Appeal Decisions

Inquiry held on 18 and 19 November 2015

Site visits made on 17 and 19 November 2015

by D E Morden MRTPI

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

Decision date: 27 January 2016

Appeal A: APP/B3600/C/14/3000220
Land at Moorhouse Sandpits, Westerham Rd, Limpsfield, Surrey, TN16 2ET

- 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 Mr G Innes against an enforcement notice issued by Surrey County Council.
- The Council's reference is LPE/58281/NS.
- The notice was is dated 30 September 2014.
- The breach of planning control as alleged in the notice is the construction of a concrete surface and erection of fencing, storage bays and other fixed infrastructure (formerly used in connection with a mortar plant since removed) in the approximate position shown hatched black on the plan attached to the Notice.
- The requirements of the notice are (i) with the exception of the green breeze block building, remove all fencing, storage bays and fixed infrastructure from the land shown hatched black on the plan attached to the Notice and (ii) remove all concrete surfacing and concrete walling from the land shown hatched black on the plan attached to the Notice.
- The period for compliance with the requirements is 8 weeks for requirement (1) and 16 weeks for requirement (ii).
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the Notice is upheld with corrections and variations as set out in the Formal Decision at paragraph 81 below.

Appeal B: APP/B3600/X/14/3000386
Land at Moorhouse Sandpits, Westerham Rd, Limpsfield, Surrey, TN16 2ET

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr G Innes against the decision of Surrey County Council.
- The application Ref TA/2013/1827, dated 7 November 2013, was refused by notice dated 21 February 2014.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the re-siting of an existing ready-mixed mortar mill.

Summary of Decision: The appeal is dismissed as set out in the Formal Decision at paragraph 82 below.

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Appeal C: APP/B3600/X/14/3000387
Land at Moorhouse Sandpits, Westerham Rd, Limpsfield, Surrey, TN16 2ET

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr G Innes against the decision of Surrey County Council.
- The application Ref TA/2013/1707, dated 7 November 2013, was refused by notice dated 21 February 2014.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of the land for the stationing of a mobile mortar plant.

Summary of Decision: The appeal is dismissed as set out in the Formal Decision at paragraph 83 below.

Preliminary Matters

1. Before hearing the evidence and following a site visit that all parties attended, the Council, at the opening of the inquiry, submitted a new plan to accompany the Enforcement Notice and proposed some words to correct the allegation. The changes were discussed between the parties following a discussion with me on site and as now proposed the alleged breach would read as follows:

   'Without planning permission the construction of a concrete surface (E) and the erection of fencing including gates (F), storage bays (A) and (B), concrete bays (C), and concrete walling (D) (formerly used in connection with a mortar plant since removed) in the approximate position shown hatched black on the Plan.'

2. The submitted plan shows the structures separately from the hatched black concrete surface area so I will correct the notice further to make the allegation absolutely clear. I will also refer to the 'plan attached to this decision' in paragraph 2 as an amended plan showing these details will be attached to this decision. As well as marking things by letters on the corrected plan, photographs of the alleged unauthorised developments were included for clarity of what was meant in the wording; they will be filed as an Inquiry document for future reference (Document 1). The Council also proposed varying the requirements as a consequence of correcting the allegation so that paragraphs 5(i) and 5(ii) would read as follows:

   5(i) 'With the exception of the pre-existing green breeze block building, remove all fencing (including gates) (F), storage bays (A & B), and concrete bays (C) from the land shown hatched black on the Plan';

   5(ii) 'Remove all concrete surface (E) and concrete walling (D) from the land shown hatched black on the Plan.'

3. I shall, therefore, consider Appeal A, the appeal against the Enforcement Notice, on the basis of the allegation and requirements as now worded by the Council. For clarity I shall also make similar changes to the wording of the requirements to those set out in paragraph 2 above. The exact wording will depend upon the outcome of the appeal against the enforcement notice (Appeal A) and the various grounds of appeal made.

4. The Council queried the submission of an LDC for an 'existing use' (Appeal B) bearing in mind that the most recent occupant of the site had left and taken away the mortar mill he had brought to the site. One of the arguments pursued by the appellant was that the site has a lawful use for General Industrial (Class B2) use as a mortar mill. It had been operating on the site for at least 10 years continuously commencing sometime after the 1957 permission had been granted. On that basis a use can be subsisting even if no activity is taking place on the site on the date that the application is made but has obviously not been abandoned. That was settled by the courts in *Panton and Farmer v SSE and Vale of White Horse DC [1999] JPL 461.* I agree that the one of the two applications/appeals is superfluous as they do amount to the same thing but I will determine both appeals.

Background/history

5. Planning permission was granted in 1949 for the winning and working of sand in Pits A and B and the eastern part of Pit C by the then Godstone Rural District Council (GRDC) and in 1953 in the whole of Pit C by the Secretary of State on appeal. Other permissions were granted over the years for different extensions to Pit C. In 1998 following the passing of the Environment Act 1995 an application was submitted (a ROMP – Review of Old Minerals Permissions) for the total area and new modern planning conditions were applied, particularly in relation to restoration of the land when extraction had been completed and aftercare (that application was approved in January 2001). The permission was to run until the end 2030 with restoration to be completed by the end of 2032. A 2001 application extended that latter date to the end of 2033.

