision of Charnwood Borough Council to issue
Enforcement Notice ref: E/21/0183**

at

Land at Syston Mill, Mill Lane, Syston, Leicestershire, LE7 1NS

Town and Country Planning Act 1990

Section 174

APPELLANT	WEALTH PROPERTY LIMITED
SITE ADDRESS	LAND AT SYSTON MILL, MILL LANE, SYSTON, LEICESTERSHIRE, LE7 1NS
APPEAL REFERENCE	TBC
LPA REFERENCE	E/21/0183
DATE	4 th NOVEMBER 2024

4th November 2024

Marrons

1 Colton Square

Leicester

Contents	Page
1. Introduction	3
2. The Site and Surroundings	6
3. Planning History	8
4. Planning Policy Context	11
5. The Grounds of Appeal	13

Appendices

- Appendix 1 - Enforcement Notice E/21/0183
- Appendix 2 - Site Location Plan in Enforcement Notice E/21/0183
- Appendix 3 - Appellant Map of Planning Units
- Appendix 4 - David Knapp Statutory Declaration
 - Exhibit A - Site Location Plan
 - Exhibit B - Parcel ID Map
 - Exhibit C - Aerial Photograph (January 2010)
 - Exhibit D - Aerial Photograph (March 2006)
 - Exhibit E - Title LT248469 (Sludge Pits)
 - Exhibit F - Aerial Photograph (April 2015)
 - Exhibit G - Aerial Photograph (April 2020)
 - Exhibit H - Aerial Photograph (April 2021)
- Appendix 5 - Existing Site Plan P-00-2521-2
- Appendix 6 - Decision Notice P-00-2521-2
- Appendix 7 - Case Officer Site Notes P-00-2521-2

1. INTRODUCTION

- 1.1 The following Grounds of Appeal have been prepared by Marrons on behalf of Wealth Property Limited (the appellant) against the enforcement notice reference number ref: E/21/0183 served by Charnwood Borough Council (the LPA) and dated 23rd September 2024 (the Notice) (at Appendix 1).
- 1.2 The LPA issued the Notice relating to breaches of planning control, (within the meaning of paragraph (a) of Section 171A (1) of the Town and Country Planning Act 1990).
- 1.3 The Notice relates to “Land at Syston Mill, Mill Lane, Syston, Leicestershire, LE7 1NS” (the site). The Notice refers to an attached plan which identifies a single site “shown edged and shaded red” comprising the whole of the land in the appellants’ ownership (Appendix 2). Section 3 of the Notice describes the entire site as being in “sui generis use”.
- 1.4 The alleged breach of planning control as set out in the Notice (Section 3) is that:
“without planning permission the material change of use of land and buildings, from industrial and agricultural use to sui generis use including industrial, agricultural, residential (building conversion and caravan), vehicle sales, MOT station, vehicle repairs and servicing, vehicle restoration, vehicle body repairs, storage, tyre fitting, siting of caravans and portable structures/buildings, storage, manufacturing and retail; and facilitating development including the installation of fencing, hardstanding, closed circuit television, lighting and ground works”.
- 1.5 The LPA Officer’s report includes a plan “which is an extract from the most recent sales particulars for the site last updated 26 January 2024”. It is difficult to read both the plan and the sales particulars, therefore there is ambiguity as to where precisely the LPA contend that the unauthorised uses are taking place. In the context of the plan and sales particulars, the Officer’s Report states “To note is that the “vehicle compound”, “Land” and “Public Car Park” are the sites of vehicle sales and storage, i.e. land to the southwest. Furthermore, on the Mill site itself, the “External Parking” is vehicles sales, and “Unit 10 Officer” is now a dwelling house”.
- 1.6 Section 4 of the Notice sets out eight reasons for issuing the Notice.
- 1.7 The appellant seeks to appeal by Inquiry procedure (The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (Statutory Instrument 2002/2685) (as amended)) on the following grounds under Section 174(2) of the 1990 Act (as amended):
- Ground (c)
 - Ground (d)
 - Ground (b)
 - Ground (a)
 - Ground (f)
 - Ground (g)
- 1.8 The appellant considers that the Notice is misconceived in its approach. The Notice erroneously treats the whole of the site as a single planning unit in alleging a single “sui generis use”. This is not correct. The site encompasses number of separate planning units, applying the principles in the decision of the High Court in the case of *Burdle v Secretary of State for the Environment [1972] 3 All E.R. 240 (“Burdle”)*.
- 1.9 In the judgement of Mr Justice Bridge in *Burdle* he sets out a three-stage approach to help identify the relevant planning unit:

