



# Appeal Decisions

Inquiry opened on 19 January 2010

Site visit made on 20 January 2010

by **Ian Currie BA MPhil MRICS MRTPI**

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

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**Decision date:  
8 June 2010**

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## **Appeal 1 – Ref: APP/B5480/C/09/2096896**

### **Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 23 December 2008.
- The breach of planning control as alleged in the notice is without planning permission, the erection of aircraft hangar building and creation of a hardstanding on the Land, shown hatched in black on the plan attached to the enforcement notice.
- The requirements of the notice are:-
  - (i) remove the aircraft hangar building and hardstanding;
  - (ii) remove from the Land all building materials and rubble arising from compliance with the first requirement above;
  - (iii) restore that part of the Land from which the hangar building and hardstanding have been removed, in compliance with steps (i) and (ii) above, to its condition before the breach occurred, by levelling the ground and laying to grass.
- The periods for compliance with the requirements are three months for steps (i) and (ii) and nine months for step (iii).
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The planning merits of this matter are dealt with under the section 78 appeal, reference APP/B5480/A/09/2101867 (Appeal 2).

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

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## **Appeal 2 – Ref: APP/B5480/A/09/2101867**

### **Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Damyns Hall Aerodrome Ltd - Mr T Lyons against the decision of the Council of the London Borough of Havering.
- The application (Ref:- P1924.08), dated 10 November 2008, was refused by notice dated 20 March 2009.
- The development proposed is change of use of agricultural barn for aircraft hangar and hardstanding.

**Summary of Decision: The appeal is dismissed.**

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**Appeal 3 – Ref: APP/B5480/A/09/2100488**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Damyns Hall Aerodrome Ltd - Mr T Lyons against the decision of the Council of the London Borough of Havering.
- The application (Ref:- P2031.08), dated 25 November 2008, was refused by notice dated 22 January 2009.
- The development proposed is change of use of land for the stationing of three portable office units.

**Summary of Decision: The appeal is dismissed.**

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**Appeal 4 – Ref: APP/B5480/C/09/2105342**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 24 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land through intensification as aerodrome in excess of the lawful activity as defined by the Certificate of Lawfulness (Local Planning Authority Reference E0005.06), a copy of which is annexed to this notice.
- The requirements of the notice are:-
  - (i) return that part of the Land, shown hatched black on Plan 2 attached to the enforcement notice, to private civil aerodrome in connection with the taking off and landing of only the following aircraft for the purpose of transport of passengers and/or flying instruction;
    - (a) light aircraft;
    - (b) microlights;
    - (c) hang gliding; and
    - (d) parascending parachutes;
  - (ii) reduce the number of aircraft to be stationed at, and operated from, the private civil aerodrome (the area hatched black on Plan 2) at any time to 9 light aircraft and 6 microlights;
  - (iii) store all aircraft which are not used either in taking off, landing, manoeuvring on the runway of the private civil aerodrome or being serviced or fuelled, in the lawful hangar building (cross-hatched black on Plan 2 annexed hereto).
- The period for compliance with these requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.**

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**Appeal 5 – Ref: APP/B5480/C/09/2105343**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 24 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, use of land coloured black and indicated by arrow and labelled on Plan 2 attached to the enforcement notice for residential purposes by stationing of a mobile home and formation of a residential curtilage.
- The requirements of the notice are:-
  - (i) stop using the Land, specifically the area coloured black and indicated by arrow and labelled on Plan 2, for residential purposes;
  - (ii) remove from the Land the mobile home, ancillary structures, equipment, machinery, goods, rubbish, apparatus and installations brought onto the land in connection with the related residential use and residential curtilage;
  - (iii) restore that part of the Land, coloured black and indicated by arrow and labelled on Plan 2 attached, to its condition before the breach occurred by levelling the ground and laying grass.
- The periods for compliance with the requirements are three months for steps (i) and (ii) and nine months for step (iii).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decisions.**

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**Appeal 6 – Ref: APP/B5480/C/09/2105344**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 24 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, formation of hardstanding and erection of three single-storey office units, in the area shown coloured black and indicated by arrow and labelled on Plan 2 attached to the enforcement notice.
- The requirements of the notice are:-
  - (i) remove from the Land the hardstanding and three single-storey office units shown coloured black and indicated by arrow and labelled on Plan 2;
  - (ii) remove from the Land all materials, including building materials and rubble arising from compliance with the first requirement above.
- The period for compliance with these requirements is three months.

- The appeal is proceeding on the ground set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 as amended. The planning merits of this matter are dealt with under the section 78 appeal, reference APP/B5480/A/09/2100488 (Appeal 3).

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

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**Appeal 7 – Ref: APP/B5480/C/09/2105346**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 24 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the clubhouse building ancillary to the aerodrome use and decking, coloured black and indicated by arrow and labelled on Plan 2 attached to the enforcement notice, to café with associated decking falling within Use Class A3 used by visiting members of the public.
- The requirements of the notice are:-
  - (i) stop using that part of the Land coloured black, and indicated by arrow and labelled on Plan 2, as a café with associated decking;
  - (ii) return that part of the Land, coloured black, and indicated by arrow and labelled on Plan 2, as ancillary clubhouse to the authorised private civil aerodrome.
- The period for compliance with these requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

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

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**Appeal 8 – Ref: APP/B5480/C/09/2105347**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 24 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, erection of decking in position coloured black, and indicated by arrow and labelled on Plan 2 attached to the enforcement notice.
- The requirements of the notice are:-
  - (i) remove decking from that part of the Land coloured black, and indicated by arrow and labelled on Plan 2, and lay down grass;
  - (ii) remove from that part of the Land coloured black, and indicated by arrow and labelled on Plan 2, all materials, including building materials and rubble arising from compliance with the first requirement above, and restore that part of the Land coloured black, and indicated by arrow and labelled on Plan 2, to its condition before the breach occurred as an open grassed area.

- The period for compliance with these requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission, deemed to have been made under section 177(5) of the Act as amended, does not fall to be considered.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld, as varied, in the terms set out below in the Formal Decisions.**

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**Appeal 9 – Ref: APP/B5480/C/09/2105348**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/39/06/UP.
- The notice was issued on 24 April 2009.
- The breach of planning control as alleged in the notice is without planning permission, the formation of hardstanding by deposit of hardcore material, in the area coloured black and indicated by arrow and labelled on Plan 2 attached to the enforcement notice, in connection with use as a car park.
- The requirements of the notice are:-
  - (i) remove from the Land the hardcore material forming the hardstanding on that area shown coloured black and indicated by arrow and labelled on Plan 2 attached;
  - (ii) remove from that area of the Land coloured black, and indicated by arrow and labelled on Plan 2 attached, all materials, including building materials and rubble arising from compliance with the first requirement above;
  - (iii) restore that area of the Land, coloured black and indicated by arrow and labelled on Plan 2 attached, to its condition before the breach occurred, by levelling the ground and laying grass.
- The periods for compliance with the requirements are three months for steps (i) and (ii) and nine months for step (iii).
- The appeal is proceeding on the ground set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decisions.**

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**Appeal 10 – Ref: APP/B5480/C/09/2105349**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

- 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 Damyns Hall Aerodrome Ltd - Mr T Lyons against an enforcement notice issued by the Council of the London Borough of Havering.
  - The Council's reference is ENF/39/06/UP.
  - The notice was issued on 24 April 2009.
  - The breach of planning control as alleged in the notice is without planning permission, the use of the area coloured black, and indicated by arrow and labelled on Plan 2 attached to the enforcement notice, as a car park.
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- The requirements of the notice are
  - (i) stop using the land, coloured black and indicated by arrow, and labelled on Plan 2, for parking vehicles
  - (ii) return that part of the land, coloured black and indicated by arrow and labelled on Plan 2, to agricultural use.
- The period for compliance with these requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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**Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.**

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**Procedural matters**

1. The Inquiry sat on 19, 20, 21 and 22 January and 11 and 12 February 2010. Appeal 4 set out above, concerning the enforcement notice alleging the more intensive use of the aerodrome without planning permission, will be determined first in its entirety, as the outcome of several of the other appeals is dependent on that decision. It also allows for a holistic approach to be taken towards the aerodrome facility as a whole, the importance of which was impressed upon me in submissions made on behalf of the appellant<sup>1</sup>. Thereafter, the appeals will be dealt with in the order of Appeals 1 and 2 relating to the barn/hangar, Appeals 3 and 6 relating to the portacabin/offices, Appeal 5 relating to the mobile home, Appeals 7 and 8 relating to café use/decking and Appeals 9 and 10 relating car parking/formation of hardstanding.

**The Site, its Location and Planning History<sup>2</sup>**

2. Damyns Hall Farm and Aerodrome is a 48.5 hectare landholding lying west of Aveley Road and north of Warwick Lane. Warwick Lane broadly constitutes the boundary between the London Borough of Havering and Thurrock Council, a unitary authority. It lies within a tract of the Metropolitan Green Belt separating the built-up areas of Upminster to the north, Rainham to the west and Aveley (in Thurrock Council's administrative area) to the south. The site is generally open, although there are hedges and trees within the site, particularly along its boundaries with adjacent land.
3. There are a number of buildings and structures within the extent of the site as follows:-
  - hangar no1 (small 'T' hangar)<sup>3</sup>;
  - hangar no2 (large hangar and clubhouse);
  - hangar no3 (small 'T' hangar)<sup>4</sup>;
  - garage (used for wedding/funeral car hire business – let out by appellant to separate enterprise and totally unconnected to any of these appeals);
  - open sided 'Dutch' barn;
  - foundations and base for dwelling granted planning permission subject to an agricultural occupancy condition<sup>5</sup>;

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<sup>1</sup> Document 22 – Closing submissions on behalf of the appellant at paragraph 1.2

<sup>2</sup> This section is largely based on sections 5, 6 and 7 of the Statement of Common Ground (Document 2) with some amplification and deletion

<sup>3</sup> 'T' hangars are built around the general shape of the aircraft they store and are largely dismantled each time the protected aircraft comes out of storage.