6. Both those permissions had a condition (16) which stated that notwithstanding the provisions of Part 19 of the GPDO, no plant, buildings or machinery whether fixed or moveable shall be erected on the site or the associated processing plant without the prior written approval of the County Planning Authority. The 1949 and 1998 applications both included the current appeal site within their application boundaries.

7. In 1957 GRDC granted permission for the re-siting of an existing ready mixed mortar mill from Pit A (at the eastern end of the overall site) to the appeal site (which lies between pits A and B). That mortar mill remained on site until it was replaced between August and October 2002 (the first operator having occupied and operated it until about 1995 after which it remained on site but unused). A new lease was granted in July 2002 to a company who occupied the site (and brought on a new mortar mill) for the same purpose until 2010 and then a third occupant moved on to continue to undertake the production of mortar again with a new mortar mill.

8. Following regular visits by the Council from about 2006 onward (to ensure compliance with the conditions attached to the 2001 permission) it was in November 2010 that officers noted that the mortar mill had been replaced again and an exchange of correspondence between the parties began. Having been issued with a Planning Contravention Notice in September 2013, the appellant submitted (in November 2013) two LDC applications, the subject of these appeals. The second one (for a proposed use) was made as the occupant had, in the meantime, vacated the site. The enforcement notice issued is aimed at structures and operational development that were left on the site.

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The s195 appeals (Appeals B and C)

9. The starting point for both these appeals (and the s174 appeal) is to determine the lawful use of the triangular area of land identified as the area the subject of the LDC applications at the date of those applications (7 November 2013).

10. In the 1949 permission (para 5 above) the appeal site is not shown as an area from where sand was to be extracted; the main areas for that (shown as Pits A and B) were located to the east and west respectively. The appeal site is and was a small triangular area in between the two, bordered by the access to Pit B to the south west, an area of leased off land to the north, and by Pit A to the east although the vehicular access to that leased off land immediately adjoins the eastern appeal site boundary.

11. Like many other small parcels of land around the large area where extraction was to take place it was shown as an area for overburden (the surface material above that to be extracted which would be stored at various parts of the site during extraction works and then used during restoration). Condition 2 of the permission required the overburden to be used after excavation to restore the land to a condition that would allow it to be cultivated. The land was in my view an integral part of the permission granted.

12. The 1998 ROMP application and subsequent permission (in 2001) took in the area covered by the 1949 permission and other land further west (Pit C) that was also the subject of a number of applications during in the 1950s. By this time Pit A had been worked out and partially restored and Pit B had also been worked out and was now used as the main processing area of the extracted sand which was at that time (1998) only being worked in Pit C.

13. The 'General Method of Working' plan (SP/5) - which is an Ordnance Survey extract – forming part of that 1998 application shows two small buildings on the appeal site and an embankment between most of the site and the haul road that runs along the south west boundary. Other parts of the appeal site are marked by dotted lines on that plan but there is no indication of what they represent. The 'Final Position' plan (SP/6) is clear however and shows the appeal site with horizontal hatching (as it does for the rest of Pit A) and states that the whole area will be restored to agricultural use. The plan showed the principles of the restoration of the three pits in terms of their land use (either agriculture or forestry) and condition 27 of the permission set out detailed requirements for the submission of a progressive restoration scheme for the whole application site area.

14. The site of the current appeal is also, however, the subject of a separate planning permission granted in 1957 and agreed by both parties to have been implemented. It is described as 'Re-siting of existing Ready-mixed mortar mill'. Unfortunately neither the Council nor the appellant's agent company (which has been the agent for all applications on this estate since 1949) could find any copies of the plans that were submitted with the application. A copy of the application forms, decision notice and an extract from the then GRDC's planning register map were submitted with the LDC applications.

15. Looking at the application form first to try to understand the application and the permission, it was stated that the new site was needed for the existing mortar mill as the then current site was going to be restored, the extraction on Pit A having finished (question 4 on the 1957 application form). It stated that

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the development proposed was permanent (as opposed to permission for a limited period – question 9). It also stated in answer to question 5 that the current (then) use of the application site was derelict land (no mention of it being used to store overburden as shown in the 1949 application plan).

16. In answer to question 3 (address) it stated 'Moorhouse Sandpits (see enclosed plan)' so some plan was submitted with the application. The screenshot of the GRDC planning register shows what, in my experience, was commonplace in the 1950s and 1960s (and in some cases even later) in both urban and rural areas. Applications registered were plotted on to ordnance survey sheets and when simple to do so, the red line indicating the application site was copied on to the register sheet rather than just the application number and an arrow indicating the site more generally. That document shows a red line around the triangular site which is the same as that used in both LDC applications and also by the Council in the enforcement notice (Appeal A).