- i. When there is a single main purpose of the occupier's use of the land to which secondary activities are incidental or ancillary, the planning unit is the whole unit of occupation.
 - ii. When there are a variety of activities and it is not possible to say that one is incidental or ancillary to another - a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land - then the planning unit is the whole unit of occupation.
 - iii. When, within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes, then the planning unit would be each area used for a different main purpose.
- 1.10 The appellant considers that the site comprises a number of different planning units, identified on the plan at Appendix 3.
- 1.11 Accordingly, the appellant submits that the Notice is invalid, being fundamentally defective in the allegation of the material change of use of land and buildings to *sui generis* use and the consequent requirements of the Notice. The suggested *sui generis* use bears no relationship to the prevailing lawful uses which relate to the historic planning permissions bearing on the site.
- 1.12 Accordingly the Notice will either need to be radically amended to reflect the facts on the ground, the occupation and the physically and functionally different uses that exist on the site or be withdrawn in its entirety.
- 1.13 Furthermore, and importantly, the Notice seeks to deprive the appellant of the benefit of time limits for enforcement action against operational development which has taken place by issuing the Notice well beyond the qualifying time limits in section 171B(1) of the 1990 Act such that by the time the Notice was issued:
- a) the operations were already immune from enforcement;
 - b) the operations were not part and parcel of the uses enforced against;
 - c) the time limit for enforcement at the time of issue of the Notice had expired.
- 1.14 The appellant does not consider that the Notice can be amended or corrected without causing prejudice and unfairness to the parties, and in particular, the appellant.
- 1.15 The appellant firmly believes the Notice as issued by the LPA is flawed and must be withdrawn or quashed. Notwithstanding, the appellant is willing to work with the LPA to come to a mutually agreed position in relation to the planning status of all component parts of the site.
- 1.16 A list of the documents associated with this appeal are set out in the Appendices to these Grounds of Appeal.

Appeal Procedure

- 1.17 The Appeal Procedure Guidance sets out three situations when an Inquiry would be appropriate procedure for a planning appeal:
- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate;
 - the issues are complex;
 - the appeal has generated substantial local interest to warrant an Inquiry as opposed to dealing with the case by a hearing.

- 1.18 The case is factually and legally complex and the key facts are in dispute between the parties. There will be a need for cross examination and the appellants will appear through Counsel and will provide evidence that will be required to be sworn on oath.
- 1.19 There is a ground (d) appeal which will involve persons providing oral evidence on oath concerning operational development over a period of several years, which would appear to be challenged by the LPA and will need to be tested by formal questioning.
- 1.20 The case involves certain issues of law that will be the subject of submissions by Counsel.
- 1.21 The appellant considers that an **Inquiry** is the appropriate mode of determination and it is noted that this Grounds of Appeal will be expanded upon in the Statement of Case and Proofs of Evidence to be prepared and submitted in accordance with a timetable determined by the Planning Inspectorate.
- 1.22 The expected number of witnesses are 4 from the appellant covering the following topics:
- Planning Policy
 - Ecology
 - Transport
 - Flood Risk
- 1.23 The delivery of ecological mitigation on the existing parking compound is expected, as part of the appeal proposals, to be delivered by way of Unilateral Undertaking.
- 1.24 Legal representation will be required. The appellant estimates that the overall inquiry length will be between 2/3 days.

