Appeal Decisions

Inquiry held on 12 March & 15–17 July 2014

Site visit made on 18 July 2014

by D H Brier BA MA MRTPI

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

Decision date: 28 October 2014

Appeal A Ref: APP/P1805/C/13/2200098
Land at Seafield Farm, Seafield Lane, Beoley, Redditch B98 9DB

- 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 Dean Attwell against an enforcement notice issued by Bromsgrove District Council.
- The notice was issued on 9 May 2013.
- The breach of planning control as alleged in the notice is the erection of a building, "the chiller building" and a building structure, "the link building".
- The requirements of the notice are:
  1. Remove the chiller building from the land.
  2. Remove the link building from the land.
  3. Remove from the land all building materials and rubble arising from compliance with requirements 1 and 2.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and a variation.

Appeal B Ref: APP/P1805/C/13/2202661
Land at Seafield Farm, Seafield Lane, Beoley, Redditch B98 9DB

- 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 Dean Attwell against an enforcement notice issued by Bromsgrove District Council.
- The notice was issued on 21 June 2013.
- The breach of planning control as alleged in the notice is the making of a material change of use of the land from agricultural use and the storage and dispatch of poultry to a mixed use comprising agricultural use, the storage and dispatch of poultry, and the commercial storage of pre-packed food and drink.
- The requirements of the notice are:
  1. Stop using any part of the land for the unauthorised use.
  2. Remove the chiller building from the land.
  3. Remove the link building from the land.
  4. Remove from the land all building materials and rubble arising from compliance with requirements 2 and 3.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and a variation.

Preliminary Matters

Evidence

1. The evidence at the inquiry was taken on oath.

The Enforcement Notices and Appeals

2. In the decision I shall refer to the notice alleging operational development as Notice A and I have labelled the related appeal 'Appeal A'. Likewise, the notice alleging material change of use will be referred to as Notice B and the related appeal is labelled 'Appeal B'.

Notice B – The Allegation

3. At the outset of the inquiry, in response to my query, both parties agreed that the use of the word 'commercial' before 'storage' in Notice B serves no useful purpose. As it imparts a certain degree of uncertainty into the allegation, it should be deleted. Mindful that both parties indicated that this measure would not cause injustice, I will exercise my power to correct the notice accordingly.

Redhill Aerodrome Judgement

4. Following the closure of the inquiry, the parties were invited to make submissions in the light of *Redhill Aerodrome v SSCLG, Tandridge District Council and Reigate and Banstead Borough Council [2014] EWHC 2476 (Admin).* This judgement, issued on the day after the inquiry closed, was overturned by the Court of Appeal on 9 October 2014 in which case it is not a matter that carries a great of weight.

Ruling

5. At the outset of the proceedings for the appellant it was contended that the authorisation procedure appertaining to Notice A was materially flawed in which case there was no authority for the link building to be attacked. Having invited further submissions from the parties on this matter and having been requested to give a ruling, I adjourned the inquiry in order to consider the matter further, indicating that I would endeavour to issue a preliminary ruling during the recess. This was done by means of a letter from the Inspectorate to the parties dated 28 May 2014. At the beginning of the re-convened inquiry on 15 July, I indicated that the preliminary ruling was my formal one.

6. The gist of the points made by the parties, together with my ruling, are set out below.

For the Appellant – Main points

7. The enforcement notice was not properly authorised until after it had been issued. So far as it affects the link building, the notice cannot be allowed to stand. While officers had sought the Council's approval to take enforcement action in December 2012, the authority did not encompass the link building. When this was discovered, authority was sought from Mrs Bamford, the delegated officer.

8. Authority to issue the notice appears to have been created on 9 May 2013, the day after it was executed on 8 May. It may be that the authority was not given until 13 May, the date it was sent to the Council's Legal Services department.

9. Mrs Bamford had clearly not seen the originally produced authority on 9 May. Moreover that authority was incorrect, so much so that the flaws in it – not least the errant date, a clear flaw, but not the only error - had been immediately pointed out by the Legal Services department. The document had been so flawed that it could not be allowed to stand, otherwise why was it amended? Clearly the Authority thought that there was something wrong with it. It is not acceptable to go back and make the process of paperwork fit what had actually happened. As the authority contained a material and factual error in that it had to be corrected before it was made, it cannot be allowed to stand.

10. While the facts are accepted, the consequences are disputed. The concern is about the proper exercise of a function. Authorities are not simply pieces of paper, they are dated for a purpose and are effective from the date they are signed. It is not satisfactory to have things back-dated. The issue of an enforcement notice is an exercise of administrative law. As such, the administration is important, it is about the correct exercise of the function. The scheme of delegation has to be exercised properly. In this case this could not have happened unless the authority itself was correct.

