Tandridge District Council Local Development Management
Plan Examination

Further Statement by Gatwick Airport Ltd - Appendices

Inspectors Matters, Issues and Questions:

Matter 8: Issue 8.100

Policy TLP51 – Airport Car Parking

Appendices (1) to GAL Further Submission on Matter 8:
Copies of three relevant recent appeal decisions:

1. Gas Holder Site, Crawley (APP/Q3820/W/17/3182041)
2. Spiritwood, Tandridge (APP/M3645/C/16/3166210)
3. Land adjacent to Lowfield Heath Service Station, Crawley, West Sussex (APP/Q3820/W/17/3173443) (attached)
Appeal Decision
Inquiry held on 15-17 May 2018
Accompanied site visit made on 17 May 2018 by
M C J Nunn BA BPL LLB LLM BCL MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 19 July 2018

Ref: APP/Q3820/W/17/3182041 Former Gas Holder Station Car Park, North of Crawley Avenue, Pound Hill, Crawley, West Sussex, RH10 3PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Ace Airport Parking against Crawley Borough Council.
- The application Ref: CR/2016/1050/NCC was refused by notice dated 14 February 2017.
- The original application sought planning permission for a retrospective change of use of land to long term airport car parking for a temporary period of three years and retention of hardstanding, Ref CR/2013/0299/FUL, dated 19 February 2014
- The condition in dispute is No 1 which states that: ‘the use of the site for airport car parking shall cease and the hardstanding hereby permitted shall be removed and the land restored to its former condition, or to a condition to be agreed in writing by the Local Planning Authority, on or before the expiration of the period ending on 17 February 2017’.
- The reason given for the condition is: ‘to enable the Local Planning Authority to review the special circumstances under which this permission is granted’.

Decision
1. The appeal is dismissed.

Preliminary Matters
2. Gatwick Airport Ltd (‘GAL’) appeared at the Inquiry as a Rule 6 Party, and gave evidence inviting me to dismiss the appeal.

3. An application for a full award of costs was made by the Council against the appellant. This is subject of a separate decision.

4. A Statement of Common Ground was jointly agreed and signed by the appellant and Council on the first day of the Inquiry¹.
Background

5. Planning permission was granted in February 2014 for a temporary three year period for the use of land for long term airport car parking\(^2\). Condition 1 of Inquiry Document (ID) 1, dated 15 May 2018 requires the car parking use to cease and the site to be restored to its former condition (or an agreed condition) by 17 February 2017. However, the site is still operating as a car park in breach of this condition. This appeal seeks the removal of Condition 1 and the grant of either permanent or temporary permission\(^2\).

6. The Council states\(^4\) that other conditions (2 to 5)\(^3\) attached to the 2014 permission have not been complied with raising the question as to whether the use has ever been lawful. In response, the appellant says an attempt was made to discharge conditions 2 to 5 by email in June 2014\(^4\) although the Council failed to respond. Whatever the situation, the site is not currently in lawful use for airport car parking as the temporary permission has now expired. Planning permission is therefore required for the site’s continued use for airport car parking.

Main Issues

7. The main issues are: (i) whether the proposal is acceptable, having regard to local parking policy; and (ii) the effect on the character and appearance of the area, and consistency with the principles established for the Forge Wood Neighbourhood.

Reasons

Planning Policy Context

8. The relevant legislation\(^5\) requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Crawley Borough Local Plan 2015-2030 (‘the Local Plan’), adopted in December 2015. The Council, in its two reasons for refusal, cites Policy GAT3 (Gatwick Airport

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\(^1\) Ref CR/2013/0299/FUL
\(^2\) Appellant’s Opening Submissions, Paragraph 1; Closing Submissions, Paragraph 34 [IDS & ID17]  
\(^3\) Mr Robinson’s Proof
\(^4\) ID2
\(^5\) These conditions relate to the removal of hardstanding, the planting of a ‘buffer area’ with native species, and the installation of petrol / oil interceptors throughout the site.
Related Parking), Policy CH1 (Neighbourhood Principle), Policy CH3 (Normal Requirements of all New Development) and Policy H2 (Key Housing Sites) of the Local Plan.

Local Parking Policy

9. Policy GAT3, cited in the first reason for refusal, is specifically concerned with airport related parking. However, the appellant has put forward a number of arguments disputing its applicability to the appeal scheme. First, the appellant argues that Policy GAT3 does not apply to the appeal proposal because the use of the land for airport car parking predated the adoption of the Local Plan, and that consequently the proposal does not constitute ‘additional’ or ‘replacement’ parking within the meaning of that Policy. In other words, because the site previously enjoyed a lawful permission, it is not caught by the policy. However, adopting such an approach would imply that any applications relating to existing unauthorised sites would not be subject to Policy GAT3 because they are already used for such parking and ‘established’ even though they are in breach of planning control. I do not find such a proposition to be tenable.

10. An alternative related argument put by the appellant is that Policy GAT3 does not apply because, at the time the Local Plan was adopted in 2015, the site was in lawful use for parking, by virtue of the 2014 permission. According to the appellant, the policy applies only to ‘truly new proposals and sites, not previously benefiting from planning permission’. That interpretation appears to depend on the contention that the policy falls to be applied to the appeal proposal at the date of the Plan’s adoption. However, it is a basic tenet of planning law that any planning decision, including one made at appeal, must be taken having regard to the development plan and other material circumstances extant at the date of that decision. Therefore, I do not find that this argument assists the appellant.

11. A further argument of the appellant is that airport parking cannot include hotel parking’ (or for that matter, ‘storage’) insofar as these are different uses. It is argued that airport related parking means ‘parking solely related to a flight from the airport’ and ‘this is not the only parking use of the appeal site because it is also used for parking of vehicles belonging to hotel guests’. However, in my judgement, any parking to accommodate cars of hotel guests so as to allow them to take a flight from the airport should be regarded as ‘airport related’ and subject to Policy GAT3. In any event, the use described in the original permission is ‘long term airport car parking’ and the appeal has been advanced on this basis. To sum up, I find that Policy GAT3 is relevant and applicable to the appeal proposals.

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6 Appellant’s Closing Submissions, Paragraph 27 [ID17]
7 Appellant’s Closing Submissions, Paragraph 28 [ID17]
8 Mr Rowe’s Proof, Paragraph 4.9
12. The first ‘limb’ of Policy GAT3 states that additional or replacement airport parking will only be permitted within the airport boundary. The second ‘limb’ requires all new proposals to be ‘justified by a demonstrable need in the context of proposals for achieving a sustainable approach to surface transport access to the airport’. Both the Council and GAL were of the firm view that the second limb applies to proposals that already comply with the first limb. In other words, the two parts of the policy should be read conjunctively rather than disjunctively, and are not alternatives. The appellant, by contrast, says the word ‘and’ which the Council reads into the policy between the two ‘limbs’ does not appear.

13. It is informative that the reasoned justification for the policy states that ‘it is considered that sites within the airport provide the most sustainable location for the additional long stay parking which needs to be provided as passenger throughput grows....’ and ‘sites within the airport boundary are close to the terminals and can help reduce the number and length of trips’. Whilst the reasoned justification is not policy, it provides helpful context, and may be relied on to assist in interpreting the policy. In addition, the Inspector examining the Local Plan observed that Policy GAT3 ‘requires all new parking to be provided within the airport boundary, on the basis that this is the most sustainable location’. In finding the Policy ‘sound’, he noted that ‘there is obvious logic to the argument that car parks close to the terminals will minimise the length of car journeys for most people, and that on-airport provision is a more sustainable option.

14. All this lends weight to the proposition that the second limb applies to those proposals that already comply with the first limb, and that the second limb follows on from the first. Indeed, having regard to the policy’s reasoned justification, as well as the Local Plan Inspector’s comments, it would be an odd interpretation if the second limb applied regardless of whether or not the proposal was on or off-airport. Had that been the intention, the policy would have explicitly been drafted to provide that either proposals had to be on-airport, or alternatively had to show a demonstrable need. Consequently, I prefer the interpretation advanced by the Council and GAL. However, even if the appellant’s interpretation is adopted, it is still necessary to address the second limb of the policy, and show that the proposal is justified by a ‘demonstrable need’.

15. The Council’s 2017 Parking Survey shows some 7,063 vacant spaces on the peak day of a peak week on and off-airport. Criticisms were made by the appellant of the Parking Survey, including that it was a ‘mere snapshot’ in time,

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10 Inspector’s Report (November 2015), Paragraph 87 [CD7/3]
11 Inspector’s Report (November 2015), Paragraph 88 [CD7/3]
12 CD7/10
13 Mr Nutt’s Proof, Paragraph 82
it was incomplete, contained anomalies, and in some respects was erroneous. It was said that the survey under-recorded the number of vehicles on certain sites\(^\text{14}\), it excluded some hotels where there is airport parking, and it excluded other sites on which airport parking occurs. Other criticisms were that the survey made no allowance or deduction for the 'buffer principle'\(^\text{15}\) which makes a distinction between 'actual' parking and 'effective' parking. An effective parking supply is generally lower than actual parking supply, to allow for, amongst other things, improperly parked vehicles and space for circulating traffic. Typically, a discount of 10-20% is applied, which the appellant says is enough by itself to dispense with the surplus identified by the survey.

