

STRATFORD-ON-AVON DISTRICT COUNCIL

**PUBLIC INQUIRY
Commencing 03 September 2024**

**PROOF OF EVIDENCE OF
Matthew Coyne, BA (Hons), MSc (Spatial Planning), PGDip (Urban Design), MRTPI**

Appeal ref: APP/J3720/C/24/3342067 & APP/J3720/C/24/3342068

LPA ref: 23/00058/DESB0C

Appellants: Mr J Clayton-Wright & Mrs D Clayton-Wright

Location: Longfield, Poolhead Lane, Tanworth-In-Arden, Solihull, B94 5ED

Date
of Inquiry: 3rd and 4th September 2024.

1. INTRODUCTION

- 1.1 My name is Matthew Coyne and I hold a BA (Hons) in Geography, a MSc in Spatial Planning and a Post Graduate Diploma in Urban Design. I am also a member of the Royal Town Planning Institute and I have been a Chartered Town Planner since 2018. I am currently a Senior Planner in the Enforcement Team at Stratford on Avon District Council. I have worked for as a local government officer for 11 years and I have worked at three different Local Planning Authorities.
- 1.2 I confirm that the evidence, which I have prepared and set out in this Proof of Evidence ('PoE'), are my true and professional opinions.

2. SITE DESCRIPTION AND CONTEXT

- 2.1 The site's description and constraints is included in the Council's Decision to Take Action report ('DTA') – previously included with the Council's Statement of Case ('SoC') and at **APPENDIX 1**. The agreed wording is also to be contained within the Statement of Common Ground ('SoCG').

3. PLANNING AND ENFORCEMENT HISTORY OF THE SITE

- 3.1 A summary of the relevant planning and enforcement history of the site is included within the Council's DTA report (**APPENDIX 1** of SoC and Section 3 of the SoC). This is to be agreed within the SoCG.

4. PLANNING POLICIES & GUIDANCE

- 4.1 A summary of the development plan and the relevant policies are also included within the DTA report referred to in Sections 2 and 3. The full list of policies are to be agreed in the SoCG.

5. THE CASE FOR THE LOCAL PLANNING AUTHORITY

Clarity of Notice

- 5.1 It is first worth addressing a preliminary issue raised by the Inspector in a 7 May 2024 email (and later at the Case Management Conference - 'CMC'): whether the breach set out as "*Material change of use of Land to a business use*" is clear enough.
- 5.2 The Council's primary position is that the current wording is sufficient. The question is whether the Notice tells the Appellants 'fairly what they have done wrong and what they must do to remedy it' (using the terminology of *LJ Upjohn in Miller-Mead v Minister for Housing and Local Government [1963] 2 QB 196*).
- 5.3 It is also important to bear in mind that the Appellants will be best placed to know what they have done (as they introduced the business use to the Land) and what business use the Notice is concerned with.
- 5.4 It is also the case that there is only one business use occurring at the Site, and the nature of the unauthorised business use is clearly known to the Appellant - as in the Appellant's 14 May 2024 email they recognise "The business involves management solutions for the health and fitness industry". Furthermore, the 2023 Planning Contravention Notice (PCN) response dated 18.08.2023 (referred to later in this PoE – attached at **APPENDIX 2**) confirms that there is now a business use at the site (question 5); and that there is a business (singular) operating from the site, as well as the nature of this business (Question 6). The PCN response describes this as one business for management solutions for the health and fitness industry. As such, both the Council and the Appellant has a clear understanding as to the nature of the business and what the Notice is referring to.
- 5.5 In that context, the Notice clearly tells the Appellants that it is concerned with the sole business use occurring within the Land and it requires that business use to cease. The Appellant has confirmed in correspondence that they recognise the relevant business use is the Appellant's business for "management solutions for the health and fitness industry".

- 5.6 The Council's primary stance is therefore that the Notice is neither a nullity (although this was not suggested by the Inspector) nor invalid as currently drafted.
- 5.7 Alternatively, even if it were a concern of the Inspector, then it could be corrected to specify further the particular type of business that is being operated. This would cause no injustice to the Appellant as it would just be making the Notice better reflect their case on the nature of the business, and there is no additional point/argument which the Appellant has been robbed of making because of the previous drafting. The Appellant has pleaded a wide range of grounds arguing for a lawfulness of the business use already.
- 5.8 The Council notes the Inspector's further concern, that any permission under Ground a) would allow for a plethora of businesses uses, but it is not considered that this concern is merited. Firstly, the issue would not arise if the non-injustice causing correction were made. Secondly, if not corrected, then the specific nature of the business use could be controlled by condition. Thirdly, the Inspector's power to grant permission under s.177 (1) is to "*grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters*" and so would allow the Inspector to grant permission for a specific business use rather than a general one.
- 5.9 The Inspector would therefore have several options open to them to avoid granting an unrestricted general business use permission.

Whether there would be any prejudice by a variation to the notice

- 5.10 At the CMC, the Inspector raised particular concern as to whether third parties would be prejudiced by the Inspector correcting the notice to relate to a specific business use and whether the third parties would be aggrieved by this. The Council maintains that any third parties would not be prejudice by the notice being drafted in this way.
- 5.11 In regard to the above, it is first worth noting that, whilst the notice is general in its reference to the 'business use', it is all-encompassing - meaning that third parties would have provided comments on any planning issues which may arise from a

business use. This would allow them to consider the 'worst-case' scenario when submitting their comments.

- 5.12 The second point, which is worth noting, is that third parties which are currently aware of the breach of control are aware of the type of activity currently operating and any impacts arising as a result of that breach. Accordingly, they are able to make comments on any planning issues which they consider are arising as a result of the unauthorised business use.
- 5.13 A total of 10 neighbouring properties were notified of the enforcement appeal. However, the Council notes that only 1 formal comment was received by the Planning Inspectorate. This refers to concerns that, as the business continues to grow, the extensions will continue with no apparent control. Concerns were also raised that if the current owners sell, this could become any sort of business. Accordingly, this third party is evidently clear on the current nature of the business and has not been deprived of making any specific comments in regard to this.
- 5.14 As such, the third parties have not been deprived from making comments about the unauthorised business use.

Nature of the business use

- 5.15 Further to the aforementioned points and specifically in relation to the Inspector's concerns that any permission under a ground (a) appeal, would allow for a plethora of businesses uses, it is worth raising, at this stage, that the nature of the business use at the site has changed significantly in recent years. As detailed in this PoE the site originally contained a small building which was converted into a small office – the appellants alleged that this was for 'homeworking' – the use has now expanded into at least 4 significant buildings and employs in excess of 50 employees, for management solutions for the fitness industry. In the 2023 PCN Response (as detailed in this PoE) there has been the introduction of a workshop/store. Accordingly, the scope of the business has evolved over time and therefore, to avoid missing elements of the appellants business, it is appropriate to refer to this as a 'business use' as the most appropriate term for the unauthorised use that is occurring on the Site.

- 5.16 For these reasons, the Council do not believe it would be appropriate to withdraw the Notice and instead believe the Notice is valid, and even if invalid can be corrected without injustice.

Response to **Ground 'b' appeal** - *That those matters have not occurred*

- 5.17 The Appellant's case in relation to Ground b) only relates to the first alleged breach; the material change of use to a business use.
- 5.18 Paragraph 4.19 of the Appellant's SoC states that the Notice defines the site as a separate planning unit. However, this is not the case. The red line on the EN is there to define the land in which the notice relates and to the alleged breach. It is not required to encompass the whole of the planning unit. As set out in the Councils SoC, the purpose of the red line is to identify the 'land to which the notice relates'¹ and the red line correctly identifies where the Council believe that there has been an unauthorised material change of use to a business use.
- 5.19 Paragraph 4.20 of the Appellant's SoC states that the land has formed part of the garden of Longfield since 1937. This is, however, contradicted by the PCN response (dated 12.12.2008 – **APPENDIX 3**) which states that the land was first used as garden in 1968. The 2008 PCN also states that in the last 10 years the site has been used for domestic recreational activities. This further contradicts Paragraph 4.20 which states that Longfield has been in a continuous mixed use since 2008 – the PCN suggesting it was residential in 2008.
- 5.20 The enforcement history and the responses to investigations by officers (either in person or via PCN responses) shows that the use of the land to the rear of Longfield has materially changed over time. The evidence in this Section will show that the use for business purposes has intensified over time resulting in a material change of use. To fully understand the situation at the site, it is considered necessary to provide a summary of the enforcement and planning history and any relevant evidence from those cases.