For Bromsgrove District Council – Main Points

11. The appellant's argument has no force. The legal point is the point in time at which delegated authority took place. Mrs Bamford made her decision on 8 May prior to the issue of the notice and prior to writing up the authorisation. A form sent to the Council's Legal Department contained typographical errors and was returned to be corrected, but the to-ing and fro-ing post-dated Mrs Bamford's decision.

12. An email dated 8 May 2013 is evidence that Mrs Bamford authorised enforcement action. An authorisation form was sent with an electronic signature albeit the date, 26 July 2012 is an error - it may have been left from a previous authorisation. An email timed at 10.39 on 9 May from the Council's Principal Solicitor referred to getting the enforcement notice signed off and another at 10.55 asked Mrs Bamford if she wanted to sign both the notice and the authority. The notice was subsequently issued on 9 May. An email of 10 May from Tracy Lovejoy of the Council's Legal Services department advised that the date of the authority be changed to 8 May. That is when the decision was made, the point made in the email is that the record should reflect this.

13. The claim that Mrs Bamford had not seen the authority until 9 May is wrong. She clearly had done so - there was email correspondence about it dated 8 May.

14. There is no such legal document as a written authority. The only purpose of the authority document is to provide proof that the decision was made so that the approval date was the date the decision was made – the final corrected authority dated 8 May reflects this. The reason why the document needed changing was because it had to record the date of the decision accurately.

15. Section 101 of the Local Government Act provides for the discharge of local authority functions by delegation. Enforcement action can only be carried out

by planning authorities and any such action must be property authorised. This can be through a scheme of delegation [see EPL 1.003.5]. The important thing is the decision, but there is no magic in the date. The key point is the date of issue of the notice from which legal consequences arise.

16. The authority is no more than an internal document that proves the decision was taken properly. There is not doubt that it was – the decision was taken, as she was entitled to, by Mrs Bamford who had the proper authority to do so. There is no legal authority for saying that there is a particular requirement for an authorisation document – how a Planning Authority chooses to evidence its action is a matter for the authority. What actually happened is important, the paper is simply a record of that. Mrs Bamford had authorised enforcement action on 8 May.

Ruling

17. The point at issue concerns Notice A which was issued on 9 May 2013. The notice attacks 2 buildings, described respectively as the chiller building and the link building. Authorisation to take enforcement action against the former was approved by the Council in December 2012. Subsequently, the action was extended to include the link building by authority given by the Council's Chief Planning Officer, Mrs Bamford, acting under delegated powers.

18. It is clear from the evidence however, that the authorisation document, dated 8 May 2013, was back-dated in that it was not forwarded to the Council's Legal Services Department in corrected form until 13 May 2013, that is 4 days after the notice was issued.

19. The fundamental question that this gives rise to is whether the decision to issue the enforcement notice in the form it now appears was taken properly. The Council's Chief Planning Officer's power to authorise the issue of and service of an enforcement notice has not been called into question. Nor is any point taken insofar as the chiller building is concerned. The matter in dispute focuses on the inclusion of the link building in the notice.

20. It may be that there is no legal authority that says there is a particular requirement for an authorisation document, as the Council contend. However, in *R v SSE ex parte Hillingdon LBC [1986] 1 W.L.R. 192,* the court identified the power contained in the 1971 Act to serve an enforcement notice and said that "*this made it clear that a decision has to be taken by the planning authority before enforcement proceedings can be commenced*". On the facts of the current case, this begs the question, was a *decision* to authorise enforcement action taken before the enforcement notice was issued?

21. On 8 May 2013 in response to an email from Ms Lovejoy of the Council's Legal Services Department asking for the authority to be sent to the Legal Services Department, Mrs Bamford merely replied "*OK. Hazel [Mrs Bailey, the Council's Enforcement Officer] is sorting it for me*." While this may appear somewhat perfunctory in its own right, the main body of the email from the legal officer set out in full the proposed reasons for issuing the notice. It is reasonable to assume therefore that Mrs Bamford had read this before she sent her brief response. To my mind this evidence points to the Chief Planning Officer having been aware of the issues, and having applied her mind to them in the context of whether enforcement action should be taken, and had taken that decision before the notice was issued.

22. An enforcement notice issued without the proper authority should be considered a nullity since without the proper authority there cannot be an enforcement notice. In this instance the circumstances of the case are such that despite the clear undisputed evidence of back-dating, on the balance of probability, a decision to authorise enforcement action was taken before the enforcement notice was issued, and that decision was made properly. On this basis, while it is acknowledged that the matters are finely balanced, the view is taken that the enforcement notice in question is sound.

The Appeals Site and Background

23. The appeal concerns 2 structures, termed respectively as the chiller building and the link building, that form part of a group of buildings at Seafield Farm. The site lies within the Green Belt, well beyond the confines of any settlement. On the east side of Seafield Lane, virtually opposite the appeals site is Oakland Farm where the main body of Oakland International, a business which focusses upon 'case consolidation' and distribution is based. The appellant is the Managing Director of Oakland International who are tenants of the appeal premises at Seafield Farm which trades as Seafield Pedigrees. Seafield Farm is owned by the appellant's parents.