<sup>4</sup> See footnote 2.

- galvanised 'barn'/hangar (the subject of Appeals 1 and 2);
  - three 'portakabins' (the subject of Appeals 3 and 6);
  - one mobile home (the subject of Appeal 5);
  - decking to café (the subject of Appeals 7 and 8);
  - an area of hardcore used as a car park to the north of the access onto Aveley Road (the subject of Appeals 9 and 10).
4. The aerodrome has a main grass runway (runway 03/21) about 700m long with a parallel taxiway within a total width of about 40m with a further taxiway leading northwards towards the hangars and aircraft parking areas. This seems to have been laid out by the previous owners/farmers of the land in about 1969. The land surrounding the runway, taxiway and aircraft parking areas is commercially farmed for arable crops. Within the farmland north of the runway is an area used for emergency purposes when the wind direction and strength precludes safe use of main runway 03/21. This emergency area had been used for helicopter training purposes over the period 2007-8 and as the base for a Zeppelin airship to take sightseers for trips over central London during the summer of 2008.
5. The aerodrome, known as 'Upminster (Damyns Hall)' is included in the Civil Aviation Authority (CAA) UK Aerodrome Index of April 1986 where it is described as having the status of "C2 – Civil Private Aerodrome – generally unlicensed available with prior permission only"<sup>6</sup>.
6. On 2 March 2007, under its reference E0005.06, the local planning authority issued a Certificate of Lawfulness of Existing Use or Development<sup>7</sup> for 'Use of the land described in the Second Schedule and hatched black on Plan A annexed hereto as a private civil aerodrome in connection with the taking off and landing of the following aircraft for the purpose of the transport of passengers and/or flying instruction:-
- (a) light aircraft;
  - (b) micro lights;
  - (c) hang gliding and;
  - (d) parascending parachutes.
- These activities are associated with the ancillary storage of aircraft and associated apparatus, machinery and equipment shown in the annexed Plan B'.
7. The application for certificate contained a plan defining the extent of the land for which a certificate was sought, identifying the whole 48.5 hectares of the appeal site, which coincides with the area licensed by the CAA. The plan attached to the certificate issued by the local planning authority, as defining the extent of the lawful use, is much smaller at 4.05 hectares, including the main runway 03/21, taxiway, aircraft parking areas and hangars. The appellant considers the area subject to the lawful use to be much more extensive than this, but no appeal has ever been lodged against this decision.

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<sup>5</sup> A lawful development certificate reference E0008.04, dated 16 December 2005, was issued by the local planning authority to the effect that these operations constituted a lawful start of implementing the planning permission granted for a replacement farmhouse approved under references L/HAV/1612/80 & L/HAV/1612A/80 – Document 27 Appendix 14.

<sup>6</sup> Document 20, Appendix 2.

<sup>7</sup> Document 3.

8. The area surrounding the aerodrome consists of gently undulating countryside, mainly in agricultural use but containing a significant number of other activities frequently associated with the rural-urban fringe, including scattered housing, equestrian activities, vehicle storage and dismantling, an outdoor pursuits centre and the extraction of sand and gravel, and its restoration for agriculture and other uses, by means of the deposit of waste as landfill. Aveley Road runs north east, via the roundabout junction with Harwood Hall Lane, to join the B1421 Upminster-North Ockendon secondary road at Corbetts Tey on the southern edge of the built-up area of Upminster. To the south, where it becomes known as Romford Road, it links to the B1335 secondary road, which ultimately leads to the A13 trunk road, the main route from Central London to the east, running along the north side of the Thames Estuary. This road interchanges with the M25 London Outer Orbital motorway at the latter's Junction 30. The M25 runs some 2km to the east of the appeal site at its closest point.
9. Damyns Hall Cottages consists of a terrace of four small houses facing onto Aveley Road immediately to the south of the access to the appeal site. The northern end of terrace house contains a number of semi-derelict buildings and vehicles in its rear garden area. To the north of the access way is a large site containing a number of buildings that appear to be used for a variety of activities including stabling of horses and vehicle storage.
10. Reference has already been made to the 1980 planning permission for an agricultural workers dwelling and the associated lawful development certificate<sup>8</sup>, lawful development certificate E0005.06<sup>9</sup> and the refusals of planning application P1924.08 for the change of use to aircraft hangar and hardstanding and P2031.08 for temporary stationing of three portacabins, which are the subject of Appeals 2 and 3. Other planning applications, submitted in 2007 for the appeal site and refused by the local planning authority, have no direct relevance to the appeals before me. They are P.1858.07 for construction of a car park for 125 cars to serve the aerodrome, refused on 21 December 2007, P1859.07 for change of use from agriculture to composite use including agriculture and aerodrome, refused on 21 December 2007, P1860.07 for change of use of land for stationing a single portacabin, refused on 21 December 2007, P1861.07 for change of use of land for stationing two mobile homes, refused on 16 November 2007, P1866.07 for change of use of land for stationing a double portakabin (helicentre), refused on 21 December 2007, and change of use for aircraft hangar and hardstanding, refused on 16 November 2007.

### **Planning Policy**

11. The development plan for the locality comprises *The London Plan – Spatial Development Strategy for Greater London* as amended and adopted in February 2008 and *The Local Development Framework, Development Control Policies, Development Plan Document (London Borough of Havering)* adopted October 2008. With regard to *The London Plan*, a number of policies are cited in the Statement of Common Ground including Policy 2A on previously

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<sup>8</sup> Paragraph 3 and footnote 4

<sup>9</sup> Paragraph 6

developed land, Policy 3B.1 on the needs of Small and Medium Enterprises (SMEs), Policy 3B.2 concerning variety in office accommodation and Policy 3D.18, support for agriculture. In practice, the only policies in *The London Plan* that played a significant role in any of the appeals were Policies 3B.9 and 11 on maximising opportunities for the 2012 Games and 3D.9 on the London Green Belt.

12. Relevant Havering Development Control Local Development Framework Policies included DC22 on informal recreation in the countryside, DC32 on the road hierarchy, DC33 on car parking, DC45 on development in the Green Belt, DC55 on noise considerations and DC61 on maintenance and management of the appearance of the locality.
13. Clearly, all of national planning guidance has to be taken into account, but of special significance in these appeals were PPG2, "Green Belts", PPS4 "Planning for Sustainable Economic Growth", PPS7 "Sustainable Development in Rural Areas", especially Annex A, and PPG24 "Noise". Advice on highway matters was largely based on 'Vehicular Access to All-Purpose Trunk Roads', TD41/95<sup>10</sup> and Design Manual for Roads and Bridges, Volume 6 Section 1 Part 1 TD 9/93 – Amendment No1, Highway Link Design, February 2002<sup>11</sup>.

#### **Appeal 4 – Ref: APP/B5480/C/09/2105342 – The Planning Unit**

14. I am firmly of the opinion that the starting point for this appeal has to be the identification of the correct planning unit. The planning unit, in this context, is the most appropriate area of land against which it is possible to assess whether or not a material change of use has taken place and at what time that change of use occurred. In general, that assessment should take place over the whole site concerned, usually the area in the same ownership or occupation. However, it is the complications in defining the area of occupation in particular which gave rise to the different planning units presented before me at the inquiry. To a significant degree the outcome of the appeal made on legal grounds stem directly from the definition of the appropriate planning unit for flying and other activities at Damyns Hall Farm and the uses that can take place within that unit without the need for planning permission.
15. For the appellant, it is contended that the overall clearly defined land in the appellant's control encompasses a longstanding mixed aerodrome and agricultural use. This is not properly reflected in lawful development certificate E0005.06 as that document is said to take an unrealistically narrow approach to the extent of the planning unit by referring solely to the aerodrome use, and confining those activities to the main runway and the immediately adjoining land that has largely been in aviation use for several years.
16. The local planning authority relies on the lawful development certificate area as being the appropriate planning unit, because the lawful development certificate, as issued, defined the extent of the aerodrome use in 2006 and the unit has not changed in the meantime. This enforcement notice is directed at the entire site, rather than the certificated area, because some site changes, such as a specific car park and the provision of a cross wind runway have

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<sup>10</sup> Document 33

<sup>11</sup> Document 34

occurred outside the area defined as aerodrome in lawful development certificate E0005.06. If the planning unit has changed to a larger area then the uses within that larger area have also changed, such that a material change of use has taken place within ten years and, as a result, the appeals on grounds (b), (c) and (d) must fail.

17. In my opinion, the starting point for determining the planning unit has to be the judgement of Mr Justice Bridge (as he then was) in the leading case of *Burdle v Secretary of State for the Environment & New Forest RDC*<sup>12</sup>. There it was held that the criteria for determining a planning unit were:-
- (i) where the occupier uses land for a single main purpose to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered;
  - (ii) where the occupier carries on a variety of activities, and it is not possible to say one is incidental or ancillary to another, it may be apt to consider the entire unit of occupation, especially where different activities are not confined within separate and physically distinct areas of land;
  - (iii) where, within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes, each area used for a different main purpose ought to be considered as a separate planning unit.
18. In a Statutory Declaration dated 6 November 2003<sup>13</sup>, Mr David Watt stated that the Watt family farmed Damyns Hall Farm, in conjunction with other agricultural land in the locality, for many years. His father, Mr John Watt, died in March 2002. In addition to farming this and other land, he had operated a private pilot's licence from 1950 onwards. The farmland incorporating the present airfield was purchased in 1968 and further land, closer to Aveley Road, was obtained in 1972. In 1969 Mr David Watt recalled that he and his father carried out work to create a grass airstrip aligned to the prevailing wind, with a taxiway, and a small hangar was erected. After that, the airstrip was in regular use for general aviation purposes and, although farming continued over the bulk of the holding, Mr David Watt found, in the 1990s, that he could not use the buildings on the site for agricultural purposes as they were full of aircraft<sup>14</sup>. None of this evidence was challenged at the inquiry.
19. The appellant, Mr Lyons purchased the whole of Damyns Hall Farm/aerodrome from the Watt family in March 2004 on the understanding that it could continue to be operated commercially for aviation and agricultural purposes, together with the holding of 'events' on an occasional basis<sup>15</sup>. At paragraph 2.1 of his proof, Mr Lyons explained that farmland at Damyns Hall played a comparatively small part in the Watt family's overall significant land holding in the locality. In contrast, the current clear-cut unit of occupation at Damyns Hall Farm in isolation required a continued aviation presence in the longstanding mixed use of this unit for Mr Lyons to achieve some sort of viability for the land as a whole. In evidence-in-chief, he stated that some 50% of his revenue from Damyns Hall was derived from farming and 50% from aviation.