16. However, these various criticisms do not appear to fundamentally alter the bigger picture that there is adequate parking supply to meet demand. The clear evidence from GAL was that all customers wishing to park at the airport are accommodated, with none turned away\(^\text{19}\). This includes both Fridays as well as Saturdays (the 'peak' day because of the overlap of passengers leaving for and returning from their holidays). It was also explained by GAL that the concept of 'actual' and 'effective' parking capacity is not critical, or used as a basis for managing demand. This is because achieving a balance between supply and demand is achieved through 'variable' or 'dynamic' pricing, with active management of parking spaces so as to fill all available capacity on the airport, whilst ensuring sufficient space remains for 'roll-up' customers who have not pre-booked\(^\text{16}\). Therefore, making such a deduction is not appropriate. I see no reason to doubt the veracity of this evidence.

17. Crucially, it is notable that the agreed Statement of Common Ground explicitly records that, whilst the 2017 Parking Survey is not agreed, the appellant ‘does not put forward an analysis of, or contrary figures to, this survey’\(^\text{17}\). And although it is said that passenger transport forecasts have been underestimated in the past, and this may continue, no alternative forecasts are offered by the appellant. On this point, the agreed Statement of Common Ground records ‘the appellant puts forward none of its own analysis or contrary figures’\(^\text{18}\).

18. There is no indication that GAL is unable to meet future parking need. Various new schemes are in the pipeline\(^\text{19}\) and a new decked parking area over an existing surface car park is under construction at the South Terminal comprising 1000 spaces\(^\text{20}\). GAL states that there are plans to spend around

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\(^{14}\) Southways site
\(^{15}\) As identified in Gatwick Airport Car Parking Strategy, January 2013, Paragraph 5.3.3.1  [CD8/7]  \(^{19}\)
\(^{16}\) Mr Wallace’s Proof, Paragraph 4.1.3
\(^{17}\) Mr Wallace’s Proof, Paragraph 4.1.2
\(^{18}\) ID1, Page 7
\(^{19}\) ID1, Page 7
\(^{20}\) Undertaken under the provisions of Part 8 of the Town and Country Planning (General Permitted Development) Order 2015
£138 million over the next five years increasing parking capacity and that potential exists to add more than 10,000 decked spaces on existing parking areas within the airport should the need arise\(^{21}\). Although the appellant highlighted that some schemes still need final approval by GAL to proceed, I see no reason why they should not be realised if they are required.

19. In addition, GAL is promoting sustainable modes of travel to the airport so as to meet its public transport mode share target as set out in the recently published Airport Surface Access Strategy\(^{22}\). This target has recently increased to a 48% public transport share by 2022, up from 40% previously\(^{23}\). This is tied into a planning agreement entered into by GAL\(^{24}\) which makes provision for the payment of a public transport levy, to be used to improve public transport links to the airport.

20. To sum up, there is no evidence to suggest that there is an unmet need that must be met by allowing off-airport parking. I conclude on the first issue that the scheme would conflict with both limbs of Policy GAT3 of the Local Plan. Even on the appellant’s preferred interpretation of Policy GAT3, it has not been established that there is a demonstrable need for the proposal, as required by the second limb. The proposal would run counter to the Local Plan in terms of controlling the extent of airport related parking, thereby helping to encourage the use of alternatives, whilst ensuring sufficient parking is available to those who have no other option\(^{29}\).

Character and Appearance

21. The Council’s second refusal ground alleges that the development would be harmful to the character of the area, and would be inconsistent with the principles established for the Forge Wood Neighbourhood. The appeal site lies within a much larger area identified on the Local Plan Map\(^{30}\) as a Key Housing Site (Policy H2). However, the ‘broad locations’ for housing do not include the appeal site\(^{25}\). In addition, the approved Forge Wood Master Plan (North East Sector Crawley) shows the site as ‘white land’, as does the Landscape Management Areas Plan submitted as part of the development proposals for a mixed use neighbourhood\(^{26}\).

22. At present, the gas holder currently dominates the site. Whilst not currently in operation, there are no current plans to remove it\(^{27}\). Gas is still stored on the site, and the site falls within a HSE Major Hazard Zone\(^{28}\). The Council accepted

\(^{21}\) Mr Wallace’s Proof, Paragraph 5.5.5 and Table E; This figure includes the decked area at South Terminal

\(^{22}\) ID4 Page 14, Target 1

\(^{23}\) Under s106 of the Town and Country Planning Act, dated 10 December 2015 [CD 7/14]

\(^{24}\) Paragraph 9.20 CD7/4A

\(^{25}\) Indicated by purple dots on the Local Plan Map

\(^{26}\) ID9

\(^{27}\) ID1, Page 2

\(^{28}\) ID 1, Page 2
that it was very unlikely that the appeal site would be used for housing whilst the gas holder remained in situ and also accepted that the appeal scheme would not prejudice the delivery of the 1,900 dwellings identified in Policy H2 of the Local Plan. Given the existence of the gas holder and the fact the site itself is not currently identified for any specific purpose within the Forge Wood Neighbourhood, it is hard to see how the proposal would be inconsistent with the principles established for the Forge Wood Neighbourhood.

23. In terms of character, the site was historically in use as part of the larger gas holder site. The main part of the site comprises areas of hardstanding and road-scalpings and is mostly devoid of vegetation. It is enclosed by a high galvanised palisade fence. Gatwick Stream runs along the eastern boundary, and there is woodland to the east, west and south of the site. The site is largely self-contained and is not visible in wider views, and the parked cars are not especially prominent in the wider landscape. It is well screened from the newly constructed houses some distance to the north, and those currently under construction to the east.

24. To sum up on the second issue, I do not find that the appeal proposal would prejudice the principles established for the Forge Wood Neighbourhood, nor would it harm the character or appearance of the area. Accordingly, I find no conflict with Policies CH1, CH3 and Policy H2 of the Local Plan, and I am not persuaded that the Council’s second ground for refusal is a valid reason for the appeal to fail.

Other Matters

25. A further issue raised by the appellant is that of inconsistency: specifically that temporary permission was granted for airport parking in 2014 but the Council now opposes it. Also, that the site was deemed to be a sustainable location in 2014 and its location has not changed in the interim. There has, however, been a significant change in policy. Policy GAT8 of the Crawley Borough Local Plan was the relevant policy in 2014. This stated that proposals for new airport related car parking on off-airport sites would only be permitted where they did not conflict with countryside policies and could be justified by a demonstrable need in the context of achieving a more sustainable approach to surface transport to the airport. That policy was considerably more permissive in that it allowed for new airport related parking on off-airport sites in certain circumstances. Policy GAT3, by contrast, is significantly more restrictive. It does not follow that because a temporary permission was previously granted such a use is still acceptable, having regard to the current development plan.
26. The appellant has mentioned that the closure of the appeal site would lead to a loss of jobs, with economic consequences for the business. That said, the appellant’s own evidence is that they are ‘a substantial business, probably the largest independent off-airport parking business in the UK’\(^3\)\(^0\). It is stated that they would no longer be able to claim to be ‘the largest independent off airport business in the UK’\(^3\)\(^1\) were the appeal to be dismissed.

27. No information has been provided in terms of the number of bookings at the appeal site as a proportion of total bookings taken, and so it is hard to make a judgement about the role or importance of the site within the business. However, it seems unlikely, given the size of the appeal site relative to the overall capacity of the business, that its loss would be significant enough to undermine the viability of the business as a whole. Moreover, the appellant has been operating the site contrary to Condition 1 of the 2014 permission for some time and so has been aware of the risk that the site may have to close.

**Overall Conclusions and Planning Balance**

28. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The National Planning Policy Framework (‘the Framework’) states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by the economic, social, and environmental dimensions and the interrelated roles they perform. The Framework also requires the planning system to contribute to building a strong, responsive and competitive economy\(^3\)\(^2\), and to proactively drive and support sustainable economic development\(^3\)\(^3\).

29. I acknowledge that the continued use of the land for parking would generate economic benefits, including jobs. I also accept that the site’s closure may have economic consequences, although there is no firm evidence as to the precise effect on the appellant’s business, nor that it would significantly undermine its overall viability. Nonetheless, the economic benefits must be weighed in the balance. In addition, the scheme could be seen as making efficient use of previously developed land within the built-up area adjacent to a gas holder. It is well screened from wider views. There is easy access from the A2011 dual carriageway, and no highway objections are raised. Nor are concerns raised in relation to flood risk. No contamination not previously identified has been found since temporary permission was granted in 2014. Furthermore, the development would not be harmful to the character of the area, nor would it be inconsistent with the principles established for the Forge Wood Neighbourhood.