24. The parties have drawn my attention to the history of the 2 sites. Of particular relevance are 2 planning permissions, both granted on appeal, one in 2003 and the other in 2013. These are:

- Planning permission for the removal of some existing poultry sheds, extensions to an existing cold store and provision of chiller and despatch area, construction of agricultural barn for replacement poultry housing, and for lambs/cattle and the construction of a hardstanding at Seafield Farm[1]. Condition 5 of this permission states, "The proposed agricultural barn shall not be used for any purpose other than agriculture unless previously agreed in writing by the local planning authority."

- Planning permission for an extension to an existing cold store at Oakland International Limited[2].

Appeals on Grounds (c) & (d)

25. In this instance these grounds of appeal are closely interlinked, in which case I deal with them jointly.

For the Appellant – Main Points

26. The agricultural barn approved in 2003 is referred to in the enforcement notices as the chiller building. The building was erected in 2007, more than 4 years before Notice A was issued and was very similar to the permitted building. It stands on the same footprint and incorporates the present steelwork and roof. While the building was modified in 2009 by the addition of side panels, a concrete floor and cooling equipment, it is essentially the same. There are 2 possibilities; either the building represents the implementation of the 2003 planning permission for an agricultural barn, or it is immune by virtue of the operations completed more than 4 years before Notice A was issued.

[1] Application ref: B2002/0383; appeal ref: APP/P1805/A/03/1108584.
[2] Application ref: 12/0455; appeal ref: APP/P1805/A/13/2196035.

27. Mindful of *Sage v SSETR and others [2003] UKHL 22,* which is authority that the 4 year time limit commences once the operation is complete, it is clear that the agricultural barn was erected on the land in 2007 and was brought into use then for agricultural purposes. This is a simple matter of the building work as completed in 2007 becoming immune from enforcement action 4 years later. To contend that the subsequent alterations, which along with the erection of the link building, are accepted to have been completed within 4 years of the date of Notice A, re-start the '4 year' clock is ill founded. As with *Makanjuola v SSCLG & Waltham Forest BC [2013] EWHC 3528*, only the alterations to the chiller building should be regarded as enforceable, with the barn as originally constructed remaining immune.

28. The remarks by the 2003 appeal Inspector reveal that she found that a commercial use was in being at the site before 2003, in which case, with the exception of the chiller building, the use of the site for commercial activities is authorised.

For Bromsgrove District Council – Main Points

29. It is not accepted that the chiller building is the same as the permitted agricultural building; in any event, both it and the link building are integral to the storage of pre-packed food and drink, a use introduced within the last 10 years in which case they fall to be enforced against under the principles set out in *Murfitt v East Cambridgeshire DC [1980] 40 P & CR* and *Somak Travel v SSE [1987] JLP 630.*

30. If operational development occurred in 2007, it was conducted with a view to constructing an open-sided agricultural building. That building had not acquired immunity by 2009 when the second round of building began and the building was changed to something else with a new purpose. The footprint changed, the construction changed, with an external frame needed to support insulated side panels, a concrete floor was laid down, the roof was changed to take insulated panels, and the ventilation was stopped up. The changes were extensive, the construction was turned from an open-sided agricultural building to an industrial one. A new enclosed building with a new purpose was created. The immunity 'clock' began again. It is not possible to acquire 'rolling immunity' by constantly making changes to an unlawful structure. In the light of S*age*, in order to be lawful the building would need to be exactly in accordance with its planning permission.

31. As regards Notice B, the use to which the notice is directed is a new use, introduced within 10 years. It is convenient and logical to regard Seafield Farm as one planning unit, it is in one ownership and is in mixed use as described in the notice. The introduction of a new use, the storage of chilled pre-packaged food and drink was a change of use, it required intense changes in terms of activity and infrastructure in order to support it. The appellant's argument that the site benefits from a general commercial use is unsustainable. The 2003 appeal decision concerned specific areas and was very specific about the use over the rest of the site. To claim that the use of the site for commercial purposes is authorised is far too wide.

Reasons

32. The evidence before me points to the structure that now constitutes the chiller building having been constructed in 2 distinct and discrete phases, one

seemingly in 2007 and the other in 2009. Although the representative from Allen Fabrications, the company purported to have carried out the works in 2007, did not appear at the inquiry, in which case his evidence could not be tested by cross-examination, there is documentary evidence in the form of invoices that supports this contention. Furthermore, it is wholly consistent with the evidence of Mr M Attwell, the owner of Seafield Pedigrees Limited, based at Seafield Farm, who did appear at the inquiry and who also referred to the building having accommodated turkeys, sheep and cattle prior to the works undertaken in 2009, a point also referred to in the evidence given by the appellant.