¹ That meets the requirement of Reg 4 of Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

2006 Enforcement File (06/00470/PR2ENF)

- 5.21 On 10.08.2006 the Council received a complaint regarding an alleged business operation being carried out from a domestic property (the appeal site, known as Longfield). On 18.09.2006 the Enforcement Officer visited the site and spoke with the owner. At that time, the Enforcement Officer found no evidence of a business use. In response to querying the number of vehicles being parked on land to rear, the owner advised the officer that they had a cleaner and housekeeper and that there were two landscape gardeners planting trees on the site. The case was subsequently closed on 20.09.2006 due to lack of evidence of business use (**APPENDIX 4** for Officer Notes).

2007 Enforcement File (07/00510/PR2ENF)

- 5.22 On 10.09.2007 a further complaint was received regarding a building to the rear of the property and concerns that the land was being used as garden. A Planning Contravention Notice (PCN) was served on the owners on 9 January 2008 and a response was received on 17.01.2008 (Copy attached at **APPENDIX 5**).
- 5.23 In the PCN the alleged breach was described as 'without planning permission the incorporation of the land hatched on the attached plan into the domestic curtilage of Longfield...'
- 5.24 Of note, Question 4 of the aforementioned PCN required details of the use of the land to the rear of the property. The response indicated that this was 'garden' and, in response to question 5, states that it 'has always been garden'. Question 8 further advises that the activities taking place on that land are 'used as garden/wildflower area'.
- 5.25 At no point was any evidence provided, nor any indication given, that this was being used for business purposes.
- 5.26 At the time, the Council disputed that the land had been used for a garden for in excess of 10 years and therefore recommended that, if the owners disagreed, to submit a lawful development certificate.

2008 Enforcement File (08/00005/PR2ENF)

- 5.27 An enforcement case was opened in January 2008 following further complaints regarding concerns of a business use at the premises. A second PCN was served on the appellants on 09.01.2008 (the same date as the PCN for the aforementioned 2007 enforcement case). The alleged breach being, 'without planning permission the change of use of a domestic residence to a mixed domestic and business use'. The red line for the plan attached to the PCN included all the land which is the subject of the Notice and also land associated with the dwelling.
- 5.28 Of note, Question 4 asked when the business use commenced at the site. The appellants responded with 'no business use'. Question 5 also asked for the names of all persons involved with the business use. The appellants responded with 'none'. A copy of the completed PCN is at **APPENDIX 6**.
- 5.29 At no point was any evidence provided, nor any indication given, that the appeal site was being used for business purposes. The enforcement case was therefore closed based on the PCN response provided.

2009 Lawful Development Certificate (09/00691/LDE)

- 5.30 Following communication between the enforcement officer and Agent acting for owner at that time, the Appellants submitted a lawful development certificate application for the land to the rear of Longfield (09/00691/LDE). The application was submitted by a Planning Agent (a 'Chartered Town Planner' - MRTPI) and was received by the Council on 02.04.2009.
- 5.31 The application form states that the application seeks confirmation that an 'existing use' is lawful and that the nature of that use is 'use of land as domestic garden'. The form states that the use occurred more than 10 years before the date of the application (the form stating 1986). A copy of the Application Form is at **APPENDIX 7**. This 1986 date directly contradicts the 1937 date now suggested in paragraph 4.20 of the appellants SoC.

- 5.32 Alongside the application form was a covering letter (dated April 2009). This includes more useful information, such as Paragraph 2.2 - which states that in the mid-1990s a garage was built on the land and that for 'more than 10 years the garage and hard standing has contributed to the domestication of the land at the rear of Longfield'. It also includes two signed affidavits (from Shane Chapman and Robert Burman) claiming that all of the land is residential garden. A copy of the Planning Statement is included at **APPENDIX 8**.
- 5.33 The Planning Officer dealing with the lawful development application carried out a site visit on 08.05.2009 and noted that the access leads direct to a large 2 bay garage. It also provided access to a small paddock area to the rear of the property Pool Bank (shared). He goes on to note that the land to the rear of the property is highly maintained curtilage, but the land to the rear (the subject of this appeal), is less maintained, although grass had been mowed short in areas. The land to the south appeared more like an orchard and was less well maintained. There was some evidence of the land (the subject of this appeal), being used as a children's outdoor play area (rugby posts, cricket nets and a zip wire). A small selection of the photos from the Officer's site visit are included at **APPENDIX 9**. These photos clearly do not show any business activity on the appeal site at this time and the Officer makes no reference to observing any business use on their Site visit. The photos do, however, show a garage building and also a limited area of hardstanding. This development is also referred to later in this PoE.
- 5.34 There was no mention in any of the supporting evidence of any business use operating from the land which was the subject of that application. A copy of the site notes are at **APPENDIX 10**.
- 5.35 The Planning Officer considered that, on the balance of probabilities, the land in question had not been used as a garden for in excess of 10 years and the application was refused. A copy of the Officer's report is at **APPENDIX 11** and the Decision is at **APPENDIX 12**.
- 5.36 The owner did not appeal the refusal of the LDE application and was advised that any domestic use of the land should cease. The owner was also invited to enter into a legal agreement to limit the use of the land but no such agreement was reached.

Report Dated 22.8.2012

- 5.37 In 2012 a Senior Planner in the enforcement team carried out an assessment of the issues at the site. The Planner viewed the site from the footpath to the rear (on 25.07.12) and noted that the majority of the site had been planted with trees and long grass. It was considered at that time, that there had not been a material change from the lawful undeveloped agricultural use. The smaller area of land (identified as area B on the plan attached to the report)), contained a garage and an area of hardstanding which appeared domestic in character. A copy of this assessment is at **APPENDIX 13**.

2012 Enforcement File (12/00613/COUENF)

- 5.38 On 3.12.2012 a further enforcement complaint was received alleging that a business use was occurring at the site.
- 5.39 The Enforcement Officer visited the site on 07.02.2013 and spoke with the owner, Mr Clayton-Wright, who confirmed that he does work from home, but does not run a business with employees from the address. The appellant advised that the vehicles to the rear were in relation to landscapers who were working on the property. A further visit on 15 March 20213 noted approximately 8 vehicles at the front of the dwelling. The owner during that visit advised that the vehicles were there as there was coffee morning at the property. There was no further evidence of any business use operating at that time, so the enforcement case was closed. A copy of the Officer's notes are included at **APPENDIX 14**.

Planning Enforcement File (15/00075/HHENF)

- 5.40 A complaint was received in January 2015 about the use of land to rear and various structures on the land. On 12.02.2015 the Enforcement Officer visited the site and viewed from the railway path to the rear. It was noted that there was a new building.
- 5.41 The Officer's site note (attached as **APPENDIX 15**) identifies a 'large new breeze block construction' building – building B of the Notice. The reference to 'breeze block' construction is key as this indicates its unfinished appearance (that coupled with the Officer suggesting it appeared 'new'). To further support this, there is an email from

the Enforcement Officer to the Ward Member advising that 'currently, an outbuilding is under construction within area A' (albeit that he mistakenly referred to Area A, instead of Area B on the plan attached to the report dated 2012 – **APPENDIX 13**) – this being building B of the Notice and shows that it was not yet complete. The email goes on to state that the owner's intention was to use it as a workshop and garage, which the owner considered to be permitted development (**APPENDIX 16**). Building B is explained in more detail under Ground d) appeal.