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<sup>12</sup> (1972) 24 P&CR 174

<sup>13</sup> Document 28 Appendix Bundle A Part 1

<sup>14</sup> Ibid paragraph 10

<sup>15</sup> Document 7 paragraph 1

20. On that basis, I conclude that, whatever the local planning authority considers to be the status of the plan attached to lawful development certificate E0005.06, this situation is on all fours with the second scenario posited by Bridge J in *Burdle* cited in paragraph 17 above. The occupier, Mr Lyons, has control of Damyns Hall Farm in its entirety. There are two activities, farming and agriculture<sup>16</sup>, neither of which can be said to be incidental or ancillary to each, or even dominant in terms of revenue-earning potential, and there is some overlap between where the two activities take place. For instance, operating a grass airstrip means that its configuration is defined by what is, in these particular circumstances, essentially an agricultural operation, the mowing of grass, so that the physical distinctions between the two activities can become somewhat blurred. In that respect, matters have not changed significantly since the period of more than thirty years that the Watt family owned Damyns Hall, farmed it and operated a private airfield on the land. Moreover, the main farmed areas are fragmented by the presence of a runway traversing the overall land holding.
21. As a consequence, I reach the conclusion that the planning unit for the land at Damyns Hall, for the purposes of this appeal, comprises a mixed use of agriculture and aviation, with neither activity ancillary nor subordinate to the other, across the entire unit of occupation. This finding will be applied to the rest of this appeal and to the other appeals as required. It will also be necessary to correct the allegation in the notice to reflect a change of use from mixed use of agriculture and as an aerodrome to a mixed use for agriculture and as a more intensively used aerodrome. I am satisfied that I can carry out this correction as a mere misdescription of the current state of affairs on the site, under the terms of section 176(1)(a) of the amended 1990 Act, as I do not consider that this will cause injustice to the appellant or the local planning authority.

**Appeal 4 – Ref: APP/B5480/C/09/2105342 – The Appeal on Grounds (b), (c) and (d)**

22. For the appeal on any of these so-called 'legal' grounds to succeed, the onus is on the appellant to demonstrate that, on the balance of probabilities, the unauthorised development alleged in the notice, specifically an intensification of aircraft usage at Damyns Hall Farm/Aerodrome, was, for whatever reason, immune from enforcement action at the time that the enforcement notice was issued. This matter will be examined in turn under the three grounds [(b), (c) and (d)] that have been pleaded.

The Appeal on Ground (b)

23. Under ground (b), the burden of proof is on the appellant to show that the matters alleged in the enforcement notice have not, as a matter of fact, taken place. In the preceding section, I reached the conclusion that the plan attached to lawful development certificate E0005.06 was not determinative of the area of the planning unit. However, the certificate set a level of lawfulness of the numbers of aircraft that could be kept on the site and remain immune from enforcement action. I have no reason to believe that these figures do not apply to the entire planning unit. They are not confined solely to the area

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<sup>16</sup> There are others but I am satisfied that they can be disregarded for the purposes of this exercise.

defined in the certificate as being lawful. Overall, the number of aircraft of all types that are permitted by the lawful development certificate is fifteen. By the time that the enforcement notice was issued that figure had risen to forty one. Whether or not that difference amounted to a breach of planning control, I am satisfied that the figure of 41 aircraft, by the application of simple arithmetic, amounted to an intensified use compared with the much lower total specified in the lawful development certificate. As a matter of fact, intensification in the numbers of aircraft kept at the site has taken place and the appeal on ground (b) must fail.

The Appeal on Ground (c)

24. In my opinion, in this particular case, ground (c) is the most important of the three grounds pleaded to determine whether or not the intensified aerodrome usage was immune from enforcement action. If the appellant can show that the keeping of increased numbers of aircraft on the site did not amount to a breach of planning control, then the appeal on ground (c) succeeds and the enforcement notice will be quashed. If it transpires that the intensification was a material change of use in its own right then the appeal on this ground will fail, as a breach of planning control will have taken place for which planning permission has not been granted.
25. In support of the first contention, the appellant cites one of my earlier appeals, Land at Poplar Hall Farm in the Parishes of Aldham and Elmsett, Suffolk<sup>17</sup>. In allowing an appeal on ground (c) on that occasion I stated, at paragraph 15 of my decision, *"It may be argued that these flying club activities in themselves altered the use so drastically that a change in the character of the use took place which was material. These were the circumstances to be found for instance in Lilo Blum v Secretary of State for the Environment & London Borough of Richmond-upon-Thames [1987] JPL 278. However, these are not the allegations contained either in the original enforcement notice or the notice as proposed to be amended. In their absence one is forced back to the words of Donaldson LJ, as he then was, in Royal Borough of Kensington and Chelsea v Secretary of State for the Environment & Mia Carla [1981] JPL 50, when he stated that intensification which did not amount to a material change of use was merely intensification and not a breach of planning control."*
26. Superficially, these two appeal sites may appear to have much in common. It could be argued that all that has happened on this occasion is what I described at paragraph 16 of my Elmsett decision as *"more of the same"*. However, in this instance, there is a starting point for determining whether intensification, amounting to a material change of use, has taken place; i.e. the limitation to 15 of the number of aircraft of all types that can be kept on the site at any time, for which lawful development certificate E0005.06 provided immunity from enforcement action. At Elmsett there was no comparable benchmark.
27. I do not consider that breaching that figure by one or two aircraft would amount to a material change of use. The physical impact of keeping say 17 or 18 aircraft on this site, in comparison with the limit of 15 imposed by the lawful development certificate over a large area of land, in my opinion would, on any common sense basis, be imperceptible. However, a total of 41 aircraft on the

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<sup>17</sup> Document 20 Appendix 10 – Appeal Reference APP/C/97/D3505/647900 dated 13 October 2000

site, to be found there on 24 April 2009, amounts to almost a trebling of the numbers certified as lawful by E0005.06 in 2007. I am satisfied that, even spread over a large area of land, a detectable increase in numbers of aircraft on this site of this magnitude between 2006 and 2009 has given rise to a change in the character of the use, which was material.

28. In the case of *R oao Childs v First Secretary of State & Test Valley BC*,<sup>18</sup> Mr James Goudie QC, sitting as a Deputy Judge of High Court, found at paragraph 38 of his judgement that use of land, which was specified in a lawful development certificate as a residential caravan site by reference to a limited total of caravans (4) and was increased in number to a greater number (8), is capable of amounting to a change of use which may be material. By analogy, an increase from a certified 15 aircraft to 41 between 2006 and 2009 can also amount to a change in the character of the use that was material. In circumstances where the onus is on the appellant to demonstrate that no breach of control has taken place, I conclude that he has failed to do that, in the absence of any planning permission for the keeping of aircraft on the appeal site in their current numbers. As a result, the appeal on ground (c) fails.

The Appeal on Ground (d)

29. For this ground of appeal, made under section 174(2)(d) of the amended 1990 Act, to succeed, the onus is once more on the appellant to demonstrate, on the balance of probabilities, this time that the land identified as the planning unit in the previous section of this decision, was first used more intensively for aerodrome purposes on or before a period of ten years before the date of issue of the enforcement notice, i.e. on or before 24 April 1999, and that it remained in use as such throughout those ten years, under the provisions of section 171B(3) of the 1990 Act as amended.
30. As is clear from my conclusions on the appeals on grounds (b) and (c), the date that the application was made for lawful development certificate E0005.06 was made, 14 February 2006, was determinative of a level of the keeping of fifteen aircraft at Damyns Hall Farm at that time. That is long after 24 April 1999. As a result, the appellant cannot demonstrate a continuous period of ten years or more of a significantly greater figure than 15 aircraft being kept on the site before the enforcement notice was issued, which might have provided immunity from enforcement action. Accordingly, the appeal on ground (d) must fail.

#### **Appeal 4 – Ref: APP/B5480/C/09/2105342 – The Appeal on Ground (a) and the Deemed Application – Main Issues**

31. Following on from my conclusions on the planning unit, the allegations in the enforcement notice require correction and that has to be reflected in the terms of the deemed planning application before me, now that the 'legal' grounds of appeal have failed. Taking all of that into account, I consider that the first main issue in this appeal is whether a material change of use of the appeal site, from mixed use as agricultural land and as an aerodrome, to a mixed use for agriculture and a more intensive use as an aerodrome, constitutes

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<sup>18</sup> 2005 [EHWC] 2368 (Admin) – Document 42

inappropriate development for the purposes of Green Belt policy. Following on from this, I consider that, if the development is inappropriate, the second issue is whether the harm to Green Belt openness, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify this particular development.