33. I acknowledge that the current evidence is somewhat at odds with Mr M Attwell's earlier response to a planning contravention notice which indicated that the building dated back to 2003. However, while I can understand why this caused the Council to be somewhat sceptical about the date of construction of the building, the evidence now before me strongly suggests that, on the balance of probability, these works occurred and were completed during the latter part of 2007, well before the 'relevant date', that is 4 May 2009.

34. I am mindful of the observation by Hobhouse LJ in *Sage* that "*if a building operation is not carried out ….fully in accordance with the permission, the whole operation is unlawful*"[3]. Applying this to the agreed facts as set out in the Statement of Common Ground, (SOCG), the development carried out in 2007 did not fully accord with the 2003 permission in that the length, width and height of the building as erected all differ from what was approved. In particular, the building is significantly higher (7.2m as opposed to 5.8m as approved, or almost 25% higher). As a matter of fact and degree, therefore, I am not satisfied that the 2007 building as erected was authorised by the 2003 permission, in which case, on the basis of *Sage*, the operation was unlawful, albeit the evidence points to the building having been used for agricultural purposes, in particular for turkey rearing and to accommodate ewes and lambs.

35. In his evidence, Mr M Attwell referred to using the same eaves height datum mark as that used on a cattle building erected beforehand in 1998. But, although the location of this was pointed out to me at the site inspection, it is not apparent on the approved plans, in which case I am not inclined to attach much weight to this point.

36. In the light of the above finding, it seems to me that there are some parallels with *Makanjuola* in that the evidence points to the chiller building having resulted from 2 separate and distinct sets of building operations. The first was to provide an agricultural building, albeit what was built did not accord with the approved plans. The second set of works in 2009 were undertaken in order to facilitate its current use as the chiller building. It is accepted that both the latter operations and the erection of the link building were completed within 4 years of the relevant date, in which case they were not immune when the notice was served. As a matter of fact and degree, the works do not appear to have formed a continuous operation, in which case it can be distinguished from *Garland v MOHLG [1969] 20 P.& C.R. 93*, another judgement cited by the Council. But, given that the 2007 building was unlawful, I am inclined to draw a parallel with *Worthy Fuel Injection Ltd v SSE [1983] JPL 173*.

[3] Sage v SSETR and others [2003] UKHL 22, paragraph 23.

37. While the work in 2009 involved closing the ventilation apertures in the roof of the 2007 building and the laying down of a concrete floor, the main thrust of it appears to have been the installation of additional steel columns outside the previously erected steelwork, positioned in line with the extent of the overhang of the building's roof which remained in situ, and the insertion of insulation panelling between the new columns. The end result was a wholly enclosed structure with increased usable floorspace as opposed to the partially open building previously used to accommodate turkeys and livestock, but which still remains albeit having been subsumed by the works undertaken in 2009.

38. It would have been open to the Council to enforce against the 2007 building, but this did not occur. The building has remained as a structure and, as I saw at the site inspection, it can still readily be identified as an entity that can be distinguished from the later works. I accept that the additional steelwork and panelling installed in 2009 would have concealed what was inside, but the roof structure would still have been readily apparent. Accordingly, therefore, on the balance of probability, I consider the 2007 building had become immune by the relevant date.

39. Turning to the question of the material change of use, a good deal of reliance is placed on the comments made by the Inspector who allowed the appeal in 2003. I accept that in granting permission for a scheme comprising several elements she only restricted the use of the then proposed agricultural barn to agricultural purposes. Moreover, in her reasoning she appeared to distinguish between agricultural and commercial activities at Seafield Farm. Be that as it may, from reading the decision it is evident that a substantial proportion of the activity associated with the development approved was related to the agricultural enterprise taking place at the site at the time.

40. While I heard that Seafield Pedigrees make some use of the chiller building on occasions, the evidence strongly suggests to me that the emphasis has now changed so that the storage and distribution activity operated by the appellant has come to the fore and is not confined solely to the chiller and link buildings. To my mind, the nature and scale of the use in question, which has involved the erection and use of the 2 buildings to which Notice A is directed is such that as a matter of fact and degree, the character and balance of uses taking place at the site has altered to such an extent that the matters alleged in the notice do constitute a material change of use.

41. In the light of the foregoing, the appeals on grounds (c) fail, but the appeals on ground (d) succeed in part. As a consequence of this, and having regard to my finding regarding the 2007 building, I shall correct the Appeal A Notice so that the allegation is directed at the works undertaken in 2009.

Appeals on Ground (a) and the Deemed Applications

42. In the light of the Court of Appeal decision in *Redhill Aerodrome,* referred to in paragraph 4, I deal with the appeals on this ground on the basis of the Green Belt policy as contained in the National Planning Policy Framework (the Framework) and in the development plan for the area.