2. THE SITE AND SURROUNDINGS

- 2.1 The site comprises the former “Syston Mill”, an industrial complex of industrial, warehouse and office buildings; areas of hardstanding and parking; and agricultural land located to the north-west of the town of Syston in the south of Charnwood Borough Council.
- 2.2 The site is located in the countryside and is an historic industrial site having been used for this purpose since the 1960s. The evidence of David John Knapp (Appendix 4) confirms that Syston Mill operated as a shoe sole manufacturing business, and was the primary occupant of the site until 1989.
- 2.3 The Land Registry Title Plan No. LT248469 dated June 1992 (Exhibit E of Mr David Knapp’s Statutory Declaration) shows the industrial complex alongside four paper “sludge pits” which were used for the storage of industrial waste, a by-product of the shoe manufacturing process.
- 2.4 The industrial complex included at least 16, B Class buildings, which are clearly shown on an Existing Site Plan submitted in support of planning permission reference 00/2521/2 (approved January 2001) (Appendix 5).
- 2.5 The buildings remain in-situ today. The sludge pits were filled-in during the late 1980s.
- 2.6 The industrial buildings are surrounded by the River Wreake to the north and northwest, the railway line to the east and the River Wreake subsidiary watercourse to the south. A bridge allows access over the watercourse. To the south of the water course, the site includes areas of hardstanding use for the vehicle storage and car sales. Beyond these parcels of land to the south, the site is open grassland and not in use. The A46 is further north and west, with Meadow Lane beyond the site to the south.
- 2.7 The site is accessed via Mill Lane, a private road off Fosse Way. Mill Lane continues over the bridge within the site and loops around the site to the north of the water course. The site can also be accessed by way of public footpath no. I56 which leads from the railway bridge through the fields on the eastern side of Mill Lane and across the bridge over the watercourses.
- 2.8 The subsidiary watercourses from the River Wreake cuts the land in half and splits into two further watercourses leading toward the cricket ground and the lake on Fosse Way which it feeds.
- 2.9 The town of Syston is to the west of the site, a 3-minute car journey or 22-minute walk. The town is the third largest town in the Borough. It is a “Service Centre” and contains a “District Centre” as designated in the adopted Core Strategy (2015). Syston train station is 2km to the south of the site and offers direct train services to Leicester and Nottingham. The nearest bus stop is on Fosse Way (“High Street”) at its junction with Mill Lane, a 9-minute walk from the site, where the 100 bus route provides services to Melton Mowbray.
- 2.10 The site is located within Flood Zone 3, there no statutory or locally listed buildings on the site and it is not within or adjacent to a Conservation Area.
- 2.11 As outlined in the Introduction of these Grounds of Appeal, it is the appellant’s case that the area within the red line as presented in the Notice comprises a number of separate planning units as shown on the Plan at Appendix 3 - appellant Map of Planning Units and summarised in Table 1 overleaf:

Parcel ID	Description of Use and Occupant	Use Class
Parcel 101	Land in use as parking area by Wealth Property Limited.	Sui Generis
Parcel 102	Land in use as car storage and selling/display of motor vehicles by Nippon Autos Ltd.	Sui Generis
Parcel 103	Land in use as car storage and selling/display of motor vehicles by Syston Autos.	Sui Generis
Parcel 104	Land in use as selling and/or display of motor vehicles by Bogden Fehrer Ltd.	Sui Generis
Parcel 105	Land in use as selling and/or display of motor vehicles by Bogden Fehrer Ltd.	Sui Generis
Parcel 106	Land in use as hardstanding by Bogden Fehrer Ltd.	Sui Generis
Unit 7.	Building in use as car repair workshop by Bogden Fehrer Ltd.	B2
Unit 7A.	Building vacant and was used as car repair workshop	B2
Unit 20.	Building vacant and was used as car repair workshop.	B2
Unit A, C and Lean-to	Building in use as car repair workshop by Green Goblin Garage.	B2
Unit B1	Building in use as a car repair workshop by Peter Chamanga.	B2
Unit B2	Building in use as car repair workshop by Heritage Bodyworks Ltd.	B2
Unit E1	Building in use as car repair workshop by Sotiris Thanasis.	B2
Unit E2	Building in use as car repair workshop by Auto Motor MK Ltd.	B2
Unit D	Building in use as car repair workshop by Bogdan Fehrer Ltd.	B2
Unit 10	Building in use as offices by Bogden Fehrer Ltd.	E
Unit 22 – 1 st Floor	First Floor vacant and was used as Office/industrial/storage.	E, B2/B8
Unit 22 - Ground	Ground floor in use as hiring, selling and/or display of motor vehicles by E-Lease Ltd.	Sui Generis
Parcel 107	External parking area used as selling and/or displaying of motor vehicles by E-Lease Ltd.	Sui Generis
Unit F	Temporary Sales Office	Sui Generis
Unit 16	Building is vacant and was used for industrial steel fabrication and offices.	E, B2
Unit 17A	Building in use as car repair workshop by Highcross Bodywork & Customs Ltd.	B2
Unit 17B	Building is vacant and was used as car repair workshop.	B2
Unit 17C	Building is vacant and was used as car repair workshop.	B2
Unit 18	Building is used as car repair workshop by Mr Krish Bhakta.	B2
Caravans	Storage of caravans (not used for residential purposes).	B8
Fields A & B	Agricultural Fields	Not development