**Appeal 4 – Ref: APP/B5480/C/09/2105342 – The Appeal on Ground (a) and the Deemed Application – Reasons**

Whether inappropriate development in Metropolitan Green Belt

32. Paragraph 3.12 of PPG2 of 1995 states that the statutory definition of development includes the making of any material change in the use of land. The making of material changes in the use of land is inappropriate development unless those changes in its use maintain openness and do not conflict with the purposes of including land in the Green Belt. On the other hand, paragraph 1.6 of the same document says that once Green Belts have been defined, the use of land in them has a positive role to play in fulfilling certain objectives, one of which is to provide opportunities for outdoor sport and outdoor recreation near urban areas.
33. There is to my mind a certain tension between these two policy statements, both of which may be said to have some application to the circumstances of this case. It is argued on behalf of the appellant that much of general aviation, as carried out at airfields such as Damyns Hall, is of an outdoor recreational nature and the maintenance of a grass airstrip is in itself an other form of development assisting in the maintenance of Green Belt openness, as required by the second bullet point in paragraph 3.4 of PPG2.
34. Much of the air activity revolves around flight training, most of which is likely to be directed towards flying for leisure and pleasure and it is conveniently placed close to the large urban populations of Greater London and South Essex, thereby satisfying much of the criteria set out in paragraph 1.6. However, it was also stressed that this can be the first steps into much more serious activity, commercial flight training, and at the inquiry Mr Lyons expressed his intentions of expanding the more commercial use of the airfield for operating private planes to provide business trips as and when required. In addition, it has in the past acted as an operating base for a lighter-than-air dirigible taking tourists on site-seeing trips over Central London. That seems to me to indicate that this general aviation operation is by no means exclusively an outdoor leisure activity.
35. Much more importantly to my mind, the increase in aircraft on the appeal site as a whole from 15 to 41, which Mr Lyons accepts spend most of their time on the ground<sup>19</sup>, by definition occupies much more of the site than the limits imposed by the 2007 lawful development certificate<sup>20</sup>. Therefore, I am firmly of the opinion that this particular material change of use does not maintain Green Belt openness and thereby conflicts with the purposes of including the land in it contrary to PPG2 paragraph 3.12. Being, by definition, inappropriate,

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<sup>19</sup> Mr Lyons proof of evidence – Document 7 paragraph 2.4

<sup>20</sup> Document 3

very special circumstances will need to be shown by the appellant to demonstrate how harm to green belt openness and any other harm can be overcome.

Very special circumstances

36. I consider that the nub of the appellant's case on the planning merits of this and the other related appeals on this site essentially centres on the tacit acceptance that the keeping of more aircraft at Damyns Hall is inappropriate development in the Green Belt. On the other hand, it is asserted that a package of considerations, taken together, can clearly outweigh harm to Green Belt openness and all other harm by cumulatively giving rise to very special circumstances that overcome the presumption against inappropriate development. However, this is, in my experience, a difficult barrier to surmount. The key paragraph in PPG2 on this matter, in my judgement, is 3.16. Because of its importance to the planning merits of this and other appeals on this site, I consider that it is worth restating here.
37. It says:- *"Inappropriate development is, by definition, harmful to the Green Belt. It is for the [appellant] to show why permission should be granted. Very special circumstances to justify development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."*
38. The appellant's case is that the airfield use is already there. It will not go away if this appeal is dismissed. There will still be an aerodrome catering for fifteen aircraft of various shapes and sizes, which will be able to operate from the airfield in a largely unregulated manner, as far as planning conditions and obligations are concerned. On the other hand, if permission is granted for an aerodrome catering for the keeping of aircraft of about forty or so in total, then controls can be put in place that could improve the amenity of people living in the immediate vicinity and the wider locality in terms of noise reduction and generally considerate flying. This, together with other benefits, such as providing for general aviation in Greater London, which is otherwise poorly catered for and providing employment prospects, are said to amount collectively to very special circumstances that outweigh harm to Green Belt openness and all other harm.
39. The controls that could be put in place would result from the more sophisticated provisions of specially drafted conditions rather than the clumsy restrictions arbitrarily imposed by the outstanding lawful development certificate. These are set out in section 10 of Mr Kember's proof<sup>21</sup>. Those that relate specifically to the operation of the airfield include proposed condition 2, which would require the maintenance of an up-to-date log of all aircraft movements at the aerodrome. Condition 3 would restrict the operation of commercial passenger or air transport by precluding aircraft with an unladen weight of more than 2.73 tonnes except for three days in a year. Condition 4 would restrict air traffic movements of all types to 5,000 in a year, of which

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<sup>21</sup> Document 19

3,500 would be home based and 250 would be helicopter movements. Condition 5 would limit the number of movements in any one day to 100, except for three days to allow for 'fly-in' events (except in emergency). Condition 6 would, again except in emergency, confine flying to the hours of 7am and 9pm.

40. Further controls lie outside the scope of planning conditions so a section 106 unilateral obligation was completed and signed prior to the closure of the inquiry<sup>22</sup>. These included the setting up of a joint consultative committee to hold regular meetings between representatives of the aerodrome and the local community to monitor how the aerodrome has been operating, to put in place an aerodrome flight policy, to instigate a complaints policy agreed between the consultative committee and the aerodrome operators and to remove the 'T hangars' (assuming that planning permission is forthcoming for the building the subject of Appeals 1 and 2).
41. I have looked at these additional controls in some detail to see whether they provide better safeguards to the community at large than the blunt instrument of the lawful development certificate, as counsel for the appellant and his witnesses contend. The appellant's main point is that the use of 15 aircraft in an uncontrolled manner could give rise to greater loss of amenity to residents than a greater number of aircraft based on the site being limited to the number of flights they can undertake overall.
42. I do not accept these arguments. There is general agreement that the persons who suffer from noise most acutely are those who live immediately adjoining the site in Damyns Hall Cottages<sup>23</sup>. This was also borne out by the evidence of those attending the inquiry who lived further away in Upminster<sup>24</sup>. They were largely made aware of the aerodrome's impacts when special 'fly-in' events were being held there. At paragraph 8.3 of his proof, Mr Kember sets out at some length alterations that can be made to current flying practice, moving take-offs further away from the cottages. He states that these changes would not require planning permission. I agree with that, especially taking into account my finding that the appropriate planning unit of the entire unit of occupation as a mixed use for agriculture and as an aerodrome, would allow the emergency runway<sup>25</sup> to be used on a much more regular basis. These sound practice measures could be carried out straight away and would seem to indicate that simple good neighbourliness can, in these circumstances, provide a greater improvement in the amenity of nearby residents than the setting up of complex institutions to monitor the operation of the aerodrome more precisely.
43. Overall, I find that the simple counting of aircraft by local authority enforcement officers provides a much more readily enforceable tool than the precise monitoring of air traffic movements by the specially designed powers of a newly created committee. The most easily provided and effective measures of improving loss of amenity from aircraft noise, for the residents of housing adjoining the site, can be put into effect straightaway. Leaving the total

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<sup>22</sup> Document 5

<sup>23</sup> Paragraph 2.26 (1) of the appellant's closing submissions – Document 22

<sup>24</sup> Mr Emery of Tawney Avenue, Ms Duffield of Ashleigh Gardens

<sup>25</sup> See paragraph 4 above

number of aircraft based at the site at 15 or thereabouts means that less of the site is devoted to aircraft storage than would otherwise be the case. Increasing it to forty would, in my professional judgement, erode Green Belt openness unacceptably and I find that there are no special circumstances that overcome the presumption against this inappropriate development that harms openness in the Metropolitan Green Belt, even if some loss of employment potential may result and that the aerodrome might be used in conjunction with the 2012 Olympic Games. Accordingly, the appeal on ground (a) and the deemed application fail.

**Appeal 4 – Ref: APP/B5480/C/09/2105342 – The Appeal on Ground (f)**

44. The appellant's case in this appeal is essentially that a reduction in the number of air traffic movements is a more effective means of control over the operation of this aerodrome for the protection of the local community at large, from loss of amenity through noise in particular, than the current restrictions based solely on numbers of planes kept on the site, as set out in lawful development certificate E0005.06. I explain in the preceding section why I do not accept those arguments. Since this issue fails on its planning merits, for the most part the requirements of the notice become the minimum necessary to remedy this particular breach of planning control. However, as far as the ground (a) appeal is concerned, I have made certain corrections to the allegations, concerning the previous and current usage of the site, and these need to be reflected in variations to the requirements of the notice, as set out in the Formal Decisions. To that very limited extent, the appeal on ground (f) succeeds.

**Appeal 1 – Ref: APP/B5480/C/09/2096896 – The Appeal on Grounds (b) and (c)**

45. As far as the appeal on ground (b) is concerned, the barn/hangar that is the subject of this notice is a substantial building in its own right. As a matter of fact it exists and so the appeal on ground (b) is bound to fail. Turning to the appeal on ground (c), the onus is firmly on the appellant to demonstrate that, on the balance of probabilities, the matters alleged in this enforcement notice, the erection of an aircraft hangar building and creation of a hardstanding on the land, does not amount to a breach of planning control.
46. Most of the appellant's case is based on the assertion that the building was erected as an agricultural building. An application was made under the prior notification procedure set out in Part 6 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995, but that this was said to have been mishandled by the local planning authority, otherwise planning permission would not have been required for this development. However, both Classes A and B of Part 6 are prefaced by the words, the carrying out on agricultural land comprised in agricultural units. With regards to appeal APP/B5480/C/09/2105342, I explain at some length<sup>26</sup> why I do not consider this to be an agricultural unit. Instead, I find it to be a mixed unit used for agriculture and general aviation and that it has been so used for a significant period of time. There is nothing in Part 6 of Schedule 2 to indicate that any

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<sup>26</sup> Paragraphs 14 to 21 inclusive above

permitted development rights are granted to a unit put to a mixed use of this type.

47. I am reinforced in adopting this stance by the purposes to which the building was put from the outset. It was used for the storage of both the appellant's farm equipment and private aircraft. Moreover, the aircraft were not used for any agricultural purpose, such as crop spraying. A number of other arguments were advanced at the inquiry for indicating that the building could have been erected without the need for planning permission. However, I find the lack of such rights on a mixed use site to be fatal to any claims that the building was erected as permitted development, especially taking into account the onus placed on the appellant to demonstrate otherwise. Therefore, the appeal on ground (c) fails.

### **Appeal 2 – Ref: APP/B5480/A/09/2101867 – Section 78 Appeal – Main Issues**

48. The refusal of planning permission that is the subject of this appeal is "*change of use of agricultural barn for aircraft hangar and hardstanding*". However, the refusal of this planning permission gives rise to a deemed planning application on the related enforcement notice appeal APP/B5480/C/09/2096896, and the development in that notice is clearly identified as "*the erection of aircraft hangar building and creation of a hardstanding on the Land*". That seems to me to be a more accurate description of the form of development to be found on the site and will be adopted as the appropriate description of the development for which planning permission is sought under this appeal.
49. Taking that into account, I consider that the main issues in this appeal to be firstly whether the erection of the barn/hangar building constitutes inappropriate development for the purposes of Green Belt policy. Following on from this, I consider that, if the development is inappropriate, the second issue is whether the harm to Green Belt openness by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify this particular development.