43. The latter comprises various 'saved', policies of the Bromsgrove District Local Plan (BDLP). Strict controls upon development within the Green Belt apply by virtue of Policy DS2, and a similar approach is contained in Policy BDP4.4 of the emerging Bromsgrove District Plan (BDP). The BDP has not yet been adopted

and I heard that at the time of the inquiry it was undergoing examination, in which case the weight to be given to it has to reflect this. Nevertheless, I find both policies consistent with the Green Belt provisions of the Framework. This advises that inappropriate development in the Green Belt should not be approved unless there are very special circumstances.

44. I consider there are 2 main issues: firstly, whether the disputed development constitutes inappropriate development in the Green Belt; and secondly, if so, whether there are any very special circumstances which would outweigh the general presumption against inappropriate development that applies here.

Issue 1

45. The parties agree that the link building constitutes inappropriate development[4], a view with which I concur. I also regard the use in question in the same light. In its initial guise as an agricultural building, what is now the chiller building would have been appropriate development, as would its re-use, subject to the provisos set out in the first sentence of paragraph 90 of The Framework. Nor is there anything that suggests that the 2007 building was anything other than a permanent and substantial construction.

46. However, the adaptation of the building to its current use involved additional building works that, due to the enclosed space formed between the original and later columns, have resulted in a building having an overall floorspace appreciably greater than that of the 2007 building. I am unable therefore to concur with the submission the changes were relatively minor works of alteration. Moreover, the development resulted in a wholly enclosed structure that has a markedly different physical character from the initial construction.

47. Although the works do not extend beyond the extent of the overhang of the 2007 building's roof, the scale of the additional work, in terms of the extra volume and increased building mass, is such that I do not regard it as a proportionate addition to the original building. And, rather than preserve openness, the filling in of the void under the roof overhang and its replacement by a solid building mass has impinged upon this quality. All this leads me to conclude that the additional work constitutes inappropriate development in the Green Belt and is not one of the instances listed in BDLP Policy DS2, or Policy C27 headed 'Re-use of Rural Buildings which is cross-referenced in Policy DS2.

Issue 2

48. Turning to the second issue, The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm to the Green Belt.

49. The position of the link building is such that it is well-contained by the existing group of buildings at Seafield Farm, in which case the degree of encroachment into the countryside is not great and it is not especially apparent from public viewpoints. Nevertheless, its presence has tended to consolidate the group of buildings here and there has been some loss of openness as a result.

50. The chiller building stands on the outer edge of the building group. Because of its size and mass it appears as a particularly prominent feature in the local landscape when viewed from the public footpath that runs on the edge of a

[4] Statement of Common Ground, paragraph 2.22.

field to the south. In the light of my conclusion regarding the works carried out in 2007, the solid building mass that the building now presents consequent upon the filling in of the void below the roof overhang has, in my view, resulted in an appreciable loss of openness. In other words, the impact of the current structure both in this respect, and in terms of encroachment into the countryside, is far greater than that of the building in its initial form.

51. According to the appellant, the works to form the chiller and link buildings were undertaken as a short notice 'emergency measure' to provide additional storage space. While the contract with the company that gave rise to that need had been terminated, the space leased at Seafield Farm is now mainly used for the storage of products to be supplied to another company, Aldi; it is seen as an integral part of Oakland International's business. Even allowing for the additional storage facility approved at Oakland Farm in 2013, the 2 buildings are still required by Oakland International.

Very Special Circumstances

52. The submissions on behalf of the appellant identified 5 very special circumstances, the first being that the company is helping to deliver sustainable economic growth. In a similar vein, the appellant contended that the business success of Oakland International – a point attested to in the representations made by the Worcestershire Local Economic Partnership – amounted to a very special circumstance.

53. I acknowledge that the promotion of sustainable development is a theme that underpins the guidance in The Framework; indeed, this is made clear in the very first sentence of the Ministerial foreword. Moreover, The Framework advises that significant weight should be placed on the need to support economic growth; it also offers support to the promotion of a strong rural economy. This approach is further reflected in BDLP Policy DS13, headed 'Sustainable Development', which states that all development must reflect the need to safeguard and improve the quality of life of residents by, amongst other things, maintaining high and stable levels of economic growth.

54. I do not take issue with the submission that as a company Oakland International is helping to deliver sustainable economic growth. Indeed, the claimed economic benefits of the disputed development are not a point at issue. Having been acquainted with the company's history, it is clear that Oakland International has become a highly successful enterprise. The company has grown rapidly in recent years to the extent that it now has an annual turnover of £21 million and employs over 200 people. It has aspirations for further business expansion and the company's 10 year growth strategy envisages the recent growth continuing apace, with over 1,100 people being employed. And, according to the appellant, the company's future growth requirements could equate to up to a further 200,000ft^2 (18,580m^2) of floorspace, a figure that is double the current company's space needs.