\(^{30}\) Mr Kiss’s Proof, Page 2  
\(^{31}\) Mr Kiss’s Proof, Page 9  
\(^{32}\) Paragraph 7  
\(^{33}\) Paragraphs 17, 18-22
30. Balanced against these factors is the clear conflict with the adopted development plan, in particular Policy GAT3, which requires all new airport parking to be within the airport boundary, on the basis that this is the most sustainable location. The scheme would conflict with both limbs of Policy GAT3 of the Local Plan, and its wider sustainability objectives. It is not within the airport boundary, but is ‘off-site’. There is no cogent evidence before me to support the view that there is any unmet need for off-airport parking, so the proposal cannot be said to be justified by a demonstrable need. Even on the appellant’s preferred interpretation of Policy GAT3, the scheme fails to satisfy the second limb of the policy.

31. I have carefully considered the various arguments made by the appellant in support of this appeal, including that the proposal should be looked at ‘in the round’, and that GAT3 should not be ‘the be all and end all’ of this appeal. It also is said that any conflict with Policy GAT3 should be characterised simply as a ‘pure policy conflict’ and that a pragmatic response would be to allow the appeal and grant permanent, or at the very least, temporary permission. However, I see no good reason to set aside the provisions of Policy GAT3 of the Local Plan, which has been subject to scrutiny through a Local Plan Examination, and also in the High Court. I have taken account of the various appeal decisions put before me, but I have assessed this proposal on its own merits.

32. Overall, the benefits of the scheme put forward by the appellant do not justify departure from Policy GAT3 of the Local Plan. I find there are no material considerations of sufficient weight that would warrant a decision other than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

Matthew C J Nunn
INSPECTOR

APPEARANCES

FOR THE COUNCIL:

34 Appellant’s Closing Submissions, Paragraphs 29 & 34 [ID17]
35 Mr Rowe’s Proof, Paragraph 4.12
36 Holiday Extras Ltd v Crawley Borough Council [2016] EWHC 3247 (Admin) [CD11/1]
37 APP/Q3820/C/12/2171971 [CD11/7]; APP/Q3820/C/13/2211146 [CD11/8]; APP/M3645/C/16/3166210 [CD11/15]; APP/M3645/W/17/3168251 [CD11/16]; APP/M3645/W/16/3150030 [CD11/17].
David Forsdick of Queens Counsel, Instructed by Crawley Borough Council

He called
Marc Robinson Principal Planning Officer, Development Management Team, Crawley Borough Council
Tom Nutt Planning Officer, Forward Planning Team, Crawley Borough Council

FOR THE APPELLANT:

Stephen Whale of Counsel, Instructed by Ace Airport Parking

He called
Steve Kiss Ace Airport Parking Ltd
Lesley Wills Fact-Services LLP
Phil Rowe PROwe Planning Solutions Ltd

FOR GATWICK AIRPORT LTD

Neil King of Queens Counsel, instructed by Gatwick Airport Ltd

He called
Gary Wallace Head of Car Parks and Commercial Products, Gatwick Airport Ltd

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Agreed Statement of Common Ground, dated 15 May 2018
2. Copy of email from Colin Wells, dated 9 June 2014 regarding conditions pertaining to permission CR/2013/0299/FUL
3. Table showing distances of hotels and car parks
4. Airport Surface Access Strategy (May 2018), Gatwick Airport
5. Appellant’s Opening Submissions
6. Council’s Opening Submissions
7. Gatwick Airport Ltd’s Opening Submissions
8. Copy of permission CR/2013/0299/FUL, dated 19 February 2014
9. Copy of permission CR/2015/0552/NCC relating to Forge Wood; North East Sector & Site Wide Landscape Management Plan & Masterplan
10. Comparative schedule of distances
11. Email from Mark Daly, Horsham District Council to Tom Nutt dated 16 May 2018
12. Note regarding Decked Car Park being constructed under rights conferred by the General Permitted Development Order 2015
13. Correspondence between Gatwick Airport Ltd and the Council regarding the Decked Car Park
14. Application for costs made by the Council
15. Closing Submissions on behalf of Gatwick Airport Ltd
16. Closing Submissions on behalf of the Council
17. Closing Submissions on behalf of the Appellant
Appeal Decision

Inquiry Held on 23 and 24 January 2018 Site visit made on 24 January 2018 by Wendy McKay  LLB
Solicitor (Non-practising)
an Inspector appointed by the Secretary of State
Decision date: 12 February 2018

Appeal Ref: APP/M3645/C/16/3166210 Spiritwood, Broadbridge Lane, Smallfield, Horley, RH6 9RF

• The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
• The appeal is made by Mr Eddy Carey against an enforcement notice issued by Tandridge District Council.
• The enforcement notice was issued on 16 November 2016.
• The breach of planning control as alleged in the notice is without planning permission making a material change of use of the land to a mixed use for the outside storage of motor vehicles/off-airport parking of motor vehicles and for the storage, recovery and repair of motor vehicles.
• The requirements of the notice are to (i) cease the use of the land for the outside storage/parking of motor vehicles in connection with an off-airport parking activity and (ii) cease using the land for the purposes of storage, recovery and repair of motor vehicles and remove from the land all vehicles stored or parked on the land and in the buildings in connection with the storage, recovery and repair activities.
• The period for compliance with requirement (i) is one month and the period for compliance with requirement (ii) is eight months.
• The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

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

Application for costs

1. At the Inquiry, an application for costs was made by Tandridge District Council against Mr Eddy Carey. This application is the subject of a separate Decision.

Preliminary matters

2. At the Inquiry, all the oral evidence was taken on oath.

3. The Statement of Common Ground (SoCG) dated 12 January 2018 includes a description of the site, the surrounding area and the local highway network. It

https://www.gov.uk/planning-inspectorate
also provides details of the planning history of the site and relevant development plan policies.

**The appeal on ground (d)**

**Background matters**

4. On ground (d), it is for the Appellant to demonstrate, on the balance of probabilities, that the material change of use alleged in the notice has existed for a period in excess of 10 years prior to the date of issue of the notice and continued actively throughout the following 10 year period. There can be no ‘dormant’ periods in the 10 year period. The Appellant must show when the change of use first occurred and demonstrate that it had continued actively throughout the relevant period, to the extent that enforcement action could have been taken against it at any time. The relevant date for the purposes of this appeal is the 16 November 2006.

5. The Appellant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted (FW Gabbitas v SSE and Newham LBC [1985] JPL 630). If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellant’s version of events less than probable, there is no good reason to refuse the appeal, provided his evidence alone is sufficiently precise and unambiguous to show the existence of a lawful use through the passage of time “on the balance of probability.”

6. The Appellant makes reference to the case of Burdle v Secretary of State for the Environment [1972] 3 AER 240, 244 in which Bridge J suggested three broad tests for determining the appropriate planning unit. The Appellant submits that this is not a site where it has ever been possible to recognise a single main purpose of the occupier’s use to which other activities are ancillary or incidental. In addition, he accepts that historically there have been no intervening boundary features to create two or more physically separate and distinct areas used for substantially different and unrelated purposes.

7. Having regard to the Burdle tests, I am satisfied that the most appropriate physical area against which to assess the materiality of any change of use is the entire unit of occupation. I consider that the notice correctly identifies the planning unit as being the whole site and the alleged breach of planning control as being the unauthorised mixed use of that land. Whilst it is correct that the components in a mix of uses can fluctuate in their intensity from time to time without there being a material change in use of the land, that scenario is entirely different from the introduction of a new use to that mix of uses which substantially changes that mixture of uses.

8. Where the parties disagree would seem to be regarding the effect of changes to the components of that mix of uses. The Appellant contends that the notice does not look at the Burdle principles of what the pre-existing use of the land has been and submits that the starting position is a mixed use of which the offairport parking already formed part.
9. In that respect, the Council points out that the Appellant would seem to equate the parking of vehicles which is ancillary to the vehicle storage, recovery and repair activities with off-airport parking which is a sui generis use. The distinction between parking and storage was emphasised by the Court of Appeal in Crawley Borough Council v Hickmet Ltd (1998) 75 P & CR 500 and the distinction also appears in the recent appeal decision in respect of the Former Blue Prince Mushroom Production Facility, Burstow, Surrey\textsuperscript{38} which was successfully defended on appeal to the High Court.