Table 1: Uses Identified within Appellant Map of Planning Units

- 2.12 The Plan within the Notice fails to identify the separate planning units which are set out in Table 1 above and shown on the Plan at Appendix 3.
- 2.13 The Notice has failed to distinguish between buildings which already benefit from planning permission. Accordingly, the Notice is prohibited from precisely identifying breaches of planning control on the site.

3. PLANNING HISTORY

3.1 Table 2 below provides an overview of the available planning history on the Council's online planning portal and includes applications detailed within the LPAs Enforcement Report under "Relevant Planning History".

LPA Reference	Description	Decision	Decision Date
P/74/1337/2	Erection of industrial building Class IV.	Decided	19/02/1975
P/75/2541/2	New footbridge on diverted footpath replacing existing footbridge.	Grant conditionally	12/02/1976
P/77/2648/2	New office and canteen block.	Grant conditionally	17/05/1978
P/77/2649/2	Two new toilet blocks.	Grant conditionally	17/05/1978
P/78/3169/2	Retention of temporary building.	Grant conditionally	08/02/1979
P/79/0353/2	Erection of warehouse (renewal of ref.no. 2365/73/74/1301/12).	Grant conditionally	25/04/1979
P/80/0001/2	Two-storey factory extension to increase production area required.	Refuse	10/04/1980
P/80/2425/2	Extension and canopy to factory (Stamina Components (Syston) Limited).	Grant conditionally	03/10/1980
P/80/3627/2	Reconstruction of Syston Mills gauging station.	Permitted Development	18/12/1980
P/83/1602/2	Extension to provide three offices over existing offices.	Grant conditionally	26/08/1983
P/84/1039/2	Retention of storage hut.	Grant conditionally	12/06/1984
P/87/1840/2	Erection of new bridge over stream.	Grant conditionally	10/09/1987
P/97/1400/2	Determination of new planning conditions under the Environment Act (81/0756/2 refers).	Grant conditionally	24/07/1998
P/99/0951/2	Submission of details re. revised phasing of mineral extraction, landfill and layout of site reception area.	Grant conditionally	18/10/1999
P/00/1067/2	Extraction of sand and gravel (Consultation by Leicestershire County Council).	No objection	19/07/2000
P/00/2521/2	External alterations to industrial, warehouse and office premises.	Grant conditionally	29/01/2001
P/04/4370/2	Variation of condition 2 of planning permission 2002/2897/02 for extension of time for permitted operations (Consultation by Leicestershire County Council).	No objection	14/02/2005

P/04/4371/2	Variation of condition 4 of planning permission 1991/1400/02 for extensions of time for permitted operations (Consultation by Leicestershire County Council).	No objection	14/02/2005
P/20/1609/2	Change of use of vacant industrial units to Gymnasium (Use Class E(d)).	Refused	05/01/2021
P/21/1796/2	Certificate of lawfulness (existing) for the change of use of land to car sales / parking (Sui generis) and associated works.	Withdrawn	23/08/2022
P/22/0061/2	Certificate of lawfulness (existing) for the change of use of land to car sales / parking (Sui generis) and associated works.	Refused	09/06/2022
P/24/0474/2	Continued use of site as Car Repair shop and Mot station (Lawful Development Certificate for Continued Use).	Withdrawn	03.06.24