### **Appeal 2 – Ref: APP/B5480/A/09/2101867 – Section 78 Appeal – Reasons**

Whether inappropriate development in Metropolitan Green Belt

50. Paragraph 3.4 of PPG2 makes clear that the construction of new buildings inside a Green Belt is inappropriate unless it is for certain purposes. The appellant's contention is that it provides, under that paragraph's second bullet point, essential facilities for outdoor sport and recreation and, taking an aerodrome used for a wide range of general aviation as a whole, another use of land which preserves the openness of the Green Belt and does not conflict with the purposes of including land in it. Paragraph 3.5 goes on to say that essential facilities should be genuinely required for uses of land, which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it.

51. In that regard it is contended on behalf of the appellant that this building is an essential facility for the operation of the aerodrome, which is a use that has to maintain a very large area of open land in a Green Belt state. As a consequence, it occupies less than 0.1% of the land area of the appeal site so that it falls within the definition of essential small-scale facilities maintaining Green Belt openness as set out in PPG2 paragraph 3.5.
52. I reject that approach. On Mr Russell-Vick's evidence<sup>27</sup> on behalf of the appellant, the visual impact of this building on its surroundings is said in places to be moderate; therefore, it is visible for a considerable distance from some public vantage points and is, therefore by definition, harmful to Green Belt openness. In addition, the primary purpose of the building is to facilitate the storage/sheltering of aircraft that would otherwise be kept in the open. In my reasoning on the deemed planning application on Appeal 4<sup>28</sup>, I conclude that the keeping of additional aircraft in the open, over and above that permitted by lawful development certificate E0005.06, is harmful to Green Belt openness and therefore inappropriate development in the Metropolitan Green Belt.
53. If the only method by which these additional aircraft can be kept under cover is by erecting a substantial structure, then that building must by definition, constitute an even more inappropriate form of development in the Green Belt, as being a large permanent fixture on the ground, in contrast with aircraft which take off from the site from time to time. For this section 78 appeal to succeed, very special circumstances of a particularly compelling nature will need to be demonstrated to overcome the serious harm to Green Belt openness caused by the presence of this bulky structure of uncompromising utilitarian appearance. I reach this conclusion despite the somewhat degraded urban fringe appearance of the surroundings, incorporating gravel workings, landfill sites, a local authority recycling centre and various commercial activities, which characterises the locality as a whole.

Very special circumstances

54. The only adverse circumstance said to follow from the dismissal of this appeal on its planning merits is stated as being<sup>29</sup> the likely retention or relocation of the barn/hangar for agricultural purposes that might stem from permitted development rights granted under the Town & Country Planning (General Permitted Development) Order 1995 as amended. Farming has seemingly been carried out successfully across the bulk of this site without the need for any agricultural use of this or other buildings on the land for a significant period<sup>30</sup>. The possibility that this obtrusive building in the Metropolitan Green Belt might be kept for agricultural purposes does not seem to me to be a particularly special reason why this structure should be granted planning permission, when weighed against the certain knowledge that there is a strong presumption against the erection of inappropriate built development on open Green Belt land. There is also said to be a severe shortage of hangarage to serve the needs of microlight storage in North East London/Essex<sup>31</sup>. That may

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<sup>27</sup> Documents 15 & 16

<sup>28</sup> Appeal reference APP/B5480/C/09/2105342 relating to intensification as aerodrome in excess of the lawful activity as defined by the Certificate of Lawfulness (Local Planning Authority Reference E0005.06)

<sup>29</sup> At paragraph 9.1(iii) of Mr Kember's proof – Document 19

<sup>30</sup> See paragraph 18 above

<sup>31</sup> Document 19 paragraph 11.5(ix)

well be the case, but I remain convinced that, in itself, that is an inadequate reason why this insensitively-sited substantial building should be allowed to remain within an otherwise largely open tract of Green Belt. Therefore, this section 78 appeal should not succeed.

**Appeal 1 – Ref: APP/B5480/C/09/2096896 – The Appeal on Ground (f)**

55. It is submitted on behalf of the appellant that it is unreasonable to require the removal of the barn/hangar if it could be used to store the appellant's own light aircraft and for agricultural purposes. It seems to me that the building has essentially been used to facilitate, in part, the major expansion of the keeping of aircraft on the site and I have explained, at paragraphs 32 to 43 inclusive above, why I consider that the numbers of aircraft kept at Damyns Hall Aerodrome should be curbed, largely to accord with the limitations imposed by lawful development certificate E0005.06<sup>32</sup>. Moreover, commercial agriculture seems to have been carried out on a reasonably successful basis from the farmland for some time without showing any dependence on the presence of this building, which has solely been used as a hangar for most of its existence. I set out in the preceding paragraphs why I consider that this building causes unacceptable harm to the Metropolitan Green Belt. As a consequence, the removal of this building and the restoration of the land to its original condition are the minimum requirements necessary to remedy this breach of planning control. Accordingly, the appeal on ground (f) fails.

**Appeal 6 – Ref: APP/B5480/C/09/2105344 – The Appeal on Grounds (b) and (c)**

56. Structures erected for office use, mainly the running of the flight training schools from the separate rooms attached to the lawful large hangar, are in place so that the matters alleged in the enforcement notice, the siting of three offices adjoining the large hangar<sup>33</sup> exist. Accordingly, the appeal on ground (b) fails. Turning to ground (c), it is contended on the part of the appellant that the development constitutes a use rather than operations and that this use is ancillary to the overall lawful aerodrome use.

57. I do not accept those arguments. From my inspection of the site, I find that the offices accord with the test of what constitutes a building, as set out in *Cardiff Rating Authority v Guest Keen Baldwin Iron & Steel Co*<sup>34</sup>. The offices are of some considerable size; they have an air of permanence and their mass, at least, sits them firmly on the ground and butting against the hangar building. As the aerodrome is unlicensed<sup>35</sup>, it cannot enjoy any permitted development rights under Part 18 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995. Therefore, a breach of planning control has taken place, with the erection of these offices without planning permission, and the appeal on ground (c) fails.

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<sup>32</sup> Document 3

<sup>33</sup> See paragraph 3 above

<sup>34</sup> [1949] 1 KB 385

<sup>35</sup> See paragraph 5 above

### **Appeal 3 – Ref: APP/B5480/A/09/2100488 – Section 78 Appeal – Main Issues**

58. The point is made on behalf of the appellant that the refusal of planning permission that is the subject of this appeal is "*change of use land for the stationing of three portable office units*". However, the refusal of this planning permission gives rise to a deemed planning application on the related enforcement notice appeal APP/B5480/C/09/2105344, and the development in that notice is clearly identified as "*formation of hardstanding and erection of three single-storey office units*". That seems to me to be a more accurate description of the form of development to be found on the site and will be adopted as the appropriate description of the development for which planning permission is sought under this appeal.
59. Taking that into account, I consider that the main issues in this appeal to be firstly whether the erection of these three offices on this area of hardstanding constitutes inappropriate development for the purposes of Green Belt policy. Following on from this, I consider that, if the development is inappropriate, the second issue is whether the harm to Green Belt openness by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify this particular development.

### **Appeal 3 – Ref: APP/B5480/A/09/2100488 – Section 78 Appeal – Reasons**

Whether inappropriate development in Metropolitan Green Belt

60. Paragraph 3.4 of PPG2 says that the construction of new buildings inside a Green Belt is inappropriate unless it is for limited purposes, among which are essential facilities for outdoor sport and outdoor recreation. It may be considered that flight training, especially for light aircraft and microlights, amounts to outdoor sport and recreation within an overall use of general aviation. However, paragraph 3.5 states that essential facilities should be genuinely required for uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. I am firmly of the opinion that the erection of these buildings adds to the developed area of land on the appeal site and, as a direct consequence, conflicts with the purposes of including that land within the Metropolitan Green Belt, safeguarding the countryside from encroachment, checking the unrestricted growth of the large urban area of Greater London and preventing the settlements of Upminster, Rainham and Aveley from merging. These three offices, by definition, constitute inappropriate development and very special circumstances will need to be shown that outweigh the harm thereby automatically caused to Green Belt openness.

Very special circumstances

61. It may be argued that paragraph 3.5 of PPG2 allows for small-scale buildings of this type if they are genuinely required for the use of the land as an aerodrome. From my inspection of the site, I gained the strong impression that these three offices were conventional in appearance, designed for the

carrying out of administrative tasks, which could be carried out anywhere and should be based on land that did not erode Green Belt openness.

62. At paragraph 4.16 of his proof<sup>36</sup>, Mr Kember makes the point that the café/clubroom adjoining the hangar has been used for many years as a briefing room used by pilots based at the aerodrome. There seems to me no good reason why that role cannot continue and incorporate the briefing of trainee pilots by their instructors based at the airfield. Overall, I can find no circumstance, special or otherwise, that can overcome the harm caused to Green Belt openness by retaining these three office buildings. Accordingly, this section 78 appeal fails.

### **Appeal 5 – Ref: APP/B5480/C/09/2105343 – The Appeal on Grounds (b) and (c)**

63. As a matter of fact, there is a mobile home used for residential purposes, in that it is slept in on a regular basis overnight by a member of the staff employed at the aerodrome. Therefore, the appeal on ground (b) is bound to fail. Turning to ground (c), use of the land for siting a caravan for residential use adds a further use to the overall mix of activities across Damyns Hall Farm for farming and airfield purposes. I am satisfied that adding this further use to the planning unit is material and it has not been granted planning permission. Accordingly, a breach of planning control has taken place and the appeal on ground (c) fails.