10. Therefore, for the Appellant to succeed he needs to establish not only that the site has been used throughout the immunity period for vehicle storage, recovery and repair including any ancillary vehicle parking but also that the site has been continuously used for off-airport parking during that period as part of the mixed use of the land.

The Appellant’s evidence

11. Mr Carey has owned the appeal site since early 2010. However, he has lived on the adjoining plot of land since 1987. He claims that he was therefore able to see what was taking place on the land during the whole of the relevant period. At the Inquiry, he stated that he could see into the site from the corners of his adjacent plot on either side of his stable building which is positioned along the common boundary. He conceded that there were parts of the site which he could not see and that he would not have been able to see what was taking place inside the Nissan huts, or directly in front of them, from his viewpoints. Nonetheless, I am satisfied from my site visit observations that, depending upon the extent of the vegetation at that time, he could potentially have been able to see a great deal of the neighbouring site and the current parking area from his property.

12. He explained that he went onto the appeal site himself on occasions to talk to the then owner. He had also kept his horses on the part of the site between the current parking area and the road. He had seen piles of rubbish and cars on the land that were broken and damaged. It was an old-fashioned type of breakers’ yard. He made reference to a variety of activities which he had observed taking place on the land prior to his purchase, namely, car storage, repairs and breaking, a landscape company, the dumping of rubbish, a window frame company, skips and shipping containers for storage. He had made complaints about some of the activities to the Council.

13. He recalled that the car repair and recovery business had parked a few cars in the woods and there were some on the site when he purchased the land. He also claimed that off-airport car parking had taken place. However, he acknowledged that there had been a greater number of cars parked on the site in 2010 until the Council’s enforcement officer came out to investigate.

14. Taking the Appellant’s own evidence as a whole, whilst various assertions have been made by him as to what had been taking place on the land few details were provided as regards specific dates, duration and extent of the various activities. In particular, he was vague as to the nature, extent and timing of the off-airport parking activity over the years. Furthermore, he provided no

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\textsuperscript{38} APP/M3545/W/16/3150030

https://www.gov.uk/planning-inspectorate
documentary evidence in the form of logbooks, financial statements, lease agreements, rent statements or anything else to support his claim that off-airport parking had existed at the site as part of the mixed use alleged since November 2006.

15. The Appellant has previously in 2011 and 2012 applied for a Certificate of Lawful Use or Development (LDC) for the storage, recovery and repair of vehicles at the site. Although some documentary evidence was submitted in support of these applications, they were ultimately refused by the Council as regards the uses sought. However, an LDC was granted in part for the 2011 application for operational development in the form of the access track and some of the hardstanding.

16. That evidence is set out in the Council’s original written representations submitted to the Planning Inspectorate prior to the change of procedure of this appeal to Inquiry. The Council points out that the Appellant did not refer to this evidence in his Statement of Case, nor was it advanced as being part of his case before the Inquiry. In addition, the evidence in those written representations is accompanied by the detailed rebuttals made by the then planning enforcement officer, Mr Matthew Banks, together with the LDC refusal decisions. No new documentary evidence has been submitted by the Appellant in respect of those activities in support of this appeal.

17. The only other oral evidence in support of the Appellant’s case on this topic was provided by the site operator, Mr Syed Bokhari. However, he acknowledged in cross-examination that his own personal knowledge of the site only dated from 2012. He alluded to having heard ex-colleagues talk about off-site airport parking at the site prior to that date. Nevertheless, I attribute little weight to this hearsay evidence.

18. He also mentioned having heard of temporary use being made of unauthorised sites for off-airport parking under the 28 day permitted development for temporary use afforded by the relevant General Permitted Development Order. However, if any use had been made of the appeal site for that purpose pursuant to those permitted development rights then the Council would have been unable to take enforcement action in respect of that activity because no breach of planning control would have been taking place during that temporary period. In any event, there is no substantial evidence before me to support the view that temporary use was made of the site in this way.

19. The Appellant also placed reliance upon a statutory declaration of Mr Brett Harry Adams and a signed statement of PJ Brown. In closing, the Appellant contended that the evidence of Mr Brett Adams confirms that the site had been used at that time as a demolition contractors’ yard and that the statement of Mr Brown confirms the same with reference to the storage of materials, car repairs and car storage. However, Mr Carey accepted in cross-examination that these did not add anything to his case in establishing either use as they did not relate to the relevant immunity period but to an earlier period when a demolition contractor occupied the site.

20. Moreover, there is no reference made by these individuals to off-airport parking being part of a mixed use of the land. Mr Brett Adams states that: “...we used to store reclaimed, bricks, tiles and wood and the Nissan huts were...”
used for the storage of architectural salvage”. Whereas Mr Brown states that: “The middle of the wood had a clearing demolition materials were stored, plant, machinery, lorries and vans were kept on the site.” To my mind, the evidence of Mr Brett Adams and Mr Brown is therefore of limited assistance in establishing the lawfulness of the unauthorised mixed use that is now alleged by the notice.

21. There was some reliance placed by the Appellant upon aerial photographs of the site taken between 1999 and 2013. He submits that depending upon the time of year, these reveal more or less of the vehicles stored under the tree canopies. He also drew attention to the Leylands site to the north and contends that the photographs show that the level of activity on that site has fluctuated in the past but did not preclude the grant of an LDC for off-airport parking by the Council.

22. For the Council, Mr Thurlow, during cross-examination expressed the view that caution should be exercised in the interpretation of these photographs. I concur with that approach. They simply reveal a few spots of something coloured present within the woodland on the occasions when they were taken. In my view, these aerial photographs provide little support for the Appellant’s case. In contrast, the Council explained that the LDC application for the Leylands site also placed reliance upon documentary evidence submitted in support. That decision was clearly made upon its own merits and it provides little assistance in the determination of this appeal.

The Council’s evidence

23. For the Council, Hilary Orr gave evidence that, in response to a complaint about the dumping of green waste on the appeal site, she made an unaccompanied site visits to Spiritwood on 29 July 2008. She walked down the access track leading to the Nissan huts and then around the woodland to the north. She did not see any cars parked under the trees in the wooded area of the site to the north of the access track and the Nissan huts. She did not see any sign of motor vehicle repairs or off-airport parking taking place even though it was the peak summer holiday period.

24. Mr Ron Howe’s evidence was that during the period 11 March 2006 to 30 December 2009 he attended the site up to four days a week to train as a member of the Reigate Powerlifting Team in one of the Nissan huts. He asserted that during this period there was no hardsurfacing beneath the trees, nor were cars parked underneath them in the wooded area. I recognise that the diary entries appended to his written statement either fall outside or mark the close of his period of attendance. However, he gave clear and cogent evidence on oath as regards his personal knowledge of the appeal site during that period.

25. The off-airport parking use first came to the Council’s attention in June 2010 and for a second time in July 2016. The Council submitted documentary evidence in the form of various officers’ reports and correspondence. The report of Ms Gemma Fitzpatrick dated 21 October 2008 does not mention any storage of vehicles or off-airport parking. At that time, she observed uPvc windows and door frames and garden waste at the site.
26. The reports of Mr Philip Evans of June 2010 and November 2010 show that there was some off-airport parking at the site during 2010. The June 2010 report notes that: “On part of the land there were many cars stored in a fashion that appeared to be off airport car parking.” However, the November 2010 report records that: “There were 5 cars on the site and in my opinion this area of land may now be starting to be used as a builders/contractors storage yard.”

27. In the correspondence between the Council and Mr David Harrison, he explains that he weight-trained on a regular basis at Unit 1 on the site between March 2006 and December 2009. He claims that during this period Unit 2 was occupied by Mr Tony Dyer who traded as Maple Craft Windows. He confirms that during the two years he occupied the unit, he saw no car-related business operating from Unit 1 or 2.

28. The correspondence between the Council and the previous owner, Mr Higgs, indicates that the buildings and land had been used for purposes other than car repairs, specifying that Unit 2 had been occupied by Maple Leaf Windows for storage purposes. It was subsequently lent to his brother for the storage of his own personal vehicles. He also confirms that Mr David Harrison was using Unit 1 as a gym.

29. Neither Ms Fitzpatrick nor Mr Philip Evans was available to give oral evidence to the Inquiry and be cross-examined on that evidence. Likewise, neither Mr Harrison nor Mr Higgs attended the Inquiry. I acknowledge that this written evidence must be afforded less weight than the oral evidence given on oath to the Inquiry and tested by cross-examination. Nevertheless, it provides evidence that is contradictory to the Appellant’s case to which modest weight can be attributed.

Conclusions on ground (d)

30. The Appellant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted. However, I find his evidence to be unduly vague and distinctly lacking in crucial detail. In my opinion, the evidence taken as a whole was seriously lacking in precision and therefore of limited assistance. It was insufficient to support the assertions made as to the continuous nature of the mixed use. Furthermore, his evidence made reference to a variety of uses taking place at times over and above those comprised in the mixed use alleged by the notice. There was also a significant lack of documentary evidence to support his recollection of events, particularly in relation to the off-airport car parking. The statutory declaration and signed statement of Mr Brett Adams and PJ Brown provide little assistance in establishing the lawfulness of the mixed use the subject of this appeal.