- 5.42 The Officer's notes detail a telephone call with Mrs D Clayton-Wright, on 9 March 2015, state she and her husband were directors of a company which operated from elsewhere (and that it did not operate from this site). Information on the Company is referred to later in this PoE.
- 5.43 During that telephone call Mrs Clayton-Wright also advised that she had a large family and employs home helps and holds coffee mornings – she claimed that the cars were from these people.
- 5.44 At that time the Appellant (John Clayton-Wright) claimed that the new unauthorised building (in the position identified as B on the Plan attached to the Notice) was a garage/workshop and 'permitted development'. However, as the land did not have a lawful use as garden at that stage there would not have been any permitted development rights under Class E of the GPDO for the land where this building was erected.

2019 Enforcement File (19/00283/DESOP)

- 5.45 An enforcement case was opened in June 2019 after reports of a large outbuilding and business use from the site. On 2 July 2019 an Enforcement Officer attempted to visit the site but was refused access onto the site. A copy of the notes made by the officer are attached as **APPENDIX 17**.
- 5.46 As officers could not inspect the building a PCN was issued on 4 July 2019 to obtain more information about the building and the use of the land. The Plan attached to the PCN identified the land to the rear of the dwelling and also the access drive. The owner confirmed that the building was being used in connection with a family run business

(2019 PCN Response attached at **APPENDIX 18**). This is the first record of the owner/appellant claiming/admitting to a business use from the site.

- 5.47 The owner claims that his 'family run business' has been operating from Longfield (including land to the rear) since 2004 when the site was purchased. The response to Question 9, of the 2019 PCN, identified 14 people employed including 8 family members. This clearly conflicts with responses provided to earlier Planning Contravention Notices in 2008 and also enforcement enquiries dating back to 2006 and continuing through to 2015 where the owner denied any business use of land at Longfield (including land to the rear).
- 5.48 In response to Question 3 of the PCN the owner states that the building identified on the plan was substantially completed in March 2014. This building is Building B on the plan attached to the Enforcement Notice. Officers' notes of observations in 2015 suggest that the building was not complete when the visits in 2015 were made. However, on the side of caution and to avoid any risk of immunity the Council has used the March 2014 date given as the relevant date.
- 5.49 It is also relevant, at this stage, to refer to communication between the Council and the solicitor acting for appellant in late 2019 which queries the business activities on the land and the response provided to the PCN (see emails 7/10/19, 24/10/19 & 29/10/19 (at **APPENDIX 19**). These issues were never clarified and resulted in lengthy communication with Council about the Subject Access Request.

2023 Enforcement File (23/00058/DESB0C)

- 5.50 In 2023 complaints were received that a further building was being erected. As no access was given to officers (despite requests from officers – see **APPENDIX 20**) a further PCN was issued to the appellant on 01.08.2023, to obtain more information about the new building that was being erected. This alleges 'without planning permission the erection of a new building' (Building C of the Enforcement Notice). A response was received from the Appellant (John Clayton-Wright) on 18.08.2023 (**APPENDIX 2**).

- 5.51 The PCN response states that the building was erected in 2005, despite no evidence of this building previously existing on any of the enforcement or planning files. The PCN states that in 2022 subsequent 'repairs' were carried out including installation of a new roof. It also states that the building is to be used as a workshop/store. As photos (attached as **APPENDIX 21**) show a metal frame and not a complete building, the owner's solicitor was asked to clarify the response to certain questions (see correspondence dated 31.08.2023 and 6 November 2023 previously included at **APPENDIX 20**) as the comments made seemed to relate to Building B and not the new Building.
- 5.52 The PCN response claims that the site has been used for 'residential and business purposes since the mid 1990's' and has been 'continued since the purchase of the property at Longfield in June 2004'. Whilst this response is similar to that made in the 2019 PCN response, the response clearly contradicts all the information given during previous enquiries and site visits and also the response to the 2008 PCNs and 2009 LDE evidence). A copy of this PCN response is at **APPENDIX 2**.
- 5.53 Two drone images were received by the Council in 2023.
- 5.54 The first is dated February 2023 (previously attached at **APPENDIX 21**) and shows buildings A and B in situ (building A appearing as open fronted on the left side; Building B having grey walls (appearing as though they clad – this being consistent with Officer Photos from 29.02.2024 – **APPENDIX 39**), enclosing a centralised parking area which extends to the rear of the site. In addition, buildings C and E appear to be of partial construction – red metal frames with concrete bases. A new area of hardstanding has also been created linking the hardstanding that was present in 2009 to another new building at the site (Building C).
- 5.55 The second drone photo is dated July 2023 (attached at **APPENDIX 22**). This shows Buildings C and E now appearing as substantially complete. It also shows that Building A has been altered with a section in the middle having no roof or walls where there previously had been. Building E has also been linked to Building B. In addition, a further new oval shaped building has been erected to the south of Building B. This development was not included in the Notice but as it is clearly operational development

erected less than 4 years ago the Council will review and deal with this matter upon the determination of this current appeal.

- 5.56 As set out previously, the appellant claimed to own a company known as AMSL and that they were operating from elsewhere (see correspondence from the Appellant's Solicitor dated 24.10.2019 – attached at **APPENDIX 23**). At that time AMSL had an address at Blythe Valley Park and this remains the case in 2023/24 (See **APPENDIX 24**). Although the footer of an email dated 22.02.23, from the owner, now also lists two other business addresses – one in Dublin, Ireland and one in Amsterdam, Netherlands (See **APPENDIX 25**).
- 5.57 The above brings into question the legitimacy of the appellants claims throughout the enforcement investigations, particularly regarding the use of the site and whether AMSL has been operating from the Appeal site for in excess of 10 years. Nevertheless, on the basis of the available evidence, the Council is satisfied that AMSL is now, to some extent, operating from the appeal site and to a sufficient degree which has resulted in a material change of use of the land. Additional information on the directors of the company is included later in this PoE

Whether there has been a material change of use

- 5.58 A detailed analysis of the enforcement history has been provided above and records suggests that if there was any business use when the owners first bought the property in 2004, this would have been considered to be 'home working' (ancillary to the residential use of the dwelling and most likely occurring from the dwellinghouse itself) and not a material change of use. The home working was also referred to in the 2013 site visit notes (**APPENDIX 14**) and 2019 emails (**APPENDIX 19**). However, the evidence shows that the scale, nature and location of the business use has changed and intensified in the last ten years resulting in a material change of use.
- 5.59 The appellants SoC suggests that Longfield has been in a continuous mixed use as part of the Appellants' business and residence since 2008. It goes on to state that the 'Appeal site includes elements of the residential and business use'. However, this conflicts with all the evidence previously provided in the PCN responses prior to 2019.

- 5.60 The business use is now clearly operating from land and buildings to the rear of the dwelling. Based on photographs taken by the case officer for LDE in 2009, the former garage building has now been significantly altered or rebuilt to provide a building used for business use rather than for any domestic purposes. It is also unclear from the PCN responses when the second building was completed but the earliest date would be March 2014 if the PCN response dated 2019 can be relied on.
- 5.61 Recent Aerial images show a high level of parking in the existing and extended areas of hardstanding. This is also evidence of how the scale of any activity has increased on the land to rear.
- 5.62 The parking of vehicles on land to be rear (which the owner always said was not for any business use) is now materially different and clearly linked to the unauthorised business use.
- 5.63 Prior to investigations in 2019 there was never any evidence that the land to rear was being used for business purposes. According to Revenues no Business Rates have ever been paid for any business use of the premises. The 2019 PCN refers to a family run business. However, in the Appellant's grounds of appeal form and in paragraph 2.5 of their SoC they now refer to 51 employees. This is not a business solely run by the family and amounts to significant intensification from 2019.
- 5.64 There has, therefore, been a material change of use of the Land to a business use within the last ten years which is a breach of planning control. The business use is occurring in a clearly distinct part of the Site which is the subject of the red line on the Notice.
- 5.65 In addition to the change of use referred to at the beginning of this report there has also been operational development in the form of four buildings (A, B, C and E shown on the Plan attached to the Notice) and an extended area of hardstanding (hatched in black and labelled 'D' on the Plan).
- 5.66 Buildings C and E and the hardstanding were erected/laid down within the last four years and are therefore not immune from enforcement.