17. The permission has two conditions attached to it, the first pre printed on to the decision notice, so clearly a 'standard' condition. It stated that no variations from the deposited plans (again a reference to plans) were permitted unless previously authorised by the Council. Condition 2 stated 'Tree planting to be carried out in accordance with the agreed scheme so far as the proposed development will permit'. In my view that implies that some tree planting was to have been carried out on the site, possibly in accordance with some restoration scheme, but could only be carried out in so far as anyone was able to do so due to the presence of the now permitted mortar mill.

18. The mortar mill used sand from the site this but this was purely a commercial exercise (such uses are generally sited within, adjacent or very close to mineral working sites to make use of a raw material that is nearby). The site was operated by an independent company that was not connected to the sand extraction company; it was carrying on an industrial use (making mortar) on the site albeit a site that was surrounded by (and also included within) the land that had been granted the earlier permission for extracting the sand.

19. The appellant submitted firstly, that the 1957 permission was clearly a permanent one and also one that carried with it planning permission for the use of the land (forming the application site) for the production of mortar (a Class B2 – General Industrial use). Secondly, it was submitted that the site, once the permission had been implemented, became a separate planning unit and also, the implementation of the permission on that separate planning unit extinguished the 1949 permission mining rights and any other obligations in so far as they related to this parcel of land.

20. The Council disagreed with the view that a 'use' had been approved and submitted that on each of the occasions that a mortar mill was 'established' on the site (1957, 2002 and 2010) it constituted the erection of plant/equipment and was an operational development (an engineering operation). The 1957 permission allowed the operational development to be carried out and then, as with any structure or building erected, use it for its intended purpose.

21. It argued that there was no permission for the 'use' of the land and, therefore, when that the mortar mill plant/equipment was first taken away (in 2002) it brought an end to that chapter of planning history governed by the 1957 permission. In 2002 and 2010 when a new mortar mill was put on the site a

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new chapter began and in those two cases without the necessary planning permission that should have been obtained.

22. The Council submitted that it therefore followed that the occupation of the site and use of the plant erected thereon did not engage s171B and render some underlying use lawful. Each occupier's 'use' was just of the plant/equipment put on the site by virtue of the operational development and once it was removed there was no 'use' of the site at all. The underlying lawful use of the site was simply that granted by the 1949 permission (to extract sand) and that was renewed in 2001 (in the 1998 ROMP application) with different conditions.

23. In determining the lawful use of the land it is also relevant to remember that in this particular case the appeal site has been retained by the Titsey Estate Company which owns all of the land contained within the larger 1949 and 1998 applications. Whichever operator has occupied the appeal site to carry on the activity of mortar production has done so on a rental basis (either a tenancy or a lease). Whilst the 1957 permission has been implemented, the owner could decide at any time not to lease the site for that use in order to complete the restoration of the area in line with the 2001 ROMP permission.

24. Looking at the submissions made by the appellant, and taking into account all the evidence presented at the Inquiry, there is no doubt that the 1957 permission was a full permanent permission but in my view it was for an operational development not a use of land. Nowhere in the application form or in the decision is there any mention of the words 'use of the land' be that for mortar production or anything else.

25. Whilst plant and equipment, even if it is comprised in a building, is not a building (by virtue of the definition in s336 of the Planning Act) and not a building operation, it can be an engineering or other operation that results in a structure being erected on a site which can then be used for the purpose for which it was designed (subject to any planning conditions). As cited by the Council and set out in *Iddenden [1972] 3 All ER 883* by Buckley LJ, when a building is demolished any use rights are then lost. I agree with the Council that the same would apply to a structure and once the mortar mill had been removed in 2002 so did the use. There was no mortar mill there, so no mortar production activity could take place.

26. Whether an operation or a use of land was involved in setting up the mortar mill on site is a matter of fact and degree and could only be determined if details of the structure(s) comprising the mortar mill were provided but there was no evidence that could be examined put forward from either side on this point. The only evidence was a black and white 1981 aerial photograph from which it was impossible to determine anything about the nature of that original mortar mill.

27. The onus in a LDC appeal is firmly on the appellant to prove his case (albeit on the balance of probability) and in my view nothing was put forward to support the claim that in 1957 a use commenced on site rather than an operational development had taken place. The appellant referred to the most recent occupier of the site and argued that his mortar mill was a mobile piece of equipment that was brought to the site on a lorry and simply swung upright and used so no operational development was involved.

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28. I will come back to this point later in considering the possibility that what took place in 1957 was a change of use rather than operational development but do not need to comment on that proposition at this point other than to say that what may have been put on the site in 2010 has no bearing in determining what might have transpired in 1957. There have been many and varied advances in technology since the 1950s and considerable changes in this type of apparatus/machinery.

29. Turning to the claim that the appeal site became a separate planning unit when the 1957 permission was implemented, I agree that a different activity took place to what was occurring on the remainder of the application site land in the ownership of the Titsey Estate Company. It was an industrial use and therefore functionally different but it was not physically separated from the rest of the land. It was only very recently that a fence and gates were erected and before that access into the site from the haul road was free and open. Vehicles transported sorted and washed sand directly to the site from elsewhere on the larger site although there was no connection between the companies involved.