55. From the manner in which Oakland International conducts its business, its operational sustainability 'credentials', the employment it provides, and the elements of corporate social responsibility it is engaged in, it clearly reflects the 3 dimensions to sustainable development – economic, social and environmental - identified in paragraph 7 of The Framework – a point expressly acknowledged by the Inspector who allowed the appeal at the Oakland International site in 2013.

56. I accept that the extracts from The Framework that address sustainable development highlighted by the appellant are not expressly 'tempered' by references to the Green Belt. Moreover the appellant's exasperation at the constraints placed upon the growth of his business by the Council's application of Green Belt policy was readily apparent during the inquiry. And, judging by the tenor of the representations made by Mr Gimson, he is not alone in this view. Be that as it may, The Framework also indicates that the Government attaches great importance to Green Belts. Furthermore, the protection of the Green Belt is one of the considerations set out in BDLP Policy DS13. And, having regard to the representations made by and on behalf of objectors, it is also apparent that there is a body of opinion in the locality that attaches a great deal of importance to the maintenance of the Green Belt and the application of Green Belt policy here. The delivery of sustainable growth and the prospect of so doing is not a matter I set aside lightly, but I am not satisfied that this factor is sufficient to override Green Belt policy.

57. The second very special circumstance put forward is that there is no credible viable alternative location. The appellant opined that the prospect of relocating his business is challenging to the point of being almost impossible and there are currently no suitable sites in the area. In particular, neither of the 2 potential alternatives identified in the County, the former Sealine premises in Kidderminster, and the former automotive site at Longridge, are considered realistic and land at junction 6 of the M5 was not ready yet. The company had leased a warehouse in Alcester for a period, an exercise the appellant described as an 'unmitigated disaster'.

58. Having heard that the company own the freehold of Oakland Farm, I can well appreciate why relocation is not a particularly palatable prospect. Moreover, in the light of the problems experienced by the company when the operation was split between 2 locations several miles apart, the reluctance to contemplate such an arrangement in the future, despite the ease and speed of modern communications, is perhaps understandable.

59. The appellant outlined the perceived problems inherent in relocating Oakland International in general terms, and indicated that searches for suitable alternative locations had been unsuccessful. However, although the appellant indicated in cross-examination that extensive research had been done in this respect, no evidence that shows that the feasibility of relocation had been the subject of detailed analysis and evaluation has been put forward. To my mind, this considerably diminishes the weight to be attached to this factor.

60. My attention was also drawn to the pursuit of a project termed 'The North Worcestershire Food Park', incorporating Oakland Farm, and involving the release of land from the Green Belt. The 'Food Park', may offer a solution, but as this is not currently provided for in either the adopted or emerging Local Plans, I am not inclined to attach a great deal of weight to this matter in the context of the appeals before me.

61. As regards the benefits to Seafield Farm, the third of the very special circumstances put forward, it is perhaps self-evident that by providing an additional source of income to the farm business, the rent from the buildings helps to support the existing agricultural enterprise there. Indeed, according to the appellant, the current farm business has become totally reliant on the

regular rental income from Oakland International and its loss would immediately cause insurmountable financial difficulties.

62. Mindful of the financial difficulties suffered by the appellant's parents' farm business in the past, I can understand the importance that has been attributed to this matter. However, despite the appellant's claims regarding the importance of Oakand International's tenancy to Seafield Pedigrees and that by 2012 the farm business was again under financial pressure, evidence to support these assertions is somewhat thin. For instance, while Mr M Attwell indicated that if the buildings went this would have a serious impact on the family business and the rent received from them accounted for a significant proportion of the farm business's profitability, no financial information or accounts appertaining to Seafield Pedigrees has been put forward.

63. In the light of the foregoing, it is difficult to make an objective assessment of the precise extent to which Oakland International's tenancy contributes to the health of the farm enterprise at Seafield Farm. Accordingly, therefore, while the presence of Oakfield International at Seafield Farm is doubtless beneficial to the farm business, I am reluctant to attach great weight to this matter.

64. Turning to corporate social responsibility, the fourth very special circumstance identified, Oakland International's credentials in this respect, as detailed by the appellant, have not been called into question. I am also mindful that the Inspector who determined the 2013 appeal found the company's engagement with the community in this respect 'impressive' and praised it as an example of the 'social role', one of the dimensions to sustainable development identified in The Framework[5].

65. I acknowledge that the manner in which the appellant's company conducts its business confers social benefits that go beyond the economic role it plays. Nevertheless, I am rather less sanguine as to whether this is a sound and weighty reason for viewing the development in question in a favourable light. Commendable though Oakland International's current approach may be, it seems to me that this is down to the particular manner in which the company is run at present rather than any intrinsic attribute. Mindful that any permission would normally run with the land, it is not inconceivable that the way the business is managed in the future could change, in which case the possibility that less emphasis may be placed on social responsibility cannot be discounted.