- 5.67 Buildings A and B were first erected over four years ago but, as explained, they have both been significantly altered since first erected. They are also part and parcel of the unauthorised material change of use.
- 5.68 As a matter of fact, the alleged business use has clearly occurred at the Land (and the Appellant does not seem to dispute this). The Appellant's case under Ground B) is that the use within the red line should be considered to be a mixed residential/business use rather than a sole business use. The Council disagrees – the nature of the use when the Notice was issued was a sole business use occurring in a distinct part of the Site without sufficient elements of residential use to make the red line area a mixed use. Even if it were a mixed use, such a finding should not mean that the Ground B) succeeds – there is still an unauthorised business use occurring on the Site. It would just result in the Notice being varied to address the mixed use with a requirement that the business use ceases – there would be no injustice or prejudice to the Appellant.
- 5.69 The Ground b) appeal cannot succeed.

Response to **Ground 'd' appeal** - *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*

- 5.70 The erection of buildings B, C and E and extensions/alterations to building A, together with the creation of the extended area of hardstanding (D) comprises operational development which constitutes 'development' as defined by Section 55 of the Town and Country Planning Act, for which planning permission is required.
- 5.71 Paragraph 4.23 of the Appellant's SoC acknowledges that there is no planning permission for the development of the Appeal site.
- 5.72 At Paragraph 4.25 of the Appellant SoC it goes on to state that the business use already existing and therefore the operational development was not part and parcel with that use. However, as discussed above, the appellants previously claimed (in a Planning Contravention Responses) that there was no business operating from the site and that there was only some element of homeworking. It is only within more recent PCN

responses (from 2023), that the Appellant now claims that the business use has been operating in excess of 10 years.

- 5.73 Paragraph 4.26 of the Appellants SoC goes on to state that Buildings A and B were complete more than 10 years before the 2023 PCN was issued and Building C was built more than 10 years prior and then refurbished within the last 2 years. However, the Council contests this point.
- 5.74 The burden is on the Appellant to show on a balance of probabilities that the breach of planning control has either occurred continuously for the ten-year period, relevant to the material change of use, prior to the Notice being issued (29.02.2014 to 29.02.2024), or for the four-year period, relevant to operational development (29.02.2020 to 29.02.2024).
- 5.75 It is only if the Appellant can show that the Council had the ability to take enforcement action against that specific breach of planning control and failed to do so, then the use is immune from enforcement (*Thurrock BC v SSETR* [2002] EWCA Civ 226, *Swale BC v First Secretary of State* [2005] EWCA Civ 1568).
- 5.76 In other words, the land must be being objectively used for that activity to have allowed the LPA to enforce against it – it must be being actually put to such use².
- 5.77 The Council will consider each element of the Notice in turn.

Buildings A and B

- 5.78 The Council is satisfied that there was a small garage-type structure in the approximate position of 'A' on the Plan attached to the Notice prior to February 2014. However, that building was far smaller than the building which currently exists on the site (the 2012 Officer report states that this building was a garage building – **APPENDIX 13**). This is consistent with the Officers Photos from 2009 (which shows a garage with a small attached shed – **APPENDIX 9**).

² This reflects language of Schiemann LJ in *Thurrock* at [28] and Keene LJ at [25] and 29] in *Swale*

- 5.79 Following receipt of the Appeal, aerial imagery of the site was obtained from 13.12.2014 (provided by Historic England) - attached at **APPENDIX 26**.
- 5.80 These photos show that there are two buildings to the rear of the garden of Longfield, but this is relatively contained to the western part of the appeal site (these being Buildings A and B on the Enforcement Notice). These photos are consistent with the Google Earth photos of the site and the Appellant's most recent PCN responses, which suggest that the second building was present in 2014 albeit the Council maintains that it was not complete or in use at that date – this is consistent with third party comments made on this appeal.
- 5.81 Building A has subsequently been altered, as can be seen from the aerial imagery of 2016 (**APPENDIX 27**)- which shows a change in the character and appearance of the roof structure of building A & comparing photos from 2009 LDE and more recent ones (**APPENDIX 39**). In the most recent drone photo (received by the Council) from July 2023, it shows the central section of Building A as being removed/partially removed. Accordingly, this building has not been in existence in a stable state since alterations were first made to it (post 2008). The building has always been in a state of flux and given recent modifications to it, it has not been in existence in its current form for in excess of 10 years³.
- 5.82 Paragraph 2.8 of the appellants SoC states that extensions to Building A were completed between 2010 and 2013. It also claims that by this stage the business was operating from the house and Building A and that the hardstanding was primarily used for parking of employees. This is contrary to the information provided by the owners during the investigations up to 2015. The aerial image of July 2023 (**APPENDIX 22**) also shows the roof removed for part of building A so further work has been carried out to that building since the period referred to by the appellant.
- 5.83 Building B is not evident in the Google Aerial imagery of the site in 2013 (04.06.2013 – **APPENDIX 28**), but is evident (in some form) in 20.04.2016 (**APPENDIX 27**). Accordingly, the Council considers that Building B was constructed (in some form)

³ *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] 1 W.L.R. 983 as recently reiterated by the Court of Appeal in *Devine v Secretary of State for Levelling Up, Housing and Communities* [2023] EWCA Civ 601

between these two dates. As indicated in Third Party comments, received as part of appeal, and Historic England images, Building B was not complete in 2014 – the external walls appear unfinished and whilst there are window openings, there do not appear to be windows at that time.

- 5.84 The Local Planning Authority notes that the Appellant's Ground of Appeal Document states that 'Building B was substantially complete by/before March 2014'. This is contrary to the signed PCN response (dated 19.07.2019) in which the Appellants confirmed that a second building on the site was completed 'in March 2014'.
- 5.85 In regard to Building B, the appellant claimed that it was Permitted Development when officers visited in 2015. However, as the building is not within the lawful garden it couldn't not have been considered PD, even if met the correct dimensions.
- 5.86 The Appellants argue that the operational development is immune from action being completed in excess of 4 years. The Council accept in relation to Building A and B that they were complete by February 2020. However, having regard to relevant caselaw (Kestrel Hydro v Secretary of State for Communities and Local Government [2016] EWCA Civ 784) as they were part and parcel of the overall unauthorised change of use of land, the Council is entitled to seek their removal as part of the Notice.
- 5.87 Furthermore, the history of Building A and B assists in considering when the material change of use occurred on the Site which will be considered below.

Building C

- 5.88 The Google Aerial Imagery shows that there is no substantial building in the location of C on the Notice Plan in 2016 (**APPENDIX 27**) - this is corroborated by the Historic England Aerial Imagery of December 2014 (previously included at **APPENDIX 26**). Whilst there is a small structure in that location evident at certain points in time (such as a small partial brick structure in the 2009 LDE Photos (**APPENDIX 9**), it was clearly a much smaller structure than that which is now present on the site (see Drone Photos from February 2023 and July 2023, which shows the different stages of construction of this building). This is clearly not a 'refurbished building' as suggested in paragraph 2.7 and 4.26 of appellants SoC, but instead an entirely new structure as can be seen

in the Drone Photo of July 2023. The small structure is the BBQ/Bread oven that is often referred to in communication from the owner or his solicitor and which appears to have been removed some time ago based on aerial images.

- 5.89 Based on the two drone images, the Council considers that Building C was only substantially complete sometime between February 2023 and July 2023 and so is not immune as this was within the Operational Development Material Period.

Building E

- 5.90 Building E was built in 2023 and is now in used for the appellant's business. The appellant does not dispute that this is a new building.

Hardstanding D

- 5.91 The area of hardstanding has also recently been extended significantly and the appellant does not dispute this.

- 5.92 The area of hardstanding was originally comprised of a small area adjacent to the former garage building. This was latterly extended to the south, when Building B was created – to create an area of hardstanding between the two buildings. The resultant area extended approximately 35m from the rear boundary of the garden, at a width of approximately 32m.

- 5.93 The drone photo from July 2023 now suggests that the hardstanding extends to the rear of the site approximately 77m from the rear boundary of the garden and at a width of approximately 15m. This February 2023 drone image also shows approximately 23 vehicles being parked on the land to the rear (albeit there appears to be space for an additional 10 vehicles – 33 in total).