### **Appeal 5 – Ref: APP/B5480/C/09/2105343 – The Appeal on Ground (a) and the Deemed Application – Main Issues**

64. I consider the first issue in this appeal to be whether the siting of a mobile home for residential purposes on this land constitutes inappropriate development for the purposes of Green Belt policy. Following on from this, I consider that, if the development is inappropriate, the second issue is whether the harm to Green Belt openness by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify this particular development.

### **Appeal 5 – Ref: APP/B5480/C/09/2105343 – The Appeal on Ground (a) and the Deemed Application – Reasons**

Whether inappropriate development in Metropolitan Green Belt

65. Paragraph 3.12 of PPG2 says that the statutory definition of development includes the making of any material change in the use of the land. It goes on to say that the making of material changes in the use of the land is inappropriate development unless it maintains openness and does not conflict with purposes of including land in the Green Belt. Although sited in a relatively secluded spot, largely hidden from the outside world by a tall hedge, the mobile home by definition encroaches onto open Green Belt land, especially in conjunction with the creation of an adjoining limited small curtilage containing domestic paraphernalia, such as garden furniture and children's play equipment. As a result, the presence of the mobile home, by definition, constitutes inappropriate development and very special circumstances will need

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<sup>36</sup> Document 19

to be shown that outweigh the harm thereby automatically caused to Green Belt openness.

Very special circumstances

66. Paragraph 10 of PPS7 makes clear that isolated new housing of any sort in the countryside requires special justification for planning permission to be granted. One of the few circumstances in which isolated residential development may be justified is when accommodation is required to enable certain full-time workers to live at, or in the immediate vicinity of, their place of work. Paragraph 1 of Annex A to PPS7 goes on to say that there will be some cases where the nature and demands of the work concerned make it essential for one or more people engaged in the enterprise to live at, or very close to, the site of their work. Whether this is essential in any particular case will depend on the needs of the enterprise concerned and not on the personal preferences of any individuals involved.
67. Paragraph 15 of the annex says that there may also be instances where special justification exists for new isolated dwellings associated with other rural-based enterprises. Decision makers should apply the same stringent levels of assessment to applications for such new occupational residential accommodation as they apply to accommodation for farm or forestry workers. They should therefore apply the same criteria and principles in paragraphs 3 to 13 of the Annex, in a manner and to the extent that they are relevant to the nature of the enterprise concerned.
68. The case made by the appellant is essentially one based on general security that a residential presence on the site acts as a deterrent to break-ins for purposes of theft, vandalism and criminal damage that could impair the safety of aircraft kept at the site, taking into account the presence of a large urban population on the aerodrome's doorstep. There had been a night-time break-in into the café/clubhouse building immediately before the inquiry opened and, on that occasion, the physical presence of the café/clubhouse operator in the mobile home had nipped a potentially serious crime in the bud. On the other hand, as far as agricultural workers' dwellings are concerned, paragraph 6 of PPS7 Annex A says that protection from theft or injury by intruders may contribute to the need for a new dwelling, although it will not by itself be sufficient to justify one. If that were the only consideration then I do not consider that the presence of the mobile home to provide simple security of the site for its protection from theft and vandalism would suffice to overcome the harm to green belt openness caused by this inappropriate development.
69. However, in addition to this I also have to take into consideration the evidence of PC Daphne Goodall, the Metropolitan Police's crime prevention officer for all of the London Borough of Havering, based at Romford Police Station. She stressed the need for constant security on the site and indicated that a 24 hour physical presence by a human being was the best deterrent to damage or theft of high value aircraft, use of the aerodrome by criminals, especially for the importation of illegal drugs, and the possibility of its use as a base for terrorist attack, especially given its proximity to the main 2012 Olympic Games site at Stratford, East London. The physical presence of persons living on the site around the clock was considered to be the most effective means of reducing

these real threats to a minimum, preferable to security fencing, alarm systems and regular night-time security patrols, although all would help.

70. What particularly impressed me about this evidence was the conviction with which it was delivered at the proceedings and the fact that it was totally unsolicited by any party to the inquiry. PC Goodall arrived at the inquiry unannounced and presented her evidence, outlined in the preceding paragraph, clearly and succinctly. It seems to me that the potential terrorist threat to the 2012 Olympic Games is a particularly compelling very special circumstance, for which a temporary grant of planning permission for residential accommodation, to provide 24 hour security to a private airfield for a limited period beyond the period of the main and paralympic games, is especially justified.
71. If it is considered that a permanent residential presence is warranted after 2012, then the appropriate approach would be to convert the agricultural workers dwelling dating from 1980, on which a lawful start has been made<sup>37</sup>, into a planning permission to a dwelling to be occupied mainly by a person or persons employed in the supervision of the aerodrome. In the meantime, a temporary planning permission for the mobile home for three years and occupied by a person mainly employed at the aerodrome will provide additional protection over a period of likely increased threat of criminal and terrorist activity at a local high profile event of world-wide significance. To that extent, the appeal on ground (a) succeeds.

**Appeal 7 – Ref: APP/B5480/C/09/2105346 – The Appeal on Grounds (a), (b), (c), (d) and (f)**

72. At the inquiry, it was agreed between the parties that the use of the clubhouse building as a café visited by members of the public at large and the setting out of a large area of decking had taken place, that this constituted a material change of use and operational development that amounted to a breach of planning control and that the unauthorised use and works had commenced less than four years before the enforcement notice had been issued. Therefore, grounds of appeal, made under section 174(2)(b), (c) and (d) of the amended 1990 Act, were bound to fail.
73. Similarly, on its planning merits, there was consensus that the development amounted to inappropriate development in the Metropolitan Green Belt, for which no very special circumstances could be found to overcome its inherent harm to Green Belt openness. Paragraph 2 of the local planning authority's closing submissions<sup>38</sup> says that it is common ground between the parties that this appeal can be disposed of, as most of the decking attached to the café/clubhouse building had been removed before the inquiry had opened, by deleting the words "*as a café with associated decking*" from the end of Step (i) of the requirements of the notice and inserting in their place the words "*as a café open to members of the public*" and by deleting the whole of Step (ii). The first part of the request is carried out in paragraph 97 of the Formal Decisions below and, to that limited extent, the appeal on ground (f) succeeds. The second part of the request, the deletion of Step (ii), is not put into effect, as it could be argued that this could have given planning permission for the

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<sup>37</sup> See paragraph 3 above and footnote 4

<sup>38</sup> Document 29

removed decking under section 73A of the 1990 Act by the operation of section 173(11) of the amended Act.

**Appeal 8 – Ref: APP/B5480/C/09/2105347 – The Appeal on Ground (d)**

74. In this ground of appeal, made under section 174(2)(d) of the amended 1990 Act, the onus is on the appellant to demonstrate, on the balance of probabilities, that the land, shown in black on Plan 2 attached to the enforcement notice, was laid out as decking on or before a period of four years before the date of issue of the enforcement notice, i.e. on or before 24 April 2005, under the provisions of section 171B(1) of the 1990 Act as amended.
75. No evidence was brought to the inquiry in support of that proposition. Indeed, by the time of the site visit, the bulk of the decking in the position shown on Plan 2 had already been removed. Accordingly, the appellant has not been able to discharge the burden of proof to demonstrate that all of the decking, the subject of this enforcement notice, had been in place continuously for a period of four years before the notice was issued. Therefore, the appeal on ground (d) must fail.

**Appeal 8 – Ref: APP/B5480/C/09/2105347 – The Appeal on Ground (f)**

76. Notwithstanding the considerations made under ground (d) above, Counsel for the local planning authority conceded at the inquiry that evidence pointed strongly that a small area of decking, which had been retained on the site, had been in place for a period in excess of four years prior to the date of the enforcement notice. As a result, to that limited extent, the local planning authority accepted that the appellant had gained immunity from enforcement action for the installation of decking on a small part of the appeal site. During the course of the inquiry the Council produced a plan identifying the extent of this area<sup>39</sup>.
77. Consequently, I was requested to vary the enforcement notice by both parties, despite the initial failure of the appellant to make an appeal under ground (f). These variations take the form of additional wording to the first and second requirements in paragraph 5 of the notice, to reduce the ambit of the decking that was less than four years old at the date that the enforcement notice was issued, and the addition of a plan to this decision identifying the area that would be exempted from the notice's effects.
78. In the light of this agreement between the main parties, I am prepared to use my powers, under section 176(1)(b) of the amended 1990 Act, to vary the terms of the enforcement notice as set out in my Formal Decisions at paragraph 97, as I am satisfied that these variations would not cause injustice to either the appellant or the local planning authority. The appeal on ground (f) succeeds to that limited extent.

**Appeal 10 – Ref: APP/B5480/C/09/2105349 – The Appeal on Ground (c)**

79. For the appeal on ground (c) to succeed, the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters alleged in this enforcement notice do not constitute a breach of planning control. Plan 2

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<sup>39</sup> Plan D

attached to the notice identifies an area of hardstanding used as a car park. However, under my reasoning concerning Appeal 4, regarding the appropriate planning unit for the appeal site as a whole, I find that this applies across the entire mixed use planning unit of aerodrome and farming known as Damyns Hall Farm. In my opinion, any part of that land can be used for car parking ancillary to overall use as an aerodrome and/or for agriculture without requiring planning permission.

80. Therefore, confining the car parking to a hard surfaced area only, as the local planning authority is endeavouring to achieve through the operation of this notice, is to my mind unrealistic. Car parking in connection with the composite mixed use of farming and aerodrome can take place anywhere on the planning unit comprising the whole of Damyns Hall Farm. Therefore no material change of use of land as a car park has taken place, only operational development in the form of hardstanding, which will be dealt with in the following Appeal 9. As a consequence, I am convinced that the matters alleged in this particular enforcement notice do not constitute a breach of planning control. Therefore, I am satisfied that, on the balance of probabilities, the car parking use alleged in the notice does not amount to a breach of planning control and the appeal against this enforcement notice on ground (c) is successful. Since the appeal succeeds on ground (c), the appeal on grounds (a), (f) and (g) does not fall to be considered.