66. The fifth very special circumstance put forward is the harm to both businesses should the appeals fail. The loss of an income stream would undoubtedly be a severe blow to Seafield Pedigrees, but although the appellant referred to the loss of at least 4 jobs, and I am mindful that after the notices were issued the business was placed in 'special measures' by its lending bank, no claim was made that the business would necessarily fold if this came to pass. While it was claimed that Seafield Pedigrees would immediately face insurmountable financial difficulties, this was not quantified. In the absence of detailed financial information about the business, it is difficult to come to a firm view on the likely consequences, in which case I find this point somewhat inconclusive.

67. As regards Oakland International, it was contended that the consequence of losing the space at Seafield Farm would be the loss of the Aldi account which would impact on the business through loss of turnover. Outcomes envisaged

[5] The Framework, paragraph 7.

would be either the business having to be dissolved or sold. I accept that either scenario is likely to have implications for the company's workforce, and were the Oakland Farm to become a transport depot – another possibility mooted – it could result in large numbers of goods vehicle movements, a matter that already gives rise to concern in the area.

68. Having been acquainted with the progressive, innovative and efficient attributes possessed by Oakland International which have enabled the business to operate at it does today, it is perhaps surprising that a less gloomy prognosis has not emerged in the face of the Council's action. But, ultimately this is a matter for the appellant, who versed with his knowledge of the business and his experience of carrying it forward to the present day, is probably best placed to assess the implications. Seen in this light, the economic consequences of the loss of a business, and its associated employment, has to be a weighty factor. That said, the main thrust of the ground (g) appeal – a point I return to below – focuses upon the difficulty of relocating the business as opposed to arrangements for dissolving it. This strongly suggests to me that it does not necessarily follow that the loss of the facility at Seafield Farm would lead to Oakland International going out of business.

Overall Conclusions

69. As I see it, the appeals are being played against a backdrop of 2 strongly opposing forces. On the one hand is the application of Green Belt policy and the strict controls upon development that are inherent in this. On the other is the presence of a successful and growing business located in the Green Belt and the company's aspirations for further continued growth.

70. The development in question has caused harm to the Green Belt and the objectives of Green Belt policy by reason of loss of openness and encroachment into the countryside as a result of the operational development that has occurred and which is also part and parcel of the use being enforced against. I also agree with the Council that permitting development of this nature in this rural location is hardly conducive to securing urban regeneration. It may be that the degree of physical harm in this instance is not especially great in that the development in question does not constitute a major incursion into the Green Belt, but it is harm to the Green Belt nonetheless. And, to this harm has to be added the harm caused by virtue of the inappropriate nature of the development.

71. For the reasons give above, I am not satisfied that the first four factors identified by the appellant are so weighty that they amount to very special circumstances sufficient to warrant permitting the development here. In particular, while the development's credentials in helping to deliver sustainable growth are strong and are consistent with the guidance in the Framework in this respect, the Framework is equally robust insofar as the protection of the Green Belt is concerned.

72. While the development in question appears to have arisen out of expediency, in that it was carried out to meet a particular requirement at the time, it is now seen as an integral part of the appellant's business, needed to help safeguard it, seemingly in the context of a successful enterprise that, as was put in closing submissions, 'must run to stand still'. Indeed, despite the approval on appeal in 2013 of the cold store extension on the Oakland International site, the company still has further expansion in its sights, as witnessed by the

further project to provide a further 6080m^2 warehouse there, referred to in evidence, not to mention the scale of growth envisaged in the company's business plan.

73. Despite the perceived importance of the development for the well-being of the company, it seems to me that rather than being a keystone of the company's success, it is more of a building block in an envisaged continuum of growth aimed at ensuring the success of the business will endure. Seen in this context, I find it difficult to conclude that the circumstances appertaining to the development are 'very special'. Indeed, I am inclined to agree with Council that the appellant's stance resembles what is termed the 'blank cheque approach' in *Summers Poultry Products v SoSCLG and Stratford–on-Avon DC [2009] EWHC 533 (Admin)* whereby the appellant is seeking to expand his business seemingly without regard to the limitations of its Green Belt location.

74. Although pronouncing on the merits of the latest scheme lies outside the ambit of this appeal, [the same applies to the Food Park project being promoted by the appellant], it is a tangible indicator that the appeal development is highly unlikely to relieve the pressure being applied to the Green Belt by the expansion of the appellant's company. Furthermore, the importance attached to the development in question shows that this propensity for expansion has spread to another site in the Green Belt, albeit one that it is in close proximity to Oakland International's main site. I see this as a legitimate concern. It is also a matter that sets this case apart from the 2013 appeal decision which concerned development at the Oakfield International site as opposed to another location in the Green Belt.