30. Using the tests in *Burdle v SSE [1972] 3 All ER 240*, which were referred to by the appellant, it seems to me that there was a composite (mixed) use on the site rather than two separate planning units. Whilst there was functional separation there was no physical separation (the site being accessed directly off the track to Pits B and C) and neither activity (the mortar production and the sand extraction) was ancillary to the other.

31. Dealing with the other point made by the appellant concerning the planning unit, I do not agree that the implementation of the 1957 permission extinguished what was permitted in the 1949 permission; as set out above no separate planning unit was formed that would, in the appellant's submission, result in that. More importantly, using the appellant's own argument, a later permission has been granted (the 2001 permission on the 1998 ROMP application) that shows the land being restored to agricultural use once extraction has finished.

32. Here the ROMP permission is inconsistent with the 1957 permission but mineral operations continue on the basis of the 2001 permission and the owner has not yet had to decide between the two. Even if I am wrong regarding the planning unit and the appeal site is a separate planning unit, the owner can still carry out what is in that 2001 permission where it relates to the appeal site (it is to be restored and used for agricultural purposes) as he owns all the land.

33. In my view, there are, therefore, two planning permissions that co-exist on the appeal site; the 1957 permission to site plant and machinery there (to produce mortar) and the 2001 permission (on the 1998 application) to extract sand (even though the actual appeal site was not an area from which sand was likely to be extracted). As cited by the Council, Lord Scarman in *Pioneer Aggregates (UK) Ltd v SOS [985] 1 AC 132* said *'It is of course trite law that any number of planning permissions can validly co-exist for the development of the same land, even though they be mutually inconsistent …'*. The landowner is not precluded from implementing the most recent permission when he chooses to do so.

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Main Conclusions on Appeals B and C

34. In summary, from the evidence and submissions put forward, I conclude firstly, that the 1957 permission was for an operational development, not a material change of use of the land. Secondly, the only 'use' permitted was by virtue of the mortar mill being used for its intended purpose i.e., the equipment could be used for the production of mortar whilst it was on the appeal site. Thirdly, the appeal site did not become a separate planning unit but was part of a mixed or composite use of all of the land included in the 1949 permission (and later the 2001 permission); use for mineral extraction and use for mortar production. Fourthly, permission to site a mortar mill on the site ended in 2002 when what had been put there in 1957 was removed. Fifthly, the mortar mill put on the site in 2002 and the one put there in 2010 were unauthorised developments.

35. In these circumstances, whilst these five conclusions are matters of law, I consider that the decisions of the Council were well founded and both appeals will, therefore, be dismissed.

Other matters on Appeals B and C

36. Even if I am wrong in my conclusions set out above and, as the appellant claimed, (i) there was a permission for a General Industrial (Class B2) use of the site in 1957 (see para 28 above), and (ii) the site did become a separate planning unit at the time that permission was implemented, I still consider that the decisions were well founded. In my view the development would not have been lawful by virtue of being 'permitted development' not requiring planning permission, as submitted by the appellant.

37. The Council acknowledged that if the 1957 permission was for a use there had clearly been continuous use for the production of mortar (a Class B2 - General Industrial use) for in excess of ten years. It was also accepted that the use had not been abandoned even though the site was unused from 1995 to 2002.

38. The appellant submitted that in those circumstances the development would be lawful by virtue of Part 8, Class B of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO); that was the Statutory Instrument in force at the date of the LDC applications and issue of the enforcement notice. That 'Part' of the GPDO allows development carried out on industrial land for the purposes of an industrial process subject to a number of restrictions.

39. There are several restrictions that need to be satisfied in that respect. Firstly, the development permitted by Part 8, Class B does not apply to land 'in or adjacent to and occupied together with a mine'. Secondly, it is not permitted if it would materially affect the external appearance of the premises of the undertaking and thirdly, it is not permitted if it would exceed a height of 15 metres above ground level or the height of anything replaced whichever is the greater.

40. Regarding its location the appellant submitted that the appeal site was not located 'in or adjacent to a mine' as the only extraction taking place now was in Pit C some distance to the west of the appeal site. Further, it could not be 'in' a mine if it was a separate planning unit and it was not adjacent to one. The northern boundary adjoined the leased off site (that had been a tile works), the eastern side, that land's access, and the south west side boundary was formed

by the access road to Pits B and C. That access road is not a mine; that lies further to the west.

41. In cross examination and in answer to my questions the appellant's witness suggested that 'in a mine' or 'adjacent to a mine' should be understood to refer to areas that have a functional relationship with extraction from a mine and are right beside the area where extraction is taking place. In my view that is unrealistic bearing in mind that many extraction sites are widespread and the actual area from where any mineral is being extracted changes over the course of time; as has happened here.