The Material Change of Use

- 5.94 As above, there has been a material change of use of the land, which is the subject of this appeal, to an unauthorised business use. As previously discussed, up until the 2019 PCN response, the Owners argued that there was no business use operating from

the site. There was no business use of the appeal site when the 2009 LDE application was assessed, nor was there any evidence of a business use when the Enforcement Officer investigated in 2015. It is only in the PCN's from 2019 onwards that the appellant now admits that there is a business operating from the site. However, in doing so, they are arguing that the business uses have been operating for a period of time extending beyond that previously admitted.

- 5.95 The 2019 PCN response describes the business as Management solutions for the health and fitness industry. In the Ground g document and 4.30 of the appellant's SoC, reference is made to manufacturing and storage. Parag 2.4 of their SoC refers to offices, workshop, storage and a streaming studio. The appeal document also acknowledges that the business has grown which supports the Councils argument of intensification. This shows a significant increase in the type of activity beyond that which could reasonably be described as 'homeworking' (as previously alleged by the appellant).
- 5.96 In terms of employees, the Appellant's SoC states that by 2018 the staff had increased from 22 to 30. Whereas in 2019, the PCN response only refers to 14 employees (including 8 family members). The Appellant's SoC goes on to state that the business currently employs 51 employees and that growth resulted in erection of Building E and Building C being 'refurbished' (albeit that the Council disputes this latter point). This significant increase in the number of employees is also another indicator that there has been a material change of use at the site.
- 5.97 Notwithstanding the above, the activity at the site has intensified significantly which has resulted in a material change of use of the land to a business use. The business use that was enforced against by the Notice in February 2024 has not been present on the land since February 2014. By comparing photos from the 2009 LDE (**APPENDIX 9**) and other images, Building A has materially changed from a garage and shed, to a new building (or significantly altered and extended building) into a use associated with the appellants business. Building B has since been erected and altered in the last 10 years and is now used for the appellants business. The area of hardstanding has also recently been extended significantly and the appellant does not dispute this.

- 5.98 Aerial images from February 2023 (**APPENDIX 21**) and photos taken from railway footpath from 2023 (**APPENDIX 29**) clearly show a metal frame and not a completed building, Building C was built in 2023 (contrary to the appellant's assertions) and is now used as a storage of materials and a workshop for the appellants business (see Ground of Appeal document).
- 5.99 In addition to the above, Building E was built in 2023 and is now in used for the appellant's business. The appellant does not dispute that this is a new building. The aerial/drone images shows this has been linked to Building B – whilst the Council had received the earlier drone image (from February 2023) it was only after the appeal was lodged that I became aware of the later drone image from July 2023. This further building has been erected to the south of Building B (which is not the subject of the enforcement notice), but also indicates further expansion and development at the site). The owners now admit that they employ over 50 staff and the amount of car parking indicates that the amount of commercial activity at the site is substantial and significant. This has resulted in a material change of use of the land which has occurred within the last 10 years.
- 5.100 In regard to the test for immunity, the use is immune if the land was being objectively used for this level of business activity since February 2014, so as to have allowed the LPA to take enforcement action. However, the evidence clearly shows that there was no evidence of a business operating from the site at that time. This is illustrated by the enforcement officers' investigations in 2015, during which they carried out a site visit (following a complaint of a business use) and found there to be no evidence of one: both from site observations and in the Appellant's own view. This cannot, however, be said to be the case now - the Appellant now accepts they are operating a business use from the Site, and, even from the public footpath, it is clear that the Site is now being used as a fully-fledged business operating out of five buildings, purportedly employing over 50 people, utilising a large hardstanding area. None of this was the case in February 2014 and therefore the business use enforced against in February 2024 is not immune.
- 5.101 In summary, Building A has been significantly extended and altered within the last 10 years; Building B was substantially complete within the last 10 years; Building C was complete within the last 4 years; Building E was complete within the last 4 years; the

hardstanding (d) was complete within the last 4 years). The above operational development was part and parcel of a material change of use of the land – which is evident from an increase in staff (from 8 to more than 50, with the amount of buildings, operations and car parking a determinative factor in this assessment). Accordingly, the development is not immune from action.

Ground 'a' appeal - 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

5.102 The Council's assessment of the planning merits of the unauthorised development was included within the DTA report. However, in view of the information submitted with the appeal form and the additional evidence contained in the appellants SoC, it is necessary to respond to the planning issues/matters raised by the appellant.

Principle

5.103 The site is situated outside of the built-up area boundary of the settlement of 'Wood End', as defined at Figure 5 of the adopted Tanworth-in-Arden NDP (**APPENDIX 30**). It also falls outside of what Officers consider to be the lawful domestic garden of the dwelling. Accordingly, the development should be assessed against Policy AS.10 of the Core Strategy.

5.104 Even if a contrary view were to be taken on the above, Wood End is a Category 4 Local Service Village, covered by Policy AS.10 of the Core Strategy.

5.105 Policy AS.10 sets out the types of development that are acceptable within Countryside and Village locations. In particular, Policies AS.10 (k)-(r) relate to 'business' uses. The use of land and buildings in connection with a new business use, together with the operational development associated with that business use are not listed within Policy AS.10 as one of the acceptable forms of development. Specifically, the development is not the conversion of a building for business purposes (the development involved the erection of new buildings); the development is not redevelopment of an existing building at a similar scale; it is not the small scale expansion of an existing group of

buildings for business purposes; it is not the extension to a business in an established location (this is an unauthorised change of use); it is not a building related to agriculture; it is not farm-based business activities; it is not a new or extended garden centre; and it is not equine related activities.

- 5.106 It is noted that the Appellant's Summary of Ground A document does not identify which part of Policy AS.10 they consider the unauthorised development to accord with. The appeal document claims that the development is 'infilling' of the land. There is, however, no requirement in AS.10 relating to infilling. As such, it is understood these references to infilling relate to Green Belt considerations which are discussed later in this PoE.
- 5.107 The Appellant's SoC document states that the development supports a prosperous local business. Again, it does not specify which policy provision this falls within.
- 5.108 In this instance, the development would fall to be assessed against the penultimate paragraph of the Policy AS10 which states, 'All other types of development or activity in the countryside, unless covered by a specific policy in the Core Strategy, will need to be fully justified, offer significant benefits to the local area and not be contrary to the overall development strategy for the district'.
- 5.109 The unauthorised development is not considered to be fully justified and there are no identifiable significant benefits to the local area. Whilst there are some benefits arising as a result of employment at the site, this is not considered to be a 'significant' benefit (as required by penultimate paragraph of AS.10) which would justify, what is otherwise, an unsustainable form of development. Accordingly, the development is contrary to Policy AS.10 of the Core Strategy.
- 5.110 The Summary of Ground A document refers to the loss of jobs for local people as a justification for retaining the existing business and development. However, whilst it can be argued that employment is a benefit of the development, that would not fully justify the creation of a new business of this scale in the Countryside, which is otherwise contrary to the Policy requirements of the development plan. Furthermore, the loss of jobs at an unauthorised business should only be afforded minimal weight,

in considering whether the development accords with the policies contained within the development plan.

5.111 In addition to the above, Policy CS.22 of the Core Strategy states that 'opportunities for business development will be provided in the countryside, including farm-based activities, in accordance with Policy AS.10 Countryside and Villages'. Furthermore, provision is made for the expansion of businesses in established locations, subject to the scale and nature of the activity being appropriate for the proposed use.

5.112 This is a new business use. As such, the development would not fall within any of the Policy provisions of CS.22.

5.113 The appellants refer to Policies E1 and E3 of the NDP and claims that the change of use and operational development accords with these policies. However, Policy E1 refers to small scale expansion of existing businesses. As set out above, the existing business was not established in this location and therefore this policy does not apply. In any event, there would be conflict with this policy – due to the harm caused by the other material planning considerations set out in the following sections of this PoE.