75. My overall conclusion is that notwithstanding the undoubted attributes of the appellant's company, on balance, the various factors put forward in support of the development in question do not amount to very special circumstances sufficient to warrant permitting inappropriate development in the Green Belt. As such, I find it contrary to BDLP Policy DS.2. I do not consider granting planning permission subject to conditions, including those aired at the inquiry, would overcome my concern.

76. In the light of the foregoing, the appeal on ground (a) fails and planning permission will not be granted on the deemed applications.

Appeals on Ground (f)

77. This ground of appeal focuses upon the required removal of the chiller and link buildings. To my mind the requirement to remove the latter, which was constructed to facilitate the storage use as opposed to agriculture, represents a reasonable response to the alleged breach. I do not find it excessive. It has been suggested that a lesser step would be to allow its retention for agricultural use. However, no evidence that demonstrates that there is a need for the building in this respect has been put forward, in which case I do not attach much weight to this point.

78. As regards the chiller building, while I am mindful of *Murfitt a*nd *Somak Travel,* in the light of my conclusions on grounds (c) and (d), I do not consider it would be reasonable to require the removal of the entire structure. Mindful that the evidence points to the building having been put to agricultural use before the second tranche of works in 2009, my view is that only the removal of the later works would be a reasonable step. That said, I see no need for the removal of

the concrete floor or the reinstatement of the air vents in the roof in order to remedy the breach. I shall vary the requirements accordingly. To this limited extent therefore, the appeal on ground (f) succeeds.

Appeals on Ground (g)

79. The premise underlying this ground of appeal is that due to the difficulties inherent in finding an alternative site and the process of relocation, the 12 month compliance period is too short.

80. I accept that finding another site for the appellant's business is likely to be challenging and complex, if not somewhat daunting. Be that as it may, I consider 2 years – the alternative put forward by the appellant - would be too long. As I see it, this would be tantamount to the grant of a temporary planning permission which I do not consider would be warranted. In my view 12 months is a reasonable period to assist the appellant with his task and is not unduly short. In so saying, I am mindful that section 173A (1) (b) gives the Council the discretion to extend the period for compliance if need be.

81. In the light of the foregoing, the appeal on ground (g) fails.

Other Matters

82. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decisions

Appeal A Ref: APP/P1805/C/13/2200098

83. I direct that the enforcement notice be:

    A. Corrected in section 3 by the deletion of "the erection of a building" and its substitution by "the extension and alteration of a building"

    B. Varied in section 5 by the deletion of the text of requirement 1 and its substitution by "Remove the external cladding and associated steel columns added to the chiller building in 2009".

84. Subject to this correction and variation, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal B Ref: APP/P1805/C/13/2202661

85. I direct that the enforcement notice be:

    A. Corrected in section 3 by the deletion of "commercial" from the penultimate line.

    B. Varied in section 5 by the deletion of the text of requirement 2 and its substitution by "Remove the external cladding and associated steel columns added to the chiller building in 2009".

86. Subject to this correction and variation, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

D H Brier

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr C Charlton	Solicitor & Partner, Messrs, Clark Wilmott, Bristol.
He called	
Mr K Mace	Former Director, Mace Buildings Limited, Leamington Spa.
Mr D Attwell	Managing Director, Oakland International Limited.
Mr J Adams BA BTP MRTPI	Director, Tetlow King Planning, Bristol.

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover	Of Counsel, instructed by Miss Tracy Lovejoy, Solicitor, Bromsgrove District Council.
She called	
Mr A Wyre	Building Control Manager, Bromsgrove District Council.
Ms H Bailey DipTP MRTPI	Planning Enforcement Officer, Bromsgrove District Council.
Ms R Bamford MA MRTPI	Head of Planning and Regeneration, Bromsgrove District Council.

INTERESTED PERSONS:

Mr W Sullivan	Chair, North Beoley Residents' Association.
Mr R Knox	Local resident.
Mr M Gimson	Chair, Moundsely Health Care Group.
Mr M Attwell	Owner, Seafield Pedigrees.
Mr T Bland	Chair, Beoley Parish Council.

DOCUMENTS

General

1 List of persons present at the inquiry.

Submitted by the Appellant

2 Letter from Worcestershire Local Enterprise Partnership dated 14 February 2014 and covering emails.
3 Enlarged aerial photographs 12 September 2005 & 31 May 2009.
4 Enforcement Report 2012/0249/ENF – Bromsgrove DC Planning Committee 3 December 2012.
5 Closing submissions by Mr Charlton.

Submitted by Bromsgrove District Council.

6 Bundle of email threads (1-5) concerning authority to issue Notice A.
7 Opening submissions by Miss Clover.
8 List of additional suggested conditions.
9 Opening submissions by Miss Clover.
10 Bundle of judgements.

Submitted by Interested Persons l

11 Email from Guy Needler dated 16 July 2014.
12 Statement by Robert Knox.
13 Annotated plan of Seafield Farm submitted by Mr M Attwell.