42. As argued by the Council, if the appellant was right, it would require a detailed factual assessment of the internal workings of each mine or quarry on every single occasion that this question arose (which could be very often given that a B2 use without this limitation would otherwise include the getting, dressing or treatment of minerals) in order to determine whether a B2 use can be said to be capable of arising. It would render the red line around the application site of any minerals permission to be practically irrelevant. It also places the availability of B2 uses at the whim of operators and their decisions on the logistics and the operation of any given site rather than the supervision of the Council.

43. The proper interpretation, in my view, is that 'within a mine' is within the site area covered by the red line on the application and this site is within the area contained within the 2001 ROMP permission (and was within the 1949 site). In this instance even if the appeal site was a separate planning unit it is also still adjacent to that red line area which virtually surrounds it. Adjacent (which is not defined in the GPDO) is something that should be given its everyday meaning. That does not necessarily mean touching. Something that is close to or near to something else can be adjacent to it. This has been settled by the courts in considering first abutting and then adjacent as it applies in Part 2, Class A of the GPDO (whether a fence, wall or other means of enclosure is adjacent to a highway used by vehicular traffic). It is a matter of fact and degree and the circumstances pertaining to the case to be determined.

44. Looking at this site, only an access separates the eastern boundary of the appeal site from Pit A. The access track to Pit C adjoins the south western boundary and walking away from the appeal site going to the north west, one only has to go about 40 metres to be in Pit B which is still being used to process the sand extracted from Pit C. From what I saw at my visit I would describe the appeal site as adjacent to the mine both to the north west and to the east. The fact that a track is between the site and Pit A does not, from what I saw on site, mean it is not adjacent to Pit A and, therefore, the mine.

45. Again, if I am wrong on that and the site is not in or adjacent to the mine, there are still two restrictions that need to be satisfied before the development is permitted by Part 8 of the GPDO. The appellant submitted that it was first necessary to decide that the plant was operational development that required permission in order to decide if any replacement plant is permitted by Part 8.

46. In my view that is not correct. Class B2 refers to 'Development carried out on industrial land for the purposes of an industrial process consisting of - (a) the installation of additional or replacement plant and machinery …'.' In the GPDO 'development' can be either change of use or operational development as is evidenced in the various Parts in Schedule 2. In this particular Part the GPDO

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refers simply to installed; that could therefore be operational development as the Council claims siting the mortar mill on the site to be, or it could be a change of use, as the appellant claims. In either instance, therefore, I consider the requirements set out in Part 8, Class B then have to apply.

47. There are two requirements (as set out in para 39 above). Looking at the photographs produced by the Council, which show the previous mortar mill put on site in 2002 (a photograph taken in 2010 shortly before its removal) and the most recent one (put there in 2010) which was removed shortly before the LDC applications were submitted, the appellant cannot satisfy those requirements.

48. From the information put forward in evidence, the recent mortar mill and its associated silos far exceeded the height of what was there before even if the silos did not exceed 15 metres above ground level) thereby complying with that subsection). Further, the bulk and overall appearance of the mortar mill and tall silos is, in my view, materially different to what was there before. The external appearance of the site is, therefore, materially affected wherever one views it from with the equipment on the site appearing much larger, much taller, and covering more of the site area. Appeal B (for an existing use) therefore does not, in my view, meet the restrictions in Part 8, Class B.

49. On Appeal C (proposed lawful use) there was no actual scheme before the Inquiry. The appellant argued that any mortar plant that met the restrictions in Class B would be lawful and the limitations of the Class could be spelt out in the Certificate but that would the same as granting a certificate for an extension to a house and then listing all the various restrictions it would have to comply with. That will not suffice; the application must be specific enough for the decision maker to determine whether or not what is being applied for is lawful. In this instance that has not happened. If the intention was that the occupier who recently vacated the site would return then I have already concluded that his mortar mill would not be lawful.

Overall conclusions on the s195 appeals (Appeals B and C)

50. I have set out in paragraphs 34 and 35 my conclusions on what I consider is the position on these appeals. In paragraphs 36 to 49 above I have set out what I consider is the position if those earlier conclusions are incorrect in law and the appellant is correct (that permission was granted for a use or a use may have become lawful over time). For the reasons set out in paragraphs 36 to 49 I conclude that, in these alternative circumstances, the Council's decisions were well founded and I shall dismiss these appeals.

The s174 appeal (Appeal A)

The appeal on Ground (c)

51. The appeal on this ground is concerned with some concrete surfacing and several means of enclosure at the site (as set out A to F in the corrected Notice and plan). The appellant submitted several arguments on ground (c), some in the alternative to others. Firstly, if there was a lawful general industrial use (Class B2) of the site then the works carried out were permitted development as minor operations within Part 8.

52. Secondly, any Part 8 'building' would by definition the include walls and bays and would be lawful if the use was. Thirdly, what had been carried out was just part and parcel, and therefore incidental to, the use (it was accepted that

they could, therefore, be required to be removed if the use was found to be unlawful). Fourthly, it was also submitted in closing that all the means of enclosure were permitted under Part 2, Class A of the GPDO. This part lists a number of minor developments that can be carried out on all sites.