31. In conclusion, the Appellant’s own evidence is not sufficiently precise and unambiguous to establish a lawful use on the balance of probabilities. Furthermore, the evidence does not satisfactorily deal with the entire period under consideration. It does not, even without taking into account the Council’s opposing evidence, establish a continuous 10 year use at some point during the relevant period.
32. Turning to the contradictory evidence of the Council, I consider the evidence given on oath by Hilary Orr and Mr Rowe to be clear and unambiguous. Although the evidence of Hilary Orr relates to only one day in the relevant ten year period, given the time of year when that visit took place it is highly likely that she would have observed evidence of the unauthorised use had it been taking place as claimed. Mr Rowe attended the site on a regular basis for some three years. In my opinion, his evidence strongly contradicts the existence of a continuous unauthorised mixed use of the site as alleged during the relevant period. Even if the land and buildings had historically been used as alleged at some point during the immunity period, the Council’s evidence shows that any such use did not have the necessary degree of continuity.

33. The Appellant’s claim that the site has been used continuously as alleged throughout the relevant ten year period is not supported by the balance of the evidence. I conclude, on the balance of probabilities, that a continuous 10 year use during the relevant period has not been demonstrated. The development is not therefore immune from enforcement action. The appeal fails on ground (d).

The appeal on ground (a) and the deemed application for planning permission

The Development Plan and other policies

34. The Statement of Common Ground agrees that the development plan for the area is the Tandridge District Core Strategy 2008 and the Tandridge District Local Plan Part 2: Detailed Policies 2014 to 2029. The agreed list of relevant policies are: CSP1 Green Belt; CSP12 Managing the demand for travel; CSP16 Aviation Development; CSP21 Protection of landscape and the character of the countryside; DP1 Presumption in favour of sustainable development; DP5 Highway safety and design; DP7 Protection of amenity; DP10 Green Belt; DP13 Conversions of buildings in the Green Belt.

35. Turning to national policy, the Government issued the National Planning Policy Framework, “the Framework”, in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.\(^{39}\) In relation to the Green Belt, paragraph 79 states that: “The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.” Paragraph 80, sets out the five purposes of including land in the Green Belt. The Framework also includes as one of the core planning principles the need to recognise the intrinsic character and beauty of the countryside.

36. I find the relevant development plan policies in this case which pre-date the Framework still have a high degree of consistency with it and full weight in accordance with their statutory status should be attached to them.

\(^{39}\) Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

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**The Main Issues**

37. The main issues are:

- Whether the development is inappropriate in the Green Belt for the purposes of the Framework and development plan policy.
- The effect of the development on the openness and purposes of the Green Belt.
- The effect of the development on the character and appearance of the site and the surrounding rural area.
- The implications that the development would have for the safety of people using the public highway.
- Whether the development would be sustainable in this location.
- The effect that the development would have on the living conditions of people living nearby with particular regard to noise and disturbance.
- If inappropriate development, whether it can be justified on the basis of very special circumstances?

**Reasons**

**Whether the development is inappropriate in the Green Belt**

38. The Framework, paragraph 89, advises that the construction of new buildings in the Green Belt should be regarded as inappropriate in the Green Belt unless it falls within the specified exceptions. These include the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land) whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. Likewise, paragraph 90 sets out certain other forms of development that would not be inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

39. The Appellant’s Appeal Statement and his representative in closing appeared to rely upon paragraph 89 and the exception for previously developed sites. However, his representative, in cross-examination of Mr Thurlow, correctly pointed out that paragraph 89 does not apply to this site, as the appeal is not concerned with a “new building”. The argument he subsequently put forward in closing was that whilst paragraph 89 specifically refers to new building, it is silent as to changes of use and a pragmatic approach would permit the application of the last bullet point exception which concerns previously developed land to this appeal.

40. In my view, there is no sound basis for interpreting paragraph 89 in this way. Its wording is clear and it applies to the construction of new buildings and not to material changes in the use of land. Furthermore, having regard to the definition of “previously developed land” set out in Annex 2 to the Framework, and the limited curtilage associated with the Nissan huts, the bulk of the appeal site would not comprise that category of land. Even if that test had been met, it would also need to be shown that there would be no greater
impact on the openness of the Green Belt or the purposes of including land within it.

41. Finally, the Appellant’s representative made a passing reference in closing to Green Belt guidance on re-use of buildings but no cogent argument or substantive evidence was put forward on this basis. I concur with the Council that the unauthorised change of use the subject of the notice does not fall within any of the exceptions to the Framework Green Belt policies.

42. I conclude that the development the subject of this appeal would be inappropriate in the Green Belt. The Framework, at paragraph 87, explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It advises, at paragraph 88, that substantial weight should be given to any harm to the Green Belt.

**The effect on the openness and purposes of the Green Belt**

43. At the Inquiry, the Council referred to the case of *John Turner v SSCLG and East Dorset Council*[^40] where the Court of Appeal recognised that the question of visual impact is implicitly part of the concept of openness. However, the openness of the Green Belt has a spatial aspect as well as a visual one and the absence of visual intrusion does not, in itself, mean that there is no impact on openness as a result.

44. The Council contends that the change of use has caused actual harm to the openness of the Green Belt as a substantial area of land that was previously wooded has now become a surfaced car park. In my view, the three aerial photographs of the appeal site dated respectively 2000, 2005 and 2013 clearly show a progressive reduction in the openness of the Green Belt and the erosion of the countryside character of the surroundings.

45. The Appellant points to the absence of conflict with the Framework, paragraph 80, bullet points 1, 2 and 4 and sought to suggest compliance with bullet point 5 which makes reference to derelict land. However, the particular scenarios envisaged by these purposes are obviously not applicable to the circumstances of the appeal site. The absence of any particular form of harm to the purposes of the Green Belt has a neutral effect upon the overall balancing exercise.

46. I conclude that the development has had a clear and obvious adverse impact upon the openness of the Green Belt and its purpose to assist in safeguarding the countryside from encroachment. It would therefore be in conflict with Local Plan Policy DP10 and the aims of the Framework Green Belt policies.

**The effect of the development on the character and appearance of the site and the surrounding rural area**

47. The SoCG notes that the site is located within the countryside and the surrounding rural area is characterised by relatively flat topography, fields lined by hedges and hedgerow trees and areas of woodland. There are groups of houses and individual residences along the road in the immediate vicinity of the site. There is other development around the site including the Leylands site to the north which is used for off-airport car parking and Flight Path Farm

[^40]: [2016] EWCA Civ 466

[40] [2016] EWCA Civ 466

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which is now an employment site. To the south, lies the Appellant’s own residence. To the west, there is a field in the corner of which is an area used for parking miscellaneous vehicles and equipment storage.

48. The Appellant contends that the development of the site represents a natural evolution and highlights the close proximity to the lawful Leylands off-airport parking site. He also draws support from the other development nearby. He submits that the appeal development has been designed so as to be absorbed into the landscape and that it would integrate well by proportionately following the style and rhythm of the existing context and development grain.

49. The Appellant also suggests, by way of comparison, that the parking of up to 208 vehicles on the site would be less harmful than the continuation of the mixed uses not enforced against. He contends that the mixture of uses which have taken place in the past has given the site a derelict and untidy appearance with piles of demolition waste, the deposit of garden waste, ad hoc parking, overflowing skips and the like. However, no LDC has been granted for any such use of the site nor is there any substantial evidence before me to support the view that it enjoys the benefit of a lawful mixed use for those purposes. There is no right to revert to an unlawful use of the land following the issue of an enforcement notice and hence no valid fall-back position before me for consideration.

50. The Council again places reliance upon the aerial photographs to show the adverse impact of the unauthorised use upon the open countryside character of the locality. The 2013 photograph reveals the scope of the woodland clearance that has taken place with extensive vehicle parking both close to the Nissan huts and on the now open land to the north of those buildings.

51. I recognise that an LDC has been granted for the retention of the access track and some of the hardstanding pursuant to the 2011 application. Furthermore, the current enforcement notice relates only to the change of use of the site and does not require the removal of any of the operational development which has taken place. Nevertheless, I consider that the unauthorised mixed use the subject of the notice has itself resulted in very clear and significant adverse impacts upon the character and appearance of the surrounding rural area. Whilst there are other commercial, industrial and residential uses and activities taking place nearby, this provides little justification for a further and serious erosion of the rural character of the locality. I conclude that the development would not be in accordance with the Tandridge Core Strategy Policy CSP21.