**Appeal 9 – Ref: APP/B5480/C/09/2105348 – The Appeal on Ground (a) and the Deemed Application – Main Issues**

81. I consider the first issue in this appeal to be whether the formation of a hardstanding to form a car park by reason of deposit of hardcore constitutes inappropriate development for the purposes of Green Belt policy. Following on from this, I consider that, if the development is inappropriate, the second issue is whether the harm to Green Belt openness by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify this particular development.

**Appeal 9 – Ref: APP/B5480/C/09/2105348 – The Appeal on Ground (a) and the Deemed Application – Reasons**

Whether inappropriate development in Metropolitan Green Belt

82. Paragraph 3.12 of PPG2 says that the statutory definition of development includes engineering and other operations. It goes on to say that the carrying out of such operations is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the Green Belt. The deposit of hardcore is an engineering operation and its creation of a hardstanding clearly does not, in itself, maintain openness. As a result, the hardstanding, by definition, constitutes inappropriate development and very special circumstances will need to be shown that outweigh the harm thereby automatically caused to Green Belt openness.

Very special circumstances

83. It seems to me that, on any analysis, the area of hardstanding for car parking use, as it existed at the time of the inquiry, was excessive for the scale of

commercial activity in the form of airfield use and agriculture at the levels of intensity pursued on the site. Halving its area would reduce hardsurfacing on the site significantly. On the other hand, providing a dense landscaped cover to the eastern half of the present area of hardcore would, in my professional judgement, screen much of potentially unsightly car parking from the rear of Damyns Hall Cottages, a short distance to the east. Provision of a still generous hard surfaced area would allow a condition to be imposed that would force car parking into this designated parking area, rather than being scattered in a haphazard manner, which could potentially arise from the success of Appeal 10 on ground (c).

84. Having exited the site from the main accessway in a modestly sized private car, I consider that, provided vehicles stop at the back edge of the highway in Aveley Road, their drivers enjoy adequate visibility to see traffic in Aveley Road clearly in both directions. In that regard, I agree with the conclusions of Mr Leslie, the highway witness supporting the appellant, who states at paragraph 12.4 of his proof of evidence<sup>40</sup>, "*The actual visibility for emerging traffic at the junction with Aveley Road is good.*" In my judgement, restricting car parking to this small area is unlikely to give rise to dangerous conditions at this junction if the present car park capacity, as determined by the current hard surfaced area, is severely reduced.
85. Taking all of that into account, confining the parking required for the airfield/farming use to a reduced area of landscape hardstanding would, in my opinion, maintain openness as required by paragraph 3.12 of PPG2 and amount to very special circumstances sufficient to overcome any harm to Green Belt openness brought about by approval of inherently inappropriate development. Accordingly, the appeal on ground (a) succeeds and planning permission will be granted on the deemed application, subject to the conditions outlined in the preceding paragraph. Since the appeal succeeds on ground (a), the appeal on ground (g) does not require consideration.

**The Appeals on Grounds (g) on Appeal 4 (APP/B5480/C/09/2105342), Appeal 1 (APP/B5480/C/09/2096896) & Appeal 6 (APP/B5480/C/09/2105344)**

86. It is agreed with the appellant's representatives that it would be very difficult to reduce present levels of activity at the aerodrome to the three months specified in the periods of compliance with the requirements of these notices. This is especially the case at a time of the year when these appeal decisions are likely to emerge, late spring, when light aircraft activity is likely to be at its annual peak and would probably remain there for some time thereafter. To bring the level of activity down to that specified in lawful development certificate E0005.06 is likely to take twelve months (Appeal 4), as is the case with relocating the flight training schools' from the portacabins (Appeal 6) to other buildings on the airfield. Because of its size, it is also likely to take twelve months to find new accommodation for the aircraft currently kept in the barn/hangar (Appeal 1) and to secure its removal and that of the resultant debris, while a further six months would be required to restore the site of this

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<sup>40</sup> Document 17

substantial building to a suitable standard. On that basis, these three appeals on ground (g) succeed.

### **Conclusions**

87. For the reasons given above, I conclude that the section 78 appeals, concerning the barn/hangar and the portacabin/offices (Appeals 2 and 3 respectively) should be dismissed. I conclude that the section 174 appeals concerning the barn/hangar (Appeal 1), intensified use of the aerodrome (Appeal 4), and erection of portacabins (Appeal 6) should not succeed. I uphold the enforcement notices with variations to the periods for compliance with the notices' requirements and, where appropriate, I refuse to grant planning permission on the deemed applications. With regard to Appeal 10, use as a car park, I conclude that the appeal should succeed on ground (c). Accordingly, that enforcement notice will be quashed. Following on from that, I conclude that related enforcement notice Appeal 9, the formation of hardstanding by deposit of hardcore material, should succeed on ground (a) and planning permission will be granted, subject to conditions.
88. Similarly, I conclude that enforcement notice Appeal 5, regarding the mobile home, should also succeed on ground (a) and planning permission will be granted, but only on a temporary basis. I conclude that enforcement notice Appeal 7, change of use of the clubhouse building and decking to café with associated decking falling within Use Class A3, used by visiting members of the public, should fail, as no evidence was brought on behalf of the appellant to the inquiry in its support. However, I conclude that the related enforcement notice Appeal 8, regarding an area of decking, should succeed on ground (f), in that part of that area has become lawful, and I am varying the enforcement notice accordingly, prior to upholding it.

### **Formal Decisions**

#### **Appeal 1 – Ref: APP/B5480/C/09/2096896**

89. I direct that the enforcement notice be varied in paragraph 5, "*WHAT YOU ARE REQUIRED TO DO*", by deleting the phrase "*3 months*" and inserting the phrase "*Twelve months*" in both of the 'Times for compliance' in steps (i) and (ii) and by deleting the phrase "*9 month*" (sic) and inserting the phrase "*Eighteen months*" in the 'Time for compliance' in step (iii). Subject to these variations, I dismiss the appeal, I uphold the enforcement notice and I refuse to grant planning permission on the application, deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Appeal 2 – Ref: APP/B5480/A/09/2101867**

90. I dismiss the appeal.

#### **Appeal 3 – Ref: APP/B5480/A/09/2100488**

91. I dismiss the appeal.

**Appeal 4 – Ref: APP/B5480/C/09/2105342**

92. I direct that the enforcement notice be corrected in paragraph 3, "*THE BREACH OF PLANNING CONTROL ALLEGED*", by deleting the words "*through intensification*" and inserting the words "*from a mixed use for agriculture and as an aerodrome to a mixed use for agriculture and more intensive use*" and be varied in paragraph 5, "*WHAT YOU ARE REQUIRED TO DO*",
- (i) in step (i) by deleting the words "*that part of the Land shown hatched black on Plan 2 attached to the enforcement notice, to*" and inserting the word "*the*" and by deleting the words "*in connection with*" and inserting the word "*to*";
  - (ii) in step (ii) by deleting the phrase "*(the area hatched black on Plan 2)*"; and
  - (iii) by deleting the phrase "*3 months*" and inserting the phrase "*Twelve months*" in each of the 'Times for compliance' in steps (i), (ii) and (iii).
93. Subject to these corrections and variations, I dismiss the appeal, I uphold the enforcement notice and I refuse to grant planning permission on the application, deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal 5 – Ref: APP/B5480/C/09/2105343**

94. I allow the appeal, and direct that the enforcement notice be quashed. I grant temporary planning permission, on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN, as shown on the plans attached to the notice, for use of land coloured black and indicated by arrow and labelled on Plan 2 attached to the enforcement notice, for residential purposes by stationing of a mobile home and formation of a residential curtilage, subject to the following conditions:-
- 1) The use for the siting of a mobile home hereby permitted shall be discontinued, any associated building works or other operations associated with the mobile home and its residential curtilage shall be removed, and the land restored to its former condition on or before 1 July 2013, in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
  - 2) The occupation of the mobile home shall be limited to a person solely or mainly employed or last employed in the business occupying the premises known as Damyns Hall Aerodrome, or a widow or widower of such a person, or any resident dependants.

**Appeal 6 – Ref: APP/B5480/C/09/2105344**

95. I direct that the enforcement notice be varied in paragraph 5, "*WHAT YOU ARE REQUIRED TO DO*", by deleting the phrase "*3 months*" and inserting the phrase "*Twelve months*" in both of the 'Times for compliance' set out in steps (i) and (ii). Subject to these variations, I dismiss the appeal, I uphold the enforcement notice and I refuse to grant planning permission on the

application, deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal 7 – Ref: APP/B5480/C/09/2105346**

96. I direct that the enforcement notice be varied in paragraph 5, "*WHAT YOU ARE REQUIRED TO DO*", by deleting the phrase "*as a café with associated decking*" at the end of Step (i) and insertion of the words "*as a café open to members of the public*". Subject to this variation, I dismiss the appeal, I uphold the enforcement notice and I refuse to grant planning permission on the application, deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal 8 – Ref: APP/B5480/C/09/2105347**

97. I allow the appeal on ground (f), and direct that the enforcement notice be varied:-

- (i) by the addition of the plan headed APP/B5480/C/09/2105347 attached to this decision;
- (ii) by the addition of the words "*save for the area identified as 'DECKING' on the plan attached to appeal decision APP/B5480/C/09/2105347*" to the end of step (i) of paragraph 5 of the notice, "*WHAT YOU ARE REQUIRED TO DO*";
- (iii) by the addition of the words "*save for the area identified as 'DECKING' on the plan attached to appeal decision APP/B5480/C/09/2105347*" to the end of step (ii) of paragraph 5 of the notice, "*WHAT YOU ARE REQUIRED TO DO*".