Table 2: Planning history of the Site

- 3.2 The historic permissions from the 1970s and 1980s confirm the use of the site for industrial, warehouse and office use. Applicants for those permissions are Jackson Bourne End Property Ltd and Stamina Components (Syston) Ltd. The enclosed Statutory Declaration provided by Mr David Knapp confirms that Bourne End Property Trading Ltd were the site owners (Appendix 4, Exhibit E Registered Title LT248469). Stamina Components (Syston) Ltd were a tenant. Mr Knapp confirms that that Stamina Components (Syston) Ltd were a shoe sole manufacturer and the main tenant on the site in the 1980s. They sublet “Unit 20” to Mr Knapp for his mechanics workshop in 1984 for five years. In 1989, following Stanima Components (Syston) Ltd going into administration, he moved into “Unit 23” and continued to operate his mechanics business from there for a further 32 years until he retired in 2021.
- 3.3 Notably, planning permission was granted in January 2001 (P/00/2521/2) for “external alterations to industrial, warehouse and office premises” (Appendix 6). The submitted “Existing Site Plan” (Appendix 5) for the application shows the industrial complex to the north of the water course and annotates an area of “hardcore parking area” to the south of the water course; and includes a number of buildings to the east, including “Mill House”.
- 3.4 The applicant’s cover letter (to planning ref: P/00/2521/2) prepared by Colliers Conrad Ritblat Erdman and dated 29th November 2000 advised that “Apres Estates Limited” were the owners of Syston Mill at that point, and that Stamina Components, “*the principal occupant of the property*” went out of business in September 1999. The Cover Letter provided a short synopsis of the planning history of the site and is reproduced below:

“The premises that comprise Syston Mills were generally constructed before the inception of the planning system, although various additions and changes to them have been subsequently approved. These have included extensions for manufacturing purposes in 1968, for storage in 1971 and for offices in 1978. Throughout the recent past, much of the floor space has been used by Stamina for manufacturing and storage purposes. Furthermore the company administered its operation from Syston. Other smaller firms have also undertaken such activities from the premises.

Apres Estates Limited purchased the property earlier this year. Its agents have had some success in finding short term tenants for various class B uses”.

- 3.5 The Case Officer’s Site Visit Notes (dated 16/1) also confirms that [the site] *“been used for industrial purposes for many years”* (Appendix 7).
- 3.6 The prevailing use class of the site to the north and south-east of the water course is Use Class B2, Use Class B8 and Use Class E(g)(i) and Use Class E(g)(iii).
- 3.7 It should be noted that the red line as set out in the Notice covers large areas of agricultural land beyond the historic boundary of Syston Mill. This land is to the north and south of Syston Mill. This land is in agricultural use and therefore not a breach of planning control. There is no justification for including this land in the scope of the Notice.

4. PLANNING POLICY CONTEXT

- 4.1 The adopted Development Plan for the site is the Charnwood Local Plan 2011-2028 Core Strategy (2015), the saved policies of the Borough of Charnwood Local Plan (2004) and relevant policies within the Submitted Charnwood Local Plan 2021-2037.
- 4.2 The Notice, in its reasons for issuing the Notice (Section 4) refers to a number of national and local planning policies with which the LPA consider that the development conflicts with and these are listed below:

Charnwood Core Strategy (adopted 2015)

- Policy CS1 - Development Strategy
- Policy CS2 – High Quality Design
- Policy CS6 – Employment and Economic Development
- Policy CS10 – Rural Economic Development
- Policy CS11 – Landscape and Countryside
- Policy CS12 – Green Infrastructure
- Policy CS13 – Biodiversity and Geodiversity
- Policy CS16 – Sustainable Construction and Energy
- Policy CS17 – Sustainable Travel
- Policy CS24 – Delivering Infrastructure
- Policy CS25 – Presumption in Favour of Sustainable Development

Charnwood Local Plan – Saved Policies (2004)