The implications that the development would have for the safety of people using the public highway

52. The site is accessed via a private access onto Broadbridge Lane which is a rural road classified as the D356. The traffic generated by the unauthorised use would result in an intensification of the use of the access by vehicles. The Surrey County Council, as Highway Authority, considers that the existing access is substandard and its increased use would be prejudicial to highway safety.

53. For the Appellant, Mr McMurtary has assessed the likely trip generation that would be associated with the off-airport parking aspect of the mixed use.
Based on his experience with other off-airport parking facilities in the vicinity, he estimates that a site with the capacity to accommodate 208 vehicles would generate a total of 21 arrivals and 21 departures (42 two-way movements per day). That figure excludes staff runner vehicles which he considers would result in a small amount of additional traffic movements. If the site were to be used to its maximum capacity of 350 spaces then those figures would increase but the Appellant proposes that the number of vehicles be limited to 208 by planning condition.

54. The Highway Authority initially raised concerns that the existing access point did not appear to be of a suitable width to accommodate simultaneous entry/exit of vehicles. This could result in vehicles queueing on the public highway and obstructing the free flow of traffic or being forced to reverse out onto the road.

55. The Appellant contends that improvements to the access junction could be made to enable two-way vehicles movements. The proposed amendment to the access arrangement is appended to Mr McMurtary’s proof of evidence and the swept path analysis has also been provided. These alterations could be secured by the imposition of a planning condition. The Highway Authority now accepts that the provision of a widened access junction in this way would allow two vehicles to pass each other at this point and would not impact on the free flow of traffic on the public highway.

56. As regards visibility at the access point, the Highway Authority originally sought the provision of a visibility splay from the private access onto the D356 of 2.4m ‘x’ distance by 120m ‘y’ distance in accordance with the Design Manual for Roads and Bridges (DMRB) standards. However, it acknowledged that this distance could be reduced, if it was demonstrated that speeds within the vicinity of the site were contained to within 40mph.

57. Mr McMurtary has carried out a speed survey on Broadbridge Lane which shows the 85th percentile speeds to be below the 40mph speed limit. At the Inquiry, the Highway Authority confirmed that, in the light of the speed survey information, the visibility requirements could be calculated by reference to the MfS guidance rather than DMRB. The appropriate visibility splay would therefore be 2.4m ‘x’ distance by 58.2m ‘y’ distance to the north and 57.8m ‘y’ distance to the south.

58. The parties agree that this could be achieved to the north by cutting back boundary vegetation on land that is within the Appellant’s control. However, they disagree as to whether this could be achieved to the south, without utilising land that is neither highway land nor within the Appellant’s control.

59. The Appellant has submitted a drawing which identifies the required visibility splay in both directions. He contends that this is achievable on land under his ownership or land that is within the highway boundary. The position of the Highway Authority remains that it is unlikely that the necessary improvement could be achieved to the south, as the vegetation that would need to be cut back falls within the boundary of the adjacent property and is outside the Appellant’s control. The difference between the parties lies in their approach to the extent of the highway land at this point.
60. The Highway Authority’s Highway Extent search indicates that the publicly owned section of the highway extends to the front (roadside portion) of the ditch which runs parallel to Broadbridge Lane adjacent to the property boundary. The Highway Authority plan marks in yellow the extent of the publicly maintainable highway. However, the written response clarifies that the information provided by the plan is limited to the accuracy of the Ordnance Survey map upon which it is based and it is not always possible to indicate the precise location of the highway boundary where a ditch or similar feature exists. In such cases, the publicly maintainable highway is taken as extending up to the roadside edge of the ditch. On that basis, the roadside ditch falls outside the highway boundary.

61. In contrast, Mr McMurtary confirmed in cross-examination that he had taken the land coloured yellow on the Highway Authority plan as showing the extent of the highway land and had assumed that the fence line dictated what could be done rather than the ditch. The Appellant’s visibility splay drawing therefore relies upon the ditch as being within the highway land.

62. It seems to me that the approach of the Highway Authority is to be preferred and is likely to be more accurate in relation to the extent of the highway land. My observations at the time of my site visit, in conjunction with the Appellant’s visibility splay drawing, do not enable me to conclude, on the balance of probabilities, that the minimum visibility requirements at the access junction could be met. It appears to me from the available evidence that part of the visibility splay to the south would encroach upon land that is neither within the Appellant’s control nor is it highway land. In reaching that conclusion, I have borne in mind the Appellant’s proposed access widening scheme and the consequent alteration to the centre point of the access.

63. The Appellant has acquired Personal Injury Accident (PIA) for the latest five year period for a stretch of Broadbridge Lane in the vicinity of the site. There was one incident recorded as occurring within the study area but this took place some 500m to the south and was unrelated to the appeal site. However, Mr McMurtary accepted that the incident statistics do not necessarily reflect the potential for accidents to occur in the situation where there is an intensification of traffic using the relevant road network. The view expressed by Ms Walmsley Macey for the Highway Authority was that, "...an intensification of the access may lead to an increase in accidents.”

64. The Framework, paragraph 32, requires amongst other things that “plans and decisions should take account of whether ... safe and suitable access to the site can be achieved for all people.” The Appellant’s traffic generation estimate was not based upon any actual evidence pertaining to the current use of the site in terms of trip generation, traffic flow or movement and for that reason should be treated with some caution. However, even taking those figures at face value, I consider that in the absence of the achievement of full visibility splays such an increase would be likely to render the use of the access unsafe. In reaching that view, I have borne in mind that the site has been operating unlawfully of late with no report of incidents occurring.

65. Since the evidence before me indicates that the required visibility splay at the point of access could not be secured by planning condition, I conclude that the
increased use by vehicles of this substandard access would be likely to cause serious harm to the safety of people using the public highway.

**Whether the development would be sustainable in this location**

66. The Framework advises that there are three dimensions to sustainable development: economic, social and environmental. All these aspects will be taken into account in reaching my overall conclusion on this appeal. As regards the promotion of sustainable transport, the Framework, paragraph 34, states that: “Plans and decisions should ensure that developments that generate significant movements are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.”

67. The Council submits that in terms of transport sustainability, the development is not sustainable. For the Highway Authority, Ms Walmsley Macey considered that the use of the site for off-airport car parking would not facilitate or propose sustainable travel to the airport but would encourage private car use. Alternative public transport options to and from the site are not available and given the rural nature of the site are unlikely to be developed in the future.

68. For the Appellant, Mr McMurtry expressed the view in his proof of evidence that, whilst the nature of the operation was unsustainable, it was not less unsustainable than parking at Gatwick airport. Indeed, he considered that it provided a more sustainable option than much of the official Gatwick parking opportunities.

69. However, during cross-examination, he amended that aspect of his proof of evidence and accepted that, in the light of the words of the Inspector at the Crawley Borough Council Local Plan Examination, off-airport parking is in fact less sustainable than on-site airport parking.

70. The Crawley Borough Council and Gatwick Airport Limited (GAL) have both submitted statements opposing this appeal. The statement of Crawley Borough Council contends that the use of the site for off-airport car parking would conflict with Policy GAT3 of the Crawley Borough Local Plan 2015-2030. Whilst not part of the Tandridge District Council’s Development Plan, Policy GAT3 is a material consideration being the most recently adopted policy on airport-related parking with a clear relationship to Tandridge Core Strategy Policy CSP16.

71. That policy states that: “the Council will seek to minimise the impact of Gatwick Airport by working with BAA Gatwick, Crawley Borough Council and adjoining local authorities on the development of the airport up to the projected 45 million passengers per annum within the agreed limits of a single runway/two terminal airport. New off-airport parking and extensions to existing sites will be considered in the light of Green Belt policy and the need to minimise the use of private car to travel to the airport.”

72. The Crawley Borough Council points out that inconsistency with the aims of Policy GAT3 would therefore also be a failure to accord with Tandridge District Council’s Policy CSP16. This approach was supported by the recent appeal decision and subsequent High Court judgment in respect of the Former Blue Prince Mushroom Farm in which GAT3 was cited as a material consideration in the refusal of off-airport parking at that site.
73. In refusing permission to appeal that decision to the Court of Appeal Lord Justice Lindblom observed that: "...the inspector properly took account of Policy GAT3, not as if it was a policy of the development plan for the interested part’s administrative area, but because of its practical implications for Policy CSP16 of the Tandridge Core Strategy .... it would have been a legal error to fail to [recognise this]."

74. For the Appellant, Mr Bokhari alluded to a need for off-airport parking based upon his own personal experience of operating such a business. However, no empirical evidence was submitted in support. Whilst the Appellant accepts that the site is more remote than the on-site airport parking, he contends that there are other authorised sites that are even more remote and to permit such a use on the appeal site would provide those other sites with the option to relocate or redevelop them. However, no substantial evidence was provided in support of that aspiration, for example, by way of formal agreements or arrangements with other site operators. It is a factor to which I attribute little weight.