98. Subject to these variations, I uphold the enforcement notice.

**Appeal 9 – Ref: APP/B5480/C/09/2105348**

99. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN, as shown on the plans attached to the notice, for the formation of hardstanding by deposit of hardcore material, in the area coloured black and indicated by arrow and labelled on Plan 2 attached to the enforcement notice, in connection with use as a car park, subject to the following conditions:-

- 1) The use for car parking hereby permitted shall cease, any engineering and other operations hereby permitted shall be removed and all equipment and materials, brought onto the land for the purposes of such use, shall be removed within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
  - i) within 3 months of the date of this decision, a scheme for finishing the hardcore surfacing and the landscaping of the car park area shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation; the scheme shall consist of the retention of the western half of the area of hardcore, at the date of this decision, for

- car parking and the eastern half of the area primarily for dense landscaping using for the most part indigenous species;
- ii) if, within 11 months of the date of this decision, the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State;
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State;
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 2) All planting, seeding or turfing, comprised in the details of landscaping approved by condition 1 above, shall be carried out in the first planting and seeding seasons following the completion of the development; and any trees or plants, which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 3) Upon completion of the car parking scheme approved by condition 1, no parking of private cars on the site, generated by the aerodrome/farming activities taking place on the site known as Damyns Hall Farm and Aerodrome, shall take place other than in the car parking area hereby permitted, unless otherwise agreed in writing by the local planning authority.

**Appeal 10 – Ref: APP/B5480/C/09/2105349**

100. I allow the appeal and direct that the enforcement notice be quashed.

*Ian Currie*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Mr Stephen Morgan	of Counsel, instructed by Mr Peter Kember, Aviation Planning Consultant, Eridge, Tunbridge Wells.
He called:-	
Mr Timothy Lyons	The Appellant, Crowhurst Oast, Lamberhurst, Tunbridge Wells, Kent, TN3 8BL.
Mr Keith Reynolds	Aerodrome Manager, Damyns Hall Aerodrome, Aveley Road, Upminster, Essex, RM14 2JN.
Mr Grant Leslie CEng MICE RMaps, MCFI	Director, Monsoon Engineering Ltd, The Barn, Lested Farm Offices, Plough Wents Road, Chart Sutton, Maidstone, Kent, ME17 3SA.
Mr Douglas Sharps CEng FIMechE FIOA	Acoustic Consultant, Sharps Acoustics LLP, Maltings House, Bentley, Ipswich, Suffolk, IP9 2LT.
Mr Philip Russell-Vick DipLA CMLI	Partner in Enplan LLP, Landscape Architects, 10 Upper Grosvenor Road, Tunbridge Wells, Kent, TN1 2EP.
Mr Peter Kember DipTP MRTPI MRAeS	Aviation Planning Consultant, Ridgers Barn, Bunny Lane, Eridge, Tunbridge Wells, TN3 9HA.

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Christopher Buttler	of Counsel, instructed by the Solicitor to the Council of the London Borough of Havering.
He called:-	
Mr Mark Philpotts CEng MICE MIHT	Principal Engineer, London Borough of Havering.
Mr Simon Thelwell BSc	Planning Control Manager (Projects and Compliance), London Borough of Havering.

### INTERESTED PERSONS:

Mr John Day	Resident of Parkland Avenue, Upminster.
Mr E Marling	Resident of Damyns Hall Cottages, Upminster.
Mr K Gilligan	Resident of Meadowside Road, Upminster.
Mr Dipak Mahajan	Resident of West Wickham, Kent.
Mr Stephen Emery	Resident of Tawney Avenue, Upminster.
Mr Alan Green	Resident of South Weald, Brentwood, Essex.
PC Daphne Goodall	Metropolitan Police Crime Prevention Officer for Havering, Romford Police Station.
Linda Duffield	Resident of Ashleigh Gardens, Upminster.
Mr Kenneth Lees	Resident of Damyns Hall Cottages, Upminster.
Mr Jeff Nicholls	Resident of Bramble Lane, Upminster.

### DOCUMENTS

- 1 Letter of notification of inquiry and list of persons notified.
- 2 Statement of Common Ground.
- 3 Certificate of Lawful Use or Development, Local Planning Authority Reference E0005.06, dated 2 March 2007.
- 4 Draft planning conditions, to be attached to any grants of planning permission, jointly agreed between Mr Kember and Mr Thelwell.
- 5 Unilateral undertaking made by Damyns Hall Aerodrome Ltd under section 106 of the Town and Country Planning Act 1990 dated 12 February 2010.
- 6 Opening statement on behalf of the appellant.
- 7 Proof of evidence of Mr Timothy Lyons.
- 8 Appendices to the proof of evidence of Mr Timothy Lyons.
- 9 Statement of Mr Keith Reynolds.
- 10 Proof of evidence of Mr Douglas Sharps.
- 11 Summary proof of evidence of Mr Douglas Sharps.
- 12 Appendices to the proof of evidence of Mr Douglas Sharps.

DOCUMENTS (Continued)

- 13 Inquiry note from Mr Douglas Sharps dated 20 January 2010.
- 14 'Operations of single-engined helicopters at London Docklands Heliport', Technical Note A7497 (No2), Bickerdike Allen Partners, 20 October 2006.
- 15 Proof of evidence of Mr Philip Russell-Vick.
- 16 Figures and appendices to the landscape and visual proof of evidence of Mr Philip Russell-Vick.
- 17 Proof of evidence of Mr Grant Leslie.
- 18 Appendices to the proof of evidence of Mr Grant Leslie.
- 19 Proof of evidence of Mr Peter Kember.
- 20 Appendices to the proof of evidence of Mr Peter Kember.
- 21 Record of aircraft movements at Damyns Hall Aerodrome 2007-8, submitted by Mr Kember.
- 22 Closing submissions on behalf of the appellant.
- 23 Opening statement on behalf of the local planning authority.
- 24 Proof of evidence of Mr Mark Philpotts.
- 25 Proof of evidence of Mr Simon Thelwell.
- 26 Summary of proof of evidence of Mr Simon Thelwell.
- 27 Appendices to the proof of evidence of Mr Simon Thelwell.
- 28 Evidence submitted with application for Certificate of Lawful Use or Development, Local Planning Authority Reference E0005.06, submitted by Mr Thelwell.
- 29 Closing submissions on behalf of the local planning authority.
- 30 Statement of Mr Alan Green.
- 31 Statement of Mr John Day.
- 32 'Vehicular Access to All-Purpose Trunk Roads', TD41/95, The Highways Agency.
- 33 Design Manual for Roads and Bridges, Volume 6 Section 1 Part 1 TD 9/93 – Amendment No1, Highway Link Design, February 2002.
- 34 Road Safety Observations Report for Damyns Hall Aerodrome Site Access, Jacobs Consultancy, December 2009.
- 35 Damyns Hall Aerodrome Traffic Conditions Report, Havering London Borough Streetcare, December 2009.
- 36 Standard London Borough of Havering response to requests for traffic mirrors.
- 37 Secretary of State decision dated 16 November 1994 on appeal against refusal of lawful development certificate for use land for storage of builders' materials to rear of 69-71 Mill Lane, Teignmouth, Devon (Teignbridge DC) – Ref:- APP/X/93/P1133/000001.
- 38 Appeal decision dated 2 August 2007 (Ref:- APP/J3530/C/06/2027448) granting planning permission and quashing an enforcement notice for change of use to provide an additional 300m of runway on land at Cherry Tree Farm, Monewdon, Woodbridge, Suffolk (Suffolk Coastal DC).
- 39 Appeal decision dated 29 November 2007 (Ref:- APP/M1005/C/06/2033220) refusing planning permission and upholding an enforcement notice for change of use for road haulage business on land at Plaistow House Farm, Plaistow, Crich, Matlock, Derbyshire (Amber Valley BC).
- 40 Decision of the Court of Appeal in *Sussex Investments Ltd v Secretary of State for the Environment and another* The Times 29 December 1997.
- 41 *South Bucks DC v Secretary of State for the Environment and Berkeley Homes Ltd* QBD 22 June 1998 (Ref:- CO/184/98).
- 42 *R oao Childs v First Secretary of State & Test Valley BC* [2005] EWHC 2368 (Admin).
- 43 Definition of *aircraft* in Shorter Oxford English Dictionary.
- 44 *Craies on Legislation*, Eighth Edition, London 2004, pp543-553.

PLANS

- A Plan showing location of car park incidental to use, as limited by lawful development certificate for airfield as specified in certificate reference E0005.06 (Document 3), submitted by Mr Thelwell.
- B Plan showing suggested details of car park incidental to use, as limited by lawful development certificate for airfield as specified in certificate reference E0005.06 (Document 3), submitted by Mr Thelwell.

PLANS (Continued)

- C Plan showing removal of half of present hardsurfaced area of car park and landscaping and planting of present eastern half of hardsurfaced area, submitted by Mr Russell-Vick.
- D Plan showing extent of agreed lawful area of decking attached to café/meeting room, submitted by the local planning authority.
- E Plan showing visibility at the access from Damyns Hall Aerodrome onto Aveley Road with 'x' distance of 4.5m and 'y' distances of 11.3m southbound and 90.7m northbound, submitted by Mr Philpotts.
- F Plan showing visibility at the access from Damyns Hall Aerodrome onto Aveley Road with 'x' distance of 4.5m and 'y' distances of 13.7m southbound and 116.6m northbound, submitted by Mr Philpotts.
- G Plan showing visibility at the access from Damyns Hall Aerodrome onto Aveley Road with 'x' distance of 2.4m and 'y' distances of 22m southbound and 104.5m northbound, submitted by Mr Philpotts.
- H Plan showing visibility at the access from Damyns Hall Aerodrome onto Aveley Road with 'x' distance of 2.4m and 'y' distances of 24.8m southbound and 122.8m northbound, submitted by Mr Philpotts.

PHOTOGRAPHS

- 1 Bundle of 13 photographs, taken on 15 December 2009, of visibility at the appeal site's access, submitted by Mr Philpotts.



# Plan

This is the plan referred to in my decision dated: 8<sup>th</sup> June, 2010.

by **Ian Currie BA MPhil MRICS MRTPI**

**Land at Damyns Hall Farm & Aerodrome, Aveley Road, Upminster, Essex, RM14 2TN**

**Reference:  
APP/B5480/C/09/2105347**

The Planning Inspectorate  
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Scale: - 1 to 5,000