53. The appeal is on this ground is against all the elements set out in the corrected Notice:- the concrete walling; the fencing/gates; the storage bays; the concrete bays; and the concrete surfacing (shown as A to F on the corrected Notice plan). I will deal with the concrete surfacing separately as there was a claim that it was simply 'repairs' and not 'development' at all.

54. Regarding the four reasons/submissions as to how and why these six matters were permitted development I have already concluded that there is not a lawful use of the site for a general industrial use in refusing the LDC appeals and there is no right, therefore, to any permitted development rights that might arise from Part 8 of the GPDO. There is no right in any event to minor operations set out anywhere in Part 8 that would include these items (A to F).

55. The second claim that all the structures (other than the concrete surfacing) were part of a building would fail for the same reason – it's not a separate planning unit with a general industrial use on it (and in addition what is on site, by definition, would not be a building) as would the claim that everything was part and parcel of the change of use.

56. I will deal with Part 2 rights separately for each element. They are all means of enclosure, some around the perimeter of the site (D and F) and others enclosing areas to store material (A, B and C). Those labelled A, B and C on the corrected plan were open at one end but I am satisfied that they should be considered as a means of enclosure.

Concrete surfacing (Item E on the Notice Plan)

57. The appellant, in support of his claim that what took place was simply works of repair to an existing surface rather than 'development', stated that the activity could not have taken place in the past unless there had been a good hard surface area to support the mortar mill itself and the heavy vehicles delivering sand and collecting mortar from the site. As with the LDC appeals, the onus is on the appellant on a ground (c) appeal to prove his case.

58. The evidence regarding repair was based upon an email to the appellant's witness dated 4 November 2014 from a Mr Pearson who worked for Marshalls Mono. He stated that the main concrete foundation on which the mortar mill stood was basically there and was about one metre thick. The areas around the rest of the site were in varying condition and quality and needed to be improved to enable the use to operate.

59. It was therefore improved as necessary with patches of fresh concrete where necessary and this took place from 6 September 2010 onwards with the work completed by 27 September 2010. However, no more detail than that was given and Mr Pearson was not produced as a witness to answer questions about what he said or the Council's contradictory evidence.

60. The Council's photographs (on which the dates could be shown) provided contradictory evidence. There were photographs from 2003, 2004, 2005, 2008, 2009 and 2010 and whilst there is sand and earth masking what could be underneath in some parts of the later photographs it is clear from those in

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2003 and 2004 that there was very little in the way of a concreted surface at the site. It was also clear that what existed was made up of several small areas rather than the one large area that is there now.

61. The Council's dated photograph of 16 September 2010 also shows that the Marshalls Mono mill was not on site at the dates claimed by Mr Pearson and indeed the site had not even been cleared of much of what had been there previously. From the evidence presented I do not agree that the concrete surfacing was simply repairs; it was the formation of a new concrete surface over a large part of the site; it was development requiring permission.

62. The other five elements need to be considered against Part 2 of the GPDO as this was the fourth reason claimed by the appellant that the ground(c) appeal should succeed.

Storage bays (Items A and B)

63. Whilst it was submitted in closing that nothing was over two metres in height, the appellant's witness in his proof of evidence admitted that the bays consisting of upright steel joists and walls formed by sliding in railway sleepers (A and B) were over 2 metres in height and it was clear at the site inspection that they were over the height limit.

Concrete storage bays (Item C)

64. These bays were only about a metre in height and would satisfy the restrictions set out in Part 2, Class A of the GPDO.

Perimeter fencing/gates (Item D) and low wall (Item F)

65. The perimeter fence/gates and low wall just inside the fence on the east boundary by the entrance gates would also satisfy the restrictions set out in Part 2, Class A.

66. The Council argued for two reasons that the appeal on Ground (c) should be dismissed for items A – D and F even if it appeared that they satisfied the restrictions in Part 2, Class A of the GPDO. Firstly, they were part and parcel and an integral part of the unauthorised development that took place on the site towards the end of 2010 – the installation of the mixed mortar plant. As such they should be removed along with the mortar mill in order to remedy the breach of planning control.

67. Secondly, condition 16 of the ROMP permission (2001) states that whilst the GPDO sets out certain developments that are permitted within a mine or on ancillary mining land, that permitted development is removed by the condition and permission has to be obtained from the Council.

68. In my view none of these structures (A, B, C, D and F) were part and parcel of the development (i.e., the installation of the mortar plant). Clearly the storage bays kept the piles of sand and other loose material used in some form of order and the boundary fences/gates and walls kept the site secure. However I do not agree that they were essential (previous operators of the mortar mill had nothing around the site in the way of fences and gates) to the development.

69. Turning to condition 16, the Notice was issued within 10 years of the apparent breaches having occurred. However, the condition in my view is specific to

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Part 19 of the GPDO and cannot, therefore, preclude anything that is permitted development under Part 2.