- Policy ST/2 – Limits to development
- Policy CT/1 – General Principles for Areas of Countryside, Green Wedge and Local Separation
- Policy CT/2 – Development in the Countryside
- Policy EV/1 – Design
- Policy TR/18 – Parking Provision in New Development

Submitted Charnwood Local Plan 2021-2037

- Policy Objective 7 – To improve local air quality, protect and improve quality and quality of water in the Borough's surface and ground waters and reduce other forms of pollution in the Borough.
- Policy DS1 – Development Strategy
- Policy DS5 – High Quality Design
- Policy C1 – Countryside
- Policy E1 – Meeting Employment Needs
- Policy T3 – Car Parking Standards
- Policy CC1: Flood Risk Management
- Policy CC2: Sustainable Drainage Systems (SuDS)
- Policy CC4: Sustainable Construction
- Policy CC5: Sustainable Transport
- Policy EV1: Landscape
- Policy EV6: Conserving and Enhancing Biodiversity and Geodiversity
- Policy INF2: Local and Strategic Road Network

The National Planning Policy Framework

- Paragraphs 88-89
- Paragraphs 114-117
- Paragraphs 139-141
- Paragraphs 165-175
- Paragraph 180
- Paragraphs 186-188
- Paragraphs 189-190

Supplementary Planning Document

- Charnwood Design (January 2020)

4.3 The planning policies as set out in the reasons for issuing the Notice will be assessed within a Statement of Case at the appropriate time. This will account for any changes arising to the Framework (anticipated in late 2024).

5. GROUNDS OF APPEAL

5.1 The appellant advances various grounds of appeal, the detail of which will be elaborated upon in the inquiry statement, to follow 6 weeks from the start date. To clarify and simplify matters (for all parties), we have sequenced the Grounds of Appeal as follows:

- ✓ **Ground (c)** – “that those matters (if they occurred) do not constitute a breach of planning control”.
- ✓ **Ground (d)** – “that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters”.
- ✓ **Ground (b)** – “that those matters have not occurred”.
- ✓ **Ground (a)** – “that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged”.
- ✓ **Ground (f)** – “that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”.
- ✓ **Ground (g)** – “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

Ground (c) - The matters stated in the Notice do not constitute a breach of planning control

5.2 The appellant considers that the use of the land parcels and buildings outlined in Table 3 below are permitted by planning permission reference P/00-02521/2 dated 16th January 2001 for the “external alterations to industrial, warehouse and office premises” (Appendix 6).

Parcel ID	Description of Use and Occupant	Use Class
Parcel 101	Land in use as parking area by Wealth Property Limited.	Sui Generis
Parcel 104	Land in use as selling and/or display of motor vehicles by Bogden Fehrer Ltd.	Sui Generis
Unit 7.	Building in use as car repair workshop by Bogden Fehrer Ltd.	B2
Unit 7A.	Building vacant and was used as car repair workshop	B2
Unit 20.	Building vacant and was used as car repair workshop.	B2
Unit A, C and Lean-to	Building in use as car repair workshop by Green Goblin Garage.	B2
Unit B1	Building in use as a car repair workshop by Peter Chamanga.	B2
Unit B2	Building in use as car repair workshop by Heritage Bodyworks Ltd.	B2
Unit E1	Building in use as car repair workshop by Sotiris Thanasis.	B2
Unit E2	Building in use as car repair workshop by Auto Motor MK Ltd.	B2
Unit D	Building in use as car repair workshop by Bogdan Fehrer Ltd.	B2
Unit 10	Building in use as offices by Bogden Fehrer Ltd.	E
Unit 22 – 1 st Floor	First Floor vacant and was used as Office/industrial/storage.	E, B2/B8
Unit 16	Building is vacant and was used for industrial steel fabrication and offices.	E, B2
Unit 17A	Building in use as car repair workshop by Highcross Bodywork & Customs Ltd.	B2

Unit 17B	Building is vacant and was used as car repair workshop.	B2
Unit 17C	Building is vacant and was used as car repair workshop.	B2
Unit 18	Building is used as car repair workshop by Mr Krish Bhakta.	B2
Fields A & B	Agricultural Fields	Not development

Table 3: Land and buildings not in breach of planning control

5.3 The Case Officer's site notes (Appendix 7) state:

"Site in countryside and been used for industrial purposes for many years. I've discussed the proposals with Guy Longley and he doesn't see any conflict with existing/emerging policies on the basis that buildings are there and that proposals are just improvements/refurbishment".