75. In contrast, the evidence of GAL provides details of the methodology used to develop parking capacity plans, off-airport parking capacity changes since 2010/11, passenger numbers and mode share, the relationship between parking supply and demand 2010-2016, the car parking strategy for the next 5 years and proposed car parking capacity developments. GAL confirms that its existing parking provision and its planned investments together with the existing level of authorised off-airport parking would ensure sufficient airport related car parking is provided in the future to meet forecast demand. GAL’s plans include sufficient capacity to also absorb all current unauthorised off-airport parking at the airport.

76. Likewise, the statement from Crawley Borough Council explains that in the 2017 Gatwick Parking Survey there was a combined spare capacity on and off airport of 7063 spaces. Furthermore, there is no evidence from the latest Gatwick Parking Survey that there is an unmet need that must be met by allowing permission off-airport.

77. I consider that Policies CSP16 and GAT3 are consistent with GAL’s obligations, commitments and strategies to meet passenger public transport mode share targets, and to promote sustainable patterns of travel. I am satisfied that all of the required airport car parking could be met within the confines of Gatwick Airport which provides a more sustainable location in transportation terms. The use of the site for off-airport car parking would not therefore be in accordance with the car parking and sustainable transport aims of Policy GAT3 and the relevant development plan Policy CSP16.

_The effect that the development would have on the living conditions of people living nearby with particular regard to noise and disturbance_

78. The appeal site is positioned in a countryside location served by minor roads with residential development nearby. Although the closest residence to the site is currently in the ownership and occupation of the Appellant, I must also have regard to the long-term implications of the development and the likely impact upon other nearby residential properties.
79. The off-airport parking use would require extended hours of operation to meet the needs of passengers departing from and arriving at Gatwick Airport during its authorised operating hours. Indeed, Mr Bokhari accepted that cars would be moving to and from the site from 3am until midnight each day.

80. As indicated above, the maximum number of cars parked at any one time in connection with the off-site airport car parking could be limited by planning condition to 208 vehicles. Nevertheless, the unauthorised mixed use would inevitably result in a material increase in traffic going to and from the site. I consider that the associated vehicles movements, noise and lights during unsocial hours would be likely to cause disturbance to neighbours in the quiet enjoyment of their homes. The absence of written objection from local people does not dissuade me from that view. I conclude that the development would not be in accordance with Local Plan Policy DP7.

If inappropriate development, whether it can be justified on the basis of very special circumstances?

81. The Appellant needs to show very special circumstances to justify the development in this location. Very special circumstances can arise from a combination of circumstances. It is necessary to balance all factors that weigh in favour of the grant of permission in each case against the harm to the Green Belt by reason of inappropriateness, and any other harm, and assess whether the harm identified is clearly outweighed by other considerations.

82. There is the harm to the Green Belt by reason of inappropriateness. The Framework advises that substantial weight should be given to any harm to the Green Belt. There would also be significant harm to the openness and one of the purposes of the Green Belt. The unauthorised mixed use would have a significant adverse impact upon the character and appearance of the surrounding rural area. Furthermore, the increased use by vehicles of the substandard access would be likely to cause serious harm to the safety of people using the public highway. The off-airport car parking use would be contrary to the sustainable transport aims of the development plan. The development would also materially detract from the living conditions of nearby residents.

83. To weigh against the harm to the Green Belt and the other harms identified, the Appellant indicates that the very special circumstances in this case include an acknowledged unmet need for off-airport parking, the provision of economic development and the creation of employment.

84. As regards the claimed need to meet the long-term parking requirements of Gatwick Airport, Mr Bokhari, in cross-examination, stated that he “believes that Gatwick Airport cannot provide parking for everyone”. However, as indicated above, he did not refer to any statistics, studies or models in support of that proposition. Nor did he seek to rebut the evidence in relation to need set out in the statements of GAL or Crawley Borough Council. There is no substantial evidence before me to support the view that there is any unmet need for offairport parking that the appeal site could meet.

85. The Council points out that there is nothing intrinsically unusual or very special about a development providing economic development or creating employment, since many developments would have that effect. As regards
economic development, the Appellant’s case is somewhat vague and there is a noticeable lack of detail in support of the argument that it amounts to a very special circumstance in this instance.

86. In relation to the creation of employment and business continuity for parking operators, the evidence of Mr Bokhari to the Inquiry was that, if planning permission was granted for the use, he hoped to employ 150-200 people in connection with it. There was no other evidence to support that assertion or any clear explanation provided as to how the appeal site might usefully employ that number of people. Nonetheless, I consider that the benefit of creating additional employment opportunities is a factor to which modest weight can be attributed.

87. However, on the particular facts of this appeal, the material considerations in support of the unauthorised development do not, either on their own or in combination, clearly outweigh the harm to the Green Belt and the other harm identified. They do not amount to very special circumstances in the context of this case. I do not find the development to be sustainable when assessed against the Framework policies taken as a whole. The appeal fails on ground (a) and I do not intend to grant permission to the deemed application for planning permission.

The appeal on ground (g)

88. On ground (g), the Appellant submits that the period of one month for the cessation of the off-airport parking use is unreasonable. He seeks a compliance period of 9-12 months to enable business continuity and to allow sufficient time to try and find an alternative site and apply for planning permission, if necessary.

89. The Council opposes any extension of the compliance period. It explains the distinction made between the vehicle repair use and the off-site airport parking in that the former use requires equipment which would need to be relocated to new premises whereas the off-site airport parking use is a user of a bare site.

90. At the Inquiry, Mr Bokhari indicated that in the event that he was evicted from the site he would try to find other land from which to operate. He would have no choice as they could not park the vehicles on public roads. He explained the efforts which had been made to date to find an alternative site. He was in contact with three or four other land owners at present. If the compliance period remained at one month then this would cause trouble for him.

91. The cessation of the unauthorised use would clearly have potentially serious implications for the operator and employees of the off-site airport parking business. I believe that it would be unreasonable to expect the off-site parking activities to cease within the timescale set out in the notice. The period for compliance with requirement (i) is therefore too short. An extension of that compliance period to six months would give the operator and employees further time within which to seek a suitable alternative site for the business or employment elsewhere. However, any greater extension of the compliance period would be excessive and could not be justified in the light of the continuing harm identified above.
92. I consider the extension of the compliance period to six months to be a proportionate response that strikes a fair balance between the competing interests of the wider public interest and the individual in this case. In those circumstances, compliance with the notice would not have a disproportionate impact upon those affected by it. The appeal on ground (g) succeeds to this limited extent.

**Formal Conclusions**

93. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

**Formal Decision**

94. The enforcement notice is varied by deleting from paragraph 5 the words “one month” and substituting therefor the words “six months”. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

+Wendy McKay+

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Phil Rowe BA Hons, BTP Planning Consultant

He called:

Mr Eddy Carey Appellant
Mr Syed A H Bokhari Site Operator
Mr David McMurtary Highways Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Fitzsimons of Counsel instructed by James Hitchcock, Solicitor to the Council

He called:

Mr Cliff Thurlow Planning Consultant
Ms Hilary Orr Planning Enforcement Manager for the Council
Mr Ron Howe Trees Officer, Mole Valley District Council
Ms Toni Walmsley- Macey Transport Development Officer, Surrey County Council

INTERESTED PERSONS:
Mr Robert Matthews – Gatwick Airport Ltd

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Attendance Lists
2. Opening submissions on behalf of the Council
3. MfS2 extract submitted by the Council
4. List of suggested planning conditions submitted by the Council
5. Closing submissions on behalf of the Council
6. Costs application on behalf of the Council
7. Copy report to Committee and location plan relating to the Leylands site submitted by the Appellant
Appeal Decision
Inquiry held on 2-5 & 9-10 October 2018
Accompanied site visit made on 5 October 2018
by M C J Nunn BA BPL LLB LLM BCL MRTP
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 31st January 2019

Ref: APP/Q3820/W/17/3173443 Land adjacent to Lowfield Heath Service Station, London Road, Lowfield Heath, Crawley, West Sussex, RH10 9SW

- 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 Holiday Extras Ltd against the decision of Crawley Borough Council.
- The application Ref: CR/2016/0156/FUL, dated 15 February 2016, was refused by notice dated 11 October 2016.
- The development is described as 'an extension to the permanent lawful long term offairport car parking use on to land adjoining the Lowfield Heath Service Station, London Road, Lowfield Heath, Crawley, West Sussex, RH10 9SW for a temporary period of five years, along with the provision of a new vehicular access, associated reception facilities, toilets and administrative offices, perimeter fencing, CCTV cameras and associated lighting'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Gatwick Airport Ltd (‘GAL’) appeared at the Inquiry as a Rule 6 Party, and gave evidence inviting me to dismiss the appeal.