5.114 Policy E3 allows for the small-scale adaptation of dwellinghouses for the benefit of homeworking. However, as set out above, the business can no longer be described as 'home-working' and the business use which is the subject of this Appeal takes place outside of the dwelling or its lawful garden area. This new business use is not the adaptation of a dwellinghouse and given the number of new buildings, extended area of hardstanding and level of parking it is not considered to be 'small scale'. As such, this policy is not applicable in this instance. Having regard to all of the above, the development is contrary to Policies CS.1, CS.22 and AS10 of the Core Strategy.

Green Belt

5.115 The site lies within the Green Belt, where very strict control is exercised over all forms of development, in accordance with national guidance contained within the National Planning Policy Framework (NPPF). The Green Belt is defined within the NPPF as an area protected by the policies within it. Many forms of development are defined as

“inappropriate” within the Green Belt; however there are a number of exceptions specifically referred to under paragraphs 154 and 155 of the NPPF.

- 5.116 Paragraph 142 of the NPPF confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 states the five purposes of the Green Belt, while paragraphs 152-153 set out the importance of preventing inappropriate development, except where very special circumstances have been demonstrated that clearly outweigh the harm.
- 5.117 The above is consistent with Policy CS.10 of the adopted SoA District Council Core Strategy, which states the purposes of the Green Belt will be upheld by resisting inappropriate development within it, except in cases where very special circumstances are justified in accordance with the provisions of national policy.
- 5.118 The development has resulted in the material change of use of land to business use and the erection/alteration of buildings and the extension of an area of hardstanding to help facilitate the change of use of the land for business use.
- 5.119 In the Summary of Ground A document, the appellant claims that the development accords with the NPPF but provides no evidence to support this. The Council considers that the development fails to meet any of the exceptions set out in paragraphs 154 and 155 of the NPPF. The appellant refers to exception '(g)' as being relevant. Whilst paragraph 154(g) allows for the redevelopment of Previously Developed Land (PDL), which includes garden land, the Council maintains that the Land is not garden land. This was confirmed in the 2009 refused LDC application which is referred to in the agreed planning history.
- 5.120 Even if the Inspector is persuaded that the land is lawful garden (and therefore PDL), there is a caveat in 154g that requires the development to not have a greater impact on openness. Impact on openness can be considered in a number of ways, including (inter alia), footprint, volume, heights, expansion of sites. In this case, the development fails on all aspects and would, therefore, not be covered by the exception of 154g.

- 5.121 The Summary of Ground A document makes reference to 'infilling'. 154g refers to limited infilling and is discussed above. Notwithstanding this, 154e also relates to 'infilling' whilst the appellant has not put forward a case based on this exception (and therefore could be taken that they agree that this exception is not applicable in this instance), the Council considers it necessary to discuss this issue (exception 154e), given the repeated references to 'infilling'.
- 5.122 The Council disputes that this is 'infilling' given the surrounding land uses. The site is open to the north west and south east (albeit in the appellant's control). Whilst there is a railway line to the north east, the sites surroundings are relatively open and free of built development. It is noted that there are some unauthorised garden extensions near to the site. These should be disregarded in this consideration of whether this amounts to 'infilling' due to the unauthorised nature of these uses.
- 5.123 Even if the development were to be considered 'infilling', the development is extensive and not considered to be 'limited'. Whilst there is no definition of 'limited' this is a significant development which includes more footprint than that of the original dwellinghouse and one which apparently employs 51 employees (according to Para 2.4 of the Appellants SoC document).
- 5.124 For the reasons set out above, the Council considers that the unauthorised development amounts to 'inappropriate' development which can only be allowed where VSCs outweigh the harm to the Green Belt.
- 5.125 Under paragraph 153 of the NPPF, 'inappropriate development' should not be approved except in 'Very Special Circumstances' ('VSC'). That will exist where other considerations clearly outweigh all the harms (Green Belt and non-Green Belt) of the development. In this case there are no VSC either individually or when combined that could outweigh the identified multiple significant and substantial material harms caused.
- 5.126 As an initial observation, although the appellants have paid the fee for the deemed planning application, no plans or elevations of the buildings have been provided at this time and therefore the Council has not been able to quantify the unauthorised development. Access to the site has also been denied and therefore no measurements

have been taken. A summary of the attempts to arrange access to the site is contained in a Table attached as **APPENDIX 31** of this PoE (Emails and letters previously included at **APPENDIX 20**).

5.127 If the Inspector is minded to grant planning permission then plans (floor plans and elevations) will be required as part of the conditions. Should these be provided, then the Council reserves its right to further comment on the impact on openness to the Green Belt (in terms of footprint, volume, heights and sprawl).

5.128 The starting point is to identify the relevant harms. In my view the following harms need to be considered:

- i) Definitional Harm;
- ii) Harm to GB openness;
- iii) Harm to GB purposes;
- iv) Design and Distinctiveness and Landscape;
- v) Harm to amenity; and
- vi) Harm by intentional unauthorised development within the Green Belt.

5.129 I will consider these harms in turn.

Harm 1 – Inappropriate development by definition within the Green Belt

5.130 The proposed development is, by definition, inappropriate within the Green Belt and such harm is automatically afforded substantial weight in the planning balance of the decision-making process. The development causes substantial, demonstrable harm to the Green Belt by reason of its inappropriateness.

Harm 2 - Harm caused by loss of Openness to the Green Belt.

5.131 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open the essential characteristics of Green Belts are their openness and their permanence (paragraph 142 of the Framework). It is recognised that openness can have, as a matter of planning judgment, three elements: spatial, visual and activity.

- 5.132 In the absence of the above-mentioned plans, the Council has had to utilise the available aerial imagery of the site, including two drone images from 2023 (attached as **APPENDIX 21 and APPENDIX 22**). These images clearly show a significant amount of development at the site. In regard to the three elements (spatial, visual and activity), I will discuss each of these in turn.
- 5.133 The appeal site contained a small stable building which was subsequently used as a garage. Nevertheless, this was contained to a small portion of the land to the rear. The recent Drone Photo from July 2023 shows a significant expansion of the built form to the east – to the rear boundary of the site – encroaching and sprawling a further C.60m into the Green Belt.
- 5.134 In regard to the visual element, whilst the buildings are single storey in height, the unauthorised development is nevertheless substantial and has resulted in a significant amount of both footprint and volume within the new buildings.
- 5.135 In regard to physical activity, the site now apparently employs in excess of 50 employees, which will generate a significant amount of activity at the site in terms of people arriving and leaving and also working from the land. The Business use also results in a significant amount of parking of vehicles and not just their arrival and departure from the site.
- 5.136 On the basis of the above, there is considered to be a large impact on the openness of the Green Belt.

Harm 3 – Harm by Encroachment of development within the Green Belt.

- 5.137 Additional Green Belt harm is caused by encroachment into Green Belt open countryside. To assist in safeguarding the countryside from encroachment is one of the 5 cornerstone purposes of designating land as Green Belt (para. 143 NPPF).
- 5.138 The development has resulted in a significant amount of built form (including number of substantial buildings, together with an area of extended hardstanding, which can accommodate a significant number of vehicles, in association with the unauthorised

business use). These factors cumulatively compromise the purpose of the green belt, in keeping this land free from encroachment.

- 5.139 Previously, this was a linear strip of development and the land beyond the rear gardens of the property (between the rear gardens and the railway) was free from any considerable built form. This unauthorised development encroaches into the countryside Green Belt, in land which is otherwise undeveloped and free from built form. This undermines the purpose of the Green Belt.