Conclusions on Ground (c)

70. In summary the storage bays (A and B) are over the two metre height limit and the appeal fails. The concrete surfacing (E) is not permitted under Part 8 or any other Part of the GPDO and the appeal fails. The concrete storage bays (C), the perimeter fencing/gates (D) and the low wall (F) are permitted under Part 2, Class A and to that limited extent the appeal succeeds and I shall very the requirements accordingly.

The appeal on Ground (d)

71. This appeal relates only to the concrete surfacing. The onus of proof on ground (d) – as with ground (c) – is on the appellant. The case relied solely on the 4 November 2014 email from Mr Pearson of Marshalls Mono which stated that what he called the repair works were completed on 27 September 2010 (which is four years and three days before the Notice was issued).

72. The Council produced photographs from 16 September 2010 and 24 November 2010 which can only be interpreted as confirming that Mr Pearson must have been mistaken in his recollections of what happened on site at the end of 2010. These photograph dates were verified by the Council from entries on its records system.

73. In the September photographs no work has commenced on clearing the site at all of all the old bits of infrastructure that was there previously or the piles of pallets, sand and other rubbish. In the November photographs the boards at the edge of the concrete surface (including the upright sticks hold them in place), the levelling boards for smoothing the surface of the 'liquid' concrete and other equipment used to lay the concrete are all there as are men who appear to be working on the surfacing.

74. From the evidence put before me, I do not consider the appellant has shown on the balance of probability, that, the work was substantially completed more than four years prior to the issue of the Notice and the appeal on this ground therefore fails.

The appeal on Ground (f)

75. The appeal on this ground relates to all elements set out in the allegation and the storage bays (A and B) and concrete surfacing (E) remain to be considered after determining the appeal on ground (c).

76. The storage bays are constructed in such a way that reducing them to no more than two metres in height is a simple exercise; an angle grinder could reduce the height of the steel joists and then sleepers dropped in to make the walls should be reduced so that the structure does not exceed two metres in height. Whilst the Council has stated that the Notice was served to remedy the breach the appellant has a fall-back position under Part 2 of the GPDO and could re-erect the bays so that they were within the height limits. In those circumstances I agree that the requirement to remove them completely is excessive and to this limited extent the appeal on ground (f) succeeds and I will vary the Notice accordingly.

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77. The concrete surfacing that was put there at the end of 2010 should be removed. I acknowledge that in these circumstances there is always a problem in knowing precisely what was there before the unauthorised works were undertaken but there is photographic help in this instance and there may be more photographs that were not put before the Inquiry to aid further in resolving how much of the concrete surfacing was already there.

78. This is not unusual in such cases and it will be a matter for the parties to agree. Clearly the Notice cannot require the appellant to remove any surfacing that was lawful. Whilst there was no appeal on ground (g) and it was not discussed at the Inquiry I consider that the extra time set out in the requirements (16 weeks rather than the 8 weeks set down for compliance with all other matters) regarding the removal of the concrete surfacing is adequate to enable that agreement to be reached.

79. As the Council stated in its evidence the purpose of the Notice is to remedy the breach and remove these structures from a site that lies within the Metropolitan Green Belt, the Surrey Hills Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value (AGLV).

80. Whilst I agree that it is not open to me to reduce the requirements as if I was just remedying the injury to amenity and permitting lesser steps, the variations I have made regarding the storage bays (A and B) are simply reflective of the fall-back position that exists and the fact that under Part 2 the means of enclosure could be re-erected up to two metres in height. The appeal on this ground, therefore, succeeds to the limited extent set out in paragraph 76 above.

Formal Decisions

Appeal A: App/B3600/C/14/3000220

81. I direct that the enforcement notice be corrected as follows:

(a) by deleting the words 'shown edged red on the attached plan' in paragraph 2 and substituting therefor the words 'edged red and annotated A to F on the plan attached to this decision';

(b) by deleting the words in paragraph 3 and substituting therefor 'Without planning permission the construction of a concrete surface, hatched black and marked as (E); and the erection of fencing including gates (F), storage bays (A) and (B), concrete bays (C), and concrete walling (D) (formerly used in connection with a mortar plant since removed) in the approximate positions marked A to F on the Plan attached to this decision'.

I also direct that the enforcement notice be varied as follows:

(a) by deleting the words in paragraph 5(i) and substituting therefor the words 'Reduce the height of the storage bays (A and B) so that they do not exceed two metres in height' and

(b) by deleting the words in paragraph5(ii) and substituting therefore the words 'remove the concrete surfacing to restore the land to it condition prior to the concreting works carried out at the end of 2010.'