3. Two of the Council’s five reasons for refusal relating to ecological impact and flood risk have now been withdrawn in the light of further information. It is
agreed that these matters can be dealt with by conditions were the appeal to be allowed.

4. Following the Inquiry, the appellant drew my attention to the newly published Gatwick Airport Draft Master Plan 2018\(^2\) and comments were received from the parties. It is, however, only a draft document and will be subject to consultation. As a consequence, I accord this document very limited weight.

5. The Inquiry was closed in writing following receipt of two planning obligations signed by the relevant parties, both dated 17 October 2018, one dealing with a public transport levy contribution, and the other with the restoration of the site\(^41\).

6. After the Inquiry had closed, the Council drew my attention to an appeal decision dated 9 January 2019 (APP/Q3820/C/17/3175231)\(^42\) relating to a site at Southways Business Park. I have taken the comments received on this decision into consideration in my deliberations.

7. As the parties are aware, I determined the earlier ‘Gasholder’ appeal decision\(^43\), also for off-airport car parking. However, each decision will turn on its own facts. To be clear, I have assessed this proposal on the evidence before me and determined the appeal on its merits.

**Main Issues**

8. The main issues are: (i) whether the proposal is acceptable, having regard to local parking policy; (ii) whether the use would compromise any future expansion of the airport, including a second runway; and (iii) the effect of the proposal on the character and appearance of the area.

**Reasons**

*Local Parking Policy*

9. The statutory development plan comprises the Crawley Borough Local Plan 2015-2030 (‘the Local Plan’), adopted in December 2015. Policy GAT3 (‘Gatwick Airport Related Parking’), as its title suggests, is specifically concerned with airport related parking. The first ‘limb’ of Policy GAT3 states that additional or replacement airport parking will only be permitted within the airport boundary. The second ‘limb’ requires all new proposals to be ‘justified by a demonstrable need in the context of proposals for achieving a

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\(^1\) Reasons 4 & 5  
\(^2\) Published by GAL  
\(^41\) ID25 & ID26  
\(^42\) ID29  
\(^43\) APP/Q3820/W/17/3182041, dismissed 19 July 2018

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sustainable approach to surface transport access to the airport’. Both the Council and GAL are of the firm view that the second limb applies to proposals that already comply with the first limb. In other words, the two parts of the policy are not alternatives, but should be read conjunctively and not disjunctively.

10. The appellant, by contrast, says there are no words within the policy that compel such a conclusion, nor any justification that the second limb should only apply to proposals that meet the first. The appellant further argues that the title of the policy is broad and inclusive, and not only confined to on-airport parking. Also, that if the second limb of Policy GAT3 only applied to proposals for on-airport parking, it would effectively be redundant, since all on-airport parking could be constructed using GPDO rights.44

11. With regards to the appellant’s contention that the GPDO makes the second limb redundant, it is important to note that such rights only attach to the ‘airport operator’ (in this instance GAL) and not to third parties (such as hotel operators). Furthermore, GPDO rights only apply on ‘operational land’, and not all the land within the airport boundary falls within that category. In addition, GPDO rights do not apply to development requiring Environmental Impact Assessment. For these reasons, I do not find the appellant’s contention that GPDO rights make the second limb redundant to be compelling.

12. The reasoned justification provides helpful context, and can assist in interpreting the policy. This states that ‘it is considered that sites within the airport provide the most sustainable location for the additional long stay parking which needs to be provided as passenger throughput grows whilst still supporting the public transport target’ and ‘sites within the airport boundary are close to the terminals and can help reduce the number and length of trips’. Importantly, the Inspector examining the Local Plan observed that Policy GAT3 ‘requires all new parking to be provided within the airport boundary, on the basis that this is the most sustainable location’.46 In finding the Policy ‘sound’, he noted that ‘there is obvious logic to the argument that car parks close to the terminals will minimise the length of car journeys for most people, and that onairport provision is a more sustainable option’.49

13. It is also instructive to look at the predecessor to Policy GAT3, namely Policy GAT8 of the Crawley Borough Local Plan, adopted in 2000.47 That stated that proposals for new airport related car parking on off-airport sites would only be permitted where they did not conflict with countryside policies and could be justified by a demonstrable need in the context of achieving a more sustainable approach to surface transport to the airport. That policy was considerably more permissive in that it explicitly allowed for new airport related parking on off-airport sites in certain circumstances. Policy GAT3, by contrast, is significantly more restrictive, and the Council is quite clear that it

44 Part 8 of the Town and Country Planning (General Permitted Development) Order 2015
45 Paragraph 9.24
46 Inspector’s Report (November 2015), Paragraph 87
47 CD7/11, Page 165
was worded specifically to remove the greater potential permissiveness of Policy GAT8.

14. In the appellant’s unsuccessful challenge to Policy GAT3 at the High Court, the Judgement provided some insight into the policy’s meaning. It stated “it is...quite clear that in considering what was appropriate in relation to the new plan the Council wanted to ensure, as far as it could, that restriction to onairport parking was clearly made and would be enforced in the manner they considered appropriate.” It is clear, therefore, the High Court appreciated that Policy GAT3 represented a clear change in approach to off-airport parking as compared with Policy GAT8, and a more restrictive one. A recent appeal decision at Southways Business Park reinforces this view, the Inspector noting that ‘a straightforward reading of the wording of GAT3 reveals no contemplation in the policy, or its reasoned justification, of any situation where additional or replacement parking could be located off-airport.

15. All these factors support the proposition that the second limb applies to those proposals that already comply with the first limb, and that the second limb follows on from the first. In fact, having regard to the policy’s reasoned justification, the Local Plan Inspector’s comments and the High Court Judgement, it would indeed be an odd interpretation if the second limb applied regardless of whether or not the proposal was on or off-airport. Had that been the intention, the policy would have explicitly been drafted to provide that either proposals had to be on-airport, or alternatively had to show a demonstrable need. Consequently, I prefer the interpretation advanced by the Council and GAL.

16. It follows the proposal would not comply with Policy GAT3. It may be possible, of course, to demonstrate that material considerations justify an exception being made to policy. One such consideration could be that the proposal is justified by a demonstrable need, or that there is an unmet need that must be met by allowing off-airport parking.

17. Predicting the demand and supply for airport related parking is far from an exact science, and is necessarily uncertain. Much evidence was presented by all the parties, but with contradictory results. Substantially different outcomes result depending on what assumptions, data and techniques are used. The complexity of the data, together with the possibility of different assumptions being made at different stages of the modelling exercise, makes deriving reliable figures difficult. The further one predicts into the future, the greater the scope for wide ranging results. There is also disagreement as to which data should be used: the appellant prefers the CAA’s data because it is publicly accessible and more ‘transparent’, and has previously been used by GAL at other recent Inquiries. GAL says, on the other hand, its own data – the ‘Retail Profiler Survey’- is more accurate and reliable. Without agreement on which data sets should be used, and with so many disputed

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48 Council’s Closing Submissions, Paragraphs 5 & 17
49 Holiday Extras Ltd v Crawley Borough Council [2016] EWHC 3247 (Admin) [CD11/1]
50 CD11/1, Collins J at Paragraph 8
14 ID29, Paragraph 30
51 There is now no suggestion by the appellant that the GAL data is ‘skewed’ to achieving the ‘right’ result
variables, it is difficult to reach a definitive answer in terms of unmet need for parking.

18. The Council draws attention to its own Parking Surveys which show a steadily increasing spare parking capacity, rising from 8,129 spaces in 2010 to 13,357 spaces in 2017\textsuperscript{52,53}. This includes authorised and unauthorised spaces. Whilst the Surveys only provide a ‘snapshot’ of available parking on a particular day, I consider they provide a basis nonetheless on which to assess whether there is any pressure on parking availability. They have proven to be reliable over the years, having been carried out using a standard methodology at the same time each year.

19. The appellant, by contrast, says the Parking Surveys have only a limited role in calculating need. Using a similar methodology to that employed by GAL, but with certain different assumptions, and by ‘reworking’ GAL’s own data, the appellant identifies a net shortfall of 6,860 spaces in 2017-2018, and after adjustment to reflect ‘effective capacity’\textsuperscript{17}, of 4,734 spaces\textsuperscript{54}. This shortfall is forecast to increase to 8,719 by 2022\textsuperscript{55}. Alternative figures showing a shortfall of 5,548 in 2017, peaking at 8,610 in 2019, and reducing to 5,899 in 2022 were also provided by the appellant at the Inquiry\textsuperscript{56}. Whatever the exact figures, the appellant’s calculations show a substantial and growing need for additional spaces up to 2022.

20. There are other differences between the parties: GAL’s analysis considers that the supply of and demand for car parking spaces are in broad equilibrium\textsuperscript{57