Harm 4 - Design and Distinctiveness and Landscape

- 5.140 The unauthorised use of the land for business purposes, has involved the erection and alteration of buildings and the extension of an area of hardstanding with substantial car parking. Although not visible from the road this business use of the site has had an urbanising impact on the rural character of the locality. On this basis, the development is considered to result in harm, which would be contrary to Policies CS.9, CS.5, CS.12 and AS.10 of the Core Strategy and Government guidance contained within the National Planning Policy Framework and Stratford on Avon District Council Design Guide.
- 5.141 The Summary of Ground A document states that the development would have a very limited impact on the character of the Arden SLA and as the buildings and parking area are to the rear of a property there is no impact on the character of the 'street-scene'. However, it is noted that the Appellant provides no further comments on this matter in their SoC. Nevertheless, lack of visibility from the public domain is not a sufficient argument to justify such an urban form of development in this countryside location and within a Special Landscape Area. This is readily visible from the gardens of nearby residential properties (and may be visible from the neighbouring properties themselves) and the footpath adjacent to the railway line. The appellant accepts in the Summary document that there are views from the pedestrian access to the station.
- 5.142 A Special Landscape Area (SLA) is a designation covering landscape within the District which is judged to be of high quality at the local level and which requires protection from inappropriate forms of development and activity. Policy CS.12 of the Core Strategy states *the high landscape quality of the Special Landscape Areas, including*

their associated historic and cultural features, will be protected by resisting development proposals that would have a harmful effect on their distinctive character and appearance which make an important contribution to the image and enjoyment of the District. The policy requires the cumulative impact of development proposals on the quality of the landscape to be taken into account.

5.143 The Arden Special Landscape Area is specifically identified in Policy CS.12 and contains 9 key characteristics (see Special Landscape Areas Study 2012 – extract attached at **APPENDIX 32**). In particular, the rural character is a key feature, with references made to the field patterns; as well as the woodlands, trees and hedgerows. One of the Key Management Recommendations within the aforementioned document is to ‘*conserve settlement character by restricting development to that which reflects the vernacular style, scale, pattern and materials*’. In this case and for the reasons set out below, the development is considered to result in harm to the character of the SLA, contrary to Policy CS.12 and the guidance in the SLA Study.

5.144 The existing prevailing pattern of development in this area is characterised by a linear form along the roads of Broad Lane and Poolhead Lane (comprised predominantly of large detached dwellings). The development is at odds with this character by resulting an urban form of development behind the existing dwellinghouse. The impact, therefore, occurs due to the significant amount, size and volume of the buildings, the size and nature of the hard standing (together with associated parking of vehicles) and the spatial relationship of this development within the wider (pre-dominantly residential) area. I consider the level of harm caused as a result of the unauthorised development to be substantial and would be contrary to Policies CS.5, CS.9, CS.12 and AS.10 of the Core Strategy.

Harm 5 – Harm to Amenity

5.145 The Appellant’s Summary of Ground A document states that the buildings are single storey and have a limited impact on the amenity of the neighbouring properties. Their SoC goes on to state that the appellant’s disagree that the development is contrary to Policies CS9 and AS10 in this regard, but they provide no further explanation, other than to state the site is well screened and employees are not always on the site.

- 5.146 The level of the business use based on the scale and number of the buildings, extended area of hardstanding and number of vehicles parked on the land, together with employing in excess of 50 staff, is not considered to be minor operation or ancillary use. The current arrangement is such that users of the site have to access the land via a narrow driveway positioned between two dwellings.
- 5.147 Prior to the Notice being issued, no planning application had been submitted to regularise the development. As such, the Council had no controls in place to limit the use of the site, to alleviate the potential harm caused as a result of the disturbance from the unauthorised use (this resulting from the comings and goings of vehicles in close proximity to residential properties, with no restrictions on hours of operation). Furthermore, if left unauthorised and unrestricted, the potential harm caused, as a result of the use, could increase, which would be to the detriment of the residential amenity of neighbouring properties through additional noise and disturbance.
- 5.148 In addition to the above, whilst the site and business is currently in the same ownership as the dwellinghouse, there are no controls in place which would tie it to only be used in connection with the dwelling.
- 5.149 Whilst the appellant has stated that they are open to conditions to control the development, the Council nevertheless considers that the business currently in operation (with in excess of 50 employees, across 4-5 unauthorised buildings) will give rise to an unacceptable impact on the amenity of neighbouring occupiers.
- 5.150 In the absence of a planning permission (with conditions) or legal agreement to control the unauthorised business use, it is considered that there is the potential for there to be a detrimental impact on the residential amenity of nearby residential properties through noise and disturbance. The use would, therefore, be contrary to Policies CS.9 and AS.10 of the Core Strategy.

Harm 6 – Harm by intentional unauthorised development within the Green Belt

- 5.151 Written Ministerial Statement – HLWS404 ‘Green Belt Protection and Intentional Unauthorised Development’ (**APPENDIX 33**) sets out changes to national planning policy to make intentional unauthorised development a material consideration in

planning decision-making, and also to provide stronger protection for Green Belts. It is concerned with harm that is caused where the development of land has been undertaken in advance of obtaining planning permission that can involve Local Planning Authorities having to take Enforcement Action in the acknowledged public interest of protecting the Green Belt.

5.152 The Appellant was clearly aware that they needed planning permission for their development of the Site but did not do so. The disregard for the planning process has a significant detrimental impact on public confidence in the system and should carry substantial weight.

Other material considerations

5.153 Having set out the harms, I will now turn to address the other material considerations which the Appellant relies upon to justify VSC.

5.154 The Appellant's VSCs, as set out in their SoC Statement, relate to the economic benefits of the development and high quality jobs and training provided by the development. The Appellant also refers to the loss of employment as a reason for justifying the development. As this is an unauthorised development the loss of employment, whilst a factor, should be afforded minimal weight. If planning permission had been sought prior to the development taking place, the appellant would have been required to demonstrate that any VSCs outweigh the harm caused to the openness of the green belt and therefore only the proposed employment would have been considered (not any loss). As such, it would be unjust to now consider the loss of unauthorised employment in considering whether it amounts to a VSC.

5.155 Whilst employment benefits would be considered to contribute towards the appellants case for VSCs, it would not be sufficient to outweigh the harms caused – which is considered to be significant in this case.

5.156 The appellant refers to the lack of highway or environmental complaints. Whilst no specific complaints regarding these issues have been received as part of the recent investigations, a lack of harm regarding certain planning considerations do not outweigh the harm arising as a result of inappropriate development in the Green Belt.

As such, this should be treated as neutral in such an assessment. Notwithstanding this, there were complaints regarding the number of vehicles in 2012 – discussed later in this PoE.

Overall Planning Balance

5.157 Having regard to the above, the development is considered to amount to inappropriate development in the Green Belt which can only be allowed in Very Special Circumstances (VSCs).

5.158 I have identified 6 harms as set out above. I give them the following weighting:

- i) Definitional Harm – Substantial weight
- ii) Harm to GB openness – Substantial weight
- iii) Harm to GB purposes – Substantial weight
- iv) Design and Distinctiveness and Landscape – Substantial weight
- v) Harm to amenity – moderate weight
- vi) Harm by intentional unauthorised development within the Green Belt – Substantial weight

5.159 Against these six weighty harms the Appellant must show there are benefits which clearly outweigh them. The economic benefits to the local and wider UK economy are the only VSCs put forward by the Appellant and these are not considered to outweigh the harm to the purposes and openness of the Green Belt. Furthermore, the Council has been unable to identify any cumulative VSCs, which would outweigh the harm to the purposes and openness of the Green Belt. The development is therefore contrary to Policy CS.10 of the Core Strategy and Government guidance contained within the NPPF.

5.160 Permission should be refused and the Ground a) dismissed.

Response to **Ground 'e' Appeal** - That copies of the enforcement notice were not served as required by section 172

- 5.161 The Appellant argues that the current occupier of the premises is Ashbourne Management Services Limited (AMSL) and that they were not served a copy of the notice.
- 5.162 The Local Planning Authority carried out a Land Registry search on 01.02.2024 which shows that the proprietors of the land are: John Nicholas Clayton-Wright and Dawne Wassell (now Clayton-Wright) – See **APPENDIX 34**. Both of the owners of the property were all served a copy of the Enforcement Notice.
- 5.163 The Council has referred to a number of PCN responses within the Ground (b) appeal section of this PoE. As can be seen from the responses to those PCNs (dating back to 2008) Mr J Clayton Wright (the appellant) was asked to list the names and addresses of all persons to have an interest in the land (this including tenants of the building). No reference to the business 'Ashbourne Management Services Limited (AMSL)' was ever cited within any of the PCN responses.
- 5.164 Companies House information for AMSL was obtained by the Council (attached at **APPENDIX 35**). This information indicated that the only active roles within the company are Mr J Clayton-Wright and Mrs D Clayton-Wright (the appellants), as named Company Directors (albeit that the Company has never been registered to the appeal site – **APPENDIX 36**). Therefore, the Council does not consider that there has been any injustice, as both named Company Directors were served a copy of the Enforcement Notice. This is relevant given s.176 (5) of the 1990 Act.
- 5.165 The Council therefore has demonstrated that the Notice is not defective as suggested in the Grounds of appeal document.