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

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Appeal B: APP/B3600/X/14/3000386

82. The appeal is dismissed.

Appeal C: APP/B3600/X/14/3000387

83. The appeal is dismissed.

D E Morden
INSPECTOR

The Planning Inspectorate

Annex to Appeal Decision - Corrected Plan

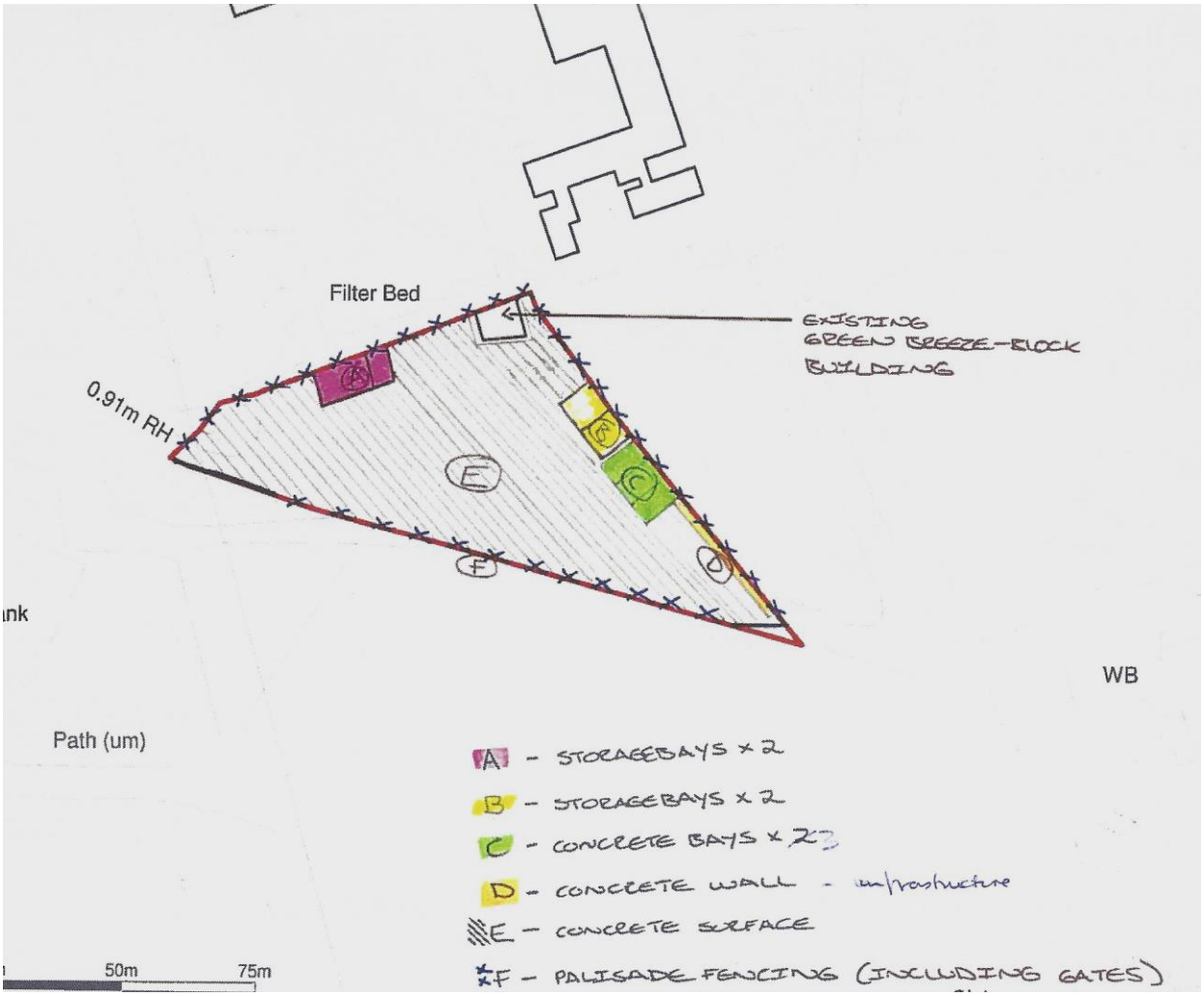
This is the plan referred to in my decision dated: 27 January 2016

by D E Morden MRTPI

Land at Moorhouse Sandpits, Westerham Road, Limpsfield, Surrey,TN16 2ET

Reference: APP/B3600/C/14/3000220

Scale: Not to scale



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APPEARANCES

FOR THE APPELLANT:

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He called	
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FOR THE LOCAL PLANNING AUTHORITY:

Mr S Stemp	Counsel, instructed by Head of Legal Services, Surrey County Council
He called	
Mr D Lees BA(Hons) MSc LMRTPI	Senior Planning Officer, Surrey County Council

DOCUMENTS

1 Corrected Enforcement Notice Plan and photographs of the elements listed.
2 Court of Appeal judgement – Jennings Motors v SSE & another
3 High Court judgement – Panton & Farmer v SSE and Vale of White Horse DC
4 House of Lords judgement – Pioneer Aggregates v SSE & others

PLANS

A A3 copy of corrected Enforcement Notice Plan
B Appellant's composite site plan
C Inspector's bundle of A3 size, 1:10,000 scale plans showing applications history
D Appellant's larger scale site plan

PHOTOGRAPHS

1 Council's bundle of site photographs 2003 – 2010
2 Inspector's bundle of photographs from site inspection
3 Council's copy of photographs attached to corrected Enforcement Notice

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