5.4 The planning permission clearly relates to all buildings and land to the north of the watercourse and includes land to the south of the watercourse, which is annotated as "hardcore parking area".

5.5 The planning permission is clear that it relates to industrial, warehouse and office premises and accordingly, the use of the land and units as outlined within Table 3 falls within the permitted uses of Use Class B2, B8 and E(g)(i) and E(g)(iii).

5.6 It is the appellant's case that the current uses outlined in Table 3 are not in breach of planning control.

5.7 The appellant also considers that the site is not subject to an Article 4 Direction and accordingly the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) apply. It is the appellant's case that the Notice fails to consider the provisions of the Order, as they relate to permitted rights for operational development.

5.8 The Town and Country Planning (Use Classes) Order 1987 (as amended) categorises different types of property and land into classes. Change between uses within the same class does not constitute development and therefore does not require planning permission. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) identifies some permitted development rights allowing the change of use from one class to another, subject to conditions, limitations and/or a prior approval process.

5.9 The appellant considers that the Notice appears to fail to have regard to the above permitted development rights, and reserves the right to make reference to those permitted rights as part of the appeal process.

Ground (d) – The alleged breach of planning control is now immune from planning enforcement

5.10 Under Regulation 5 of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024, the amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where –

a) In respect of a breach of planning control referred to in section 171B (1) of the 1990 Act (5) (time limits) (operational development), the operations were substantially completed.

5.11 In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024.
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024.
- within 10 years for any other breach of planning control (essentially other changes of use).

- 5.12 The Statutory Declaration provided by Mr David John Knapp confirms that the following uses and/or operational development, has persisted for over 10 years:

Parcel 101	Known to be in use as a parking area since the 1980s
Parcel 103	Covered in hardstanding for over 10 years.
Parcel 104 (part of)	Some of the land has been covered in hardstanding for more than 10 years.
Unit 22 – Ground floor	Ground floor in use as hiring, selling and/or display of motor vehicles by E-Lease Ltd for over 13 years.
Parcel 107	External parking area used as selling and/or displaying of motor vehicles by E-Lease Ltd for over 13 years.

Table 4: Ground (d) Operations and Uses

- 5.13 Mr David John Knapp will provide evidence, if necessary, under examination. A signed copy of his statutory declaration will accompany the Inquiry Statement.
- 5.14 Accordingly, the appellant considers that some matters listed in the Notice are immune from enforcement action and the appeal on Ground (d) should succeed.

Ground (b) – The alleged breach of planning control has not occurred

- 5.15 A number of units are (as of 4th November 2024) either vacant and accordingly, not in breach of planning control; or, are occupied by B2 occupiers, with the benefit of a prevailing planning permission reference P/00-02521/2 dated 16th January 2001 (Appendix 6).
- 5.16 The units, which the appellant suggests succeed under ground (b), are set out below in Table 5 below:

Parcel ID	Description of Use and Occupant	Use Class
Unit 7.	Building in use as car repair workshop by Bogden Fehrer Ltd.	B2
Unit 7A.	Building vacant and was used as car repair workshop	B2
Unit 20.	Building vacant and was used as car repair workshop.	B2
Unit A, C and Lean-to	Building in use as car repair workshop by Green Goblin Garage.	B2
Unit B1	Building in use as a car repair workshop by Peter Chamanga.	B2
Unit B2	Building in use as car repair workshop by Heritage Bodyworks Ltd.	B2
Unit E1	Building in use as car repair workshop by Sotiris Thanasis.	B2
Unit E2	Building in use as car repair workshop by Auto Motor MK Ltd.	B2
Unit D	Building in use as car repair workshop by Bogdan Fehrer Ltd.	B2
Unit 10	Building in use as offices by Bogden Fehrer Ltd.	E
Unit 22 – 1 st Floor	First Floor vacant and was used as Office/industrial/storage.	E, B2/B8
Unit 16	Building is vacant and was used for industrial steel fabrication and offices.	E, B2
Unit 17A	Building in use as car repair workshop by Highcross Bodywork & Customs Ltd.	B2
Unit 17B	Building is vacant and was used as car repair workshop.	B2
Unit 17C	Building is vacant and was used as car repair workshop.	B2
Unit 18	Building is used as car repair workshop by Mr Krish Bhakta.	B2
Fields A & B	Agricultural Fields	Not development