Response to **Ground 'f' appeal** - *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*

- 5.166 The Appellant argues that the steps to remedy the breach (i.e. the removal of the buildings) is excessive and disproportionate as they could be reused for another purpose (namely residential purposes). Furthermore, they argue that 'Building A' (in its original form) has been present on the land for a long time.
- 5.167 In response to the Appellant's Ground (b) appeal, it has been established that the appeal site is not and was not in a lawful residential use. Whilst a small portion of that site could be argued to have gained immunity (a small square of land where Buildings A and original hardstanding were located), not all of the land is lawfully domestic garden.
- 5.168 The starting point is that these buildings are unauthorised. The appellant's argue that the buildings could remain in a residential use. However, for them to even meet the requirements of the GPDO, then an assessment would be needed in regard to the 'curtilage of the dwellinghouse'. This land is a substantial distance from the dwellinghouse and is divided by boundary treatments and vegetation.
- 5.169 Due to current size, scale and design of Buildings A and B, the Council considered that they cannot be retained for purposes 'incidental' or 'ancillary' to the dwelling Longfield. The size of these buildings are substantial and any alternate use is unlikely to be 'incidental' – see technical householder guidance extract at **APPENDIX 37** or in SoCG.
- 5.170 In accordance with the above, an assessment would be needed in regard to whether the buildings A and B could remain in a residential use. The Council's Policy CS.10 (Green Belt) states that new outbuildings should be within 5m of the dwellinghouse (the purpose of this being to restrict sprawl). Accordingly, even in a residential use, the buildings would fail to meet the requirements of Policy CS.10.

- 5.171 The building is not an extension or alteration of a building and therefore the development in a residential use would be inappropriate development in the Green Belt where it can only be allowed in VSCs. There would be no VSCs associated with a residential use of these buildings which would outweigh the harm caused to the Green Belt. As such, they should be removed.
- 5.172 Buildings C and E, and the hardstanding at D, are beyond what could reasonably be argued as the lawful extent of any residential garden and therefore their retention would also result in a material change of use of the land to a residential use which would be contrary to Policy AS.10 of the Council's adopted Core Strategy (which does not provide for garden extensions into the countryside). Furthermore, the buildings and operations involved in those buildings are not listed as an exception in Paragraphs 154 and 155 of the NPPF and therefore it would amount to 'Inappropriate Development' in the green belt with not Very Special Circumstances that outweigh the harm caused.
- 5.173 Accordingly, the steps to remedy the breach are reasonable and proportionate. These are unauthorised buildings in the green belt (which are inappropriate development) and would need to be justified through VSCs to outweigh harm. There are no VSCs to outweigh the impact on the Green Belt (even in an alternate use). Furthermore, the planning harms identified within the Ground A appeal are regardless of the use of the buildings.

Response to **Ground g appeal** - *That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed*

- 5.174 The Local Planning Authority considers that the compliance period for the enforcement notice (6 months) is not too short and would allow an appropriate amount of time for the buildings to be demolished and the materials removed.
- 5.175 At the time of writing this PoE, there are many premises available in the nearby areas, including in the more sustainable area of Redditch (approximately 6 miles from the site), which include office and industrial premises. There are also premises available at Blythe Valley Park, which is the same address given as their postal address (See **APPENDIX 38** for alternative properties which are likely to be similar in floor area to the unauthorised buildings).

5.176 The Council note that the appellant has requested 18 months for the compliance period, referring to the number of jobs at the site as a reason for this. These jobs have been created through an unauthorised change of use of land. Furthermore, those jobs can continue to operate from alternate premises and therefore the jobs could be retained at a relocated site.

5.177 The period of 18 months, as suggested by the appellant, is excessive and would effectively be the equivalent of granting a temporary planning permission for the business use of the site. This would result in the planning harms identified in this PoE existing for a prolonged period of time.

6. SUMMARY AND CONCLUSION

General Matters

6.1 Considering relevant case law, the Council maintain the view that the red line on the Notice defines the land in which the notice relates and to the alleged breach. It is not required to encompass the whole of the planning unit. In this case, the red line correctly identifies where the Council believe that there has been an unauthorised material change of use to a business use.

6.2 The Council maintains that the Notice clearly tells the Appellants fairly what they have done wrong and what they must do to remedy it. As explained in this PoE, the Inspector has a number of options available to him, including correcting the notice without injustice; granting planning permission with a condition restricting the use; granting permission for 'part' of the alleged breach. As explained in this PoE, neither the Council, Appellant or any third parties would be prejudiced by the Inspector utilising any of the aforementioned options.

Ground B

6.3 The evidence contained within this PoE shows that the use of the land to the rear of Longfield, for business purposes, has intensified over time resulting in a material change of use. As a matter of fact, the alleged business use has clearly occurred at

the Land. In addition, operational development (including the erection/significant alteration of buildings, and the erection of hardstanding) has been carried out which is part and parcel of the change of use.

6.4 The Ground b) appeal cannot succeed.

Ground D

6.5 Building A has been significantly extended and altered within the last 10 years; Building B was substantially complete within the last 10 years; Building C was complete within the last 4 years; Building E was complete within the last 4 years; the hardstanding (d) was complete within the last 4 years). The above operational development was part and parcel of a material change of use of the land – which is evident from an increase in staff (from 8 to more than 50, with the amount of buildings, operations and car parking a determinative factor in this assessment). Accordingly, the development is not immune from action and the Ground d appeal cannot succeed.

Ground A

6.6 In this Proof of Evidence, I have demonstrated that the appeal site is an unsustainable location for the creation of a new business. Furthermore, I have identified that the development is 'Inappropriate Development' in the Green Belt, to which I note 6 harms:

- vii) Definitional Harm – Substantial weight
- viii) Harm to GB openness – Substantial weight
- ix) Harm to GB purposes – Substantial weight
- x) Design and Distinctiveness and Landscape – Substantial weight
- xi) Harm to amenity – moderate weight
- xii) Harm by intentional unauthorised development within the Green Belt – Substantial weight

6.7 The economic benefits to the local and wider UK economy are the only VSCs put forward by the Appellant and these are not considered to outweigh the harm to the purposes and openness of the Green Belt. Furthermore, the Council has been unable

to identify any cumulative VSCs, which would outweigh the harm to the purposes and openness of the Green Belt. The development is therefore contrary to Policy CS.10 of the Core Strategy and Government guidance contained within the NPPF.

- 6.8 Permission should be refused and the Ground a) dismissed.

Ground E

- 6.9 The Council has demonstrated that the Notice was served on those persons with an interest in the land and therefore it is not defective. Accordingly, the Ground e) appeal cannot succeed.

Ground F

- 6.10 The Council has identified these unauthorised buildings (in a business use) in the Green Belt (which are inappropriate development) and would need to be justified through VSCs to outweigh harm. There are no VSCs to outweigh the impact on the Green Belt (even in an alternate use). Furthermore, the planning harms identified within the Ground A appeal are regardless of the use of the buildings. Accordingly, the Council has demonstrated that the steps to remedy the breach are reasonable and proportionate and therefore the Ground f) appeal cannot succeed.

Ground G

- 6.11 For the reasons set out in this PoE, The Local Planning Authority considers that the compliance period for the enforcement notice (6 months) is not too short and would allow an appropriate amount of time for the buildings to be demolished and the materials removed.
- 6.12 For the reasons set out in above and as detailed in this PoE, the Inspector is respectfully asked to dismiss the appeal.

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