Table 5: Ground (b) no breach of planning control has occurred

- 5.17 It is the appellant's case that the above units of occupation are themselves independent planning units which should be excluded from the Notice as no breach of planning control has occurred.

Ground (a) – Planning permission should be granted

- 5.18 Without prejudice to the appellant's case that most or all of the matters alleged in the Notice are misconceived or have become lawful for the reasons given, if planning permission is needed for any or some of the land uses, it should be granted planning permission. The ground (a) arguments for the uses contained within the distinct planning units subject to this ground (a) are summarised in Table 6 below.

Parcel 102	The use will cease, hardstanding removed and land will form part of an ecological mitigation plan to be put to the Inspector as part of the appeal inquiry process. The appellant reserved the right to secure a remediation plan by way of legal agreement.
Parcel 103	Vehicle sales should be permitted on this area of established hardstanding.
Parcel 104 (part)	The unauthorised vehicles storage and display use will cease. Some unauthorised hardstanding will be removed and some land will form part of an ecological mitigation plan to be put to the Inspector as part of the appeal inquiry process.
Parcel 105	The use will cease, the unauthorised hardstanding will be removed and the land will form part of an ecological mitigation plan to be put to the Inspector as part of the appeal inquiry process.
Parcel 106	The use will cease, the hardstanding will be removed and the land will form part of an ecological mitigation plan to be put to the Inspector as part of the appeal inquiry process.
Caravans	The storage of caravans on the site should be allowed.

Table 6: Ground (a) planning permission should be granted

- 5.19 It is the appellant's case that evidence would be submitted, in accordance with the timetable set out at the start date latter, to address all reasons (at Section 4 of the Notice) for issuing the Notice. Expert technical input on the following elements will be submitted as part of the appeal:

- Transport and highways
- Ecological/Arboricultural
- Biodiversity Net Gain
- Contamination
- Flood Risk

- 5.20 As part of positive engagement with the local planning authority on the Statement of Common Ground, and corrections to the Enforcement Notice, we will seek clarification and agreement on all alleged unauthorised development. We reserve the right to pursue under ground (a), planning permission which otherwise accords with the Development Plan.

- 5.21 It will be demonstrated, having regard to the above, that the proposals are in accordance with the Development Plan and there are no material considerations indicting why planning permission should not be granted.

Ground (f) – the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

- 5.22 The Notice seeks to treat the entire area of the Site as the basis for prohibition of all uses taking place on the site. The Notice errs in considering the site as one single planning unit, ignoring

prevailing planning permissions and periods of elapsed time pursuant to immunity, for multiple components on the site.

- 5.23 It is the appellant's case that a large number of the uses on site are not in breach of planning control and/or planning permission can be granted subject to S106 Agreement/Unilateral Undertaking to remediate those areas of land where there is unauthorised development.
- 5.24 The Notice, at Section 5 sets out steps which requires the appellant to cease various uses, remove various items, and includes the provision of a planting scheme. The appellant will work the local planning authority to ensure that the requirements of the Notice are amended and justifiable.

Ground (g) – that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

- 5.25 The appellant considers that the time periods set out at Section 6 of the Notice (Time for Compliance) are insufficient. Subject to adequate precision on the status of multiple planning units within the site, and clarification on the requirements of any amendments to the Notice at Section 5 (What you are required to do), the appellant reserves the right to appeal the entirety of the Notice on the basis of ground (g).

Marrons

**Julie McLaughlin
Brian Mullin**

4th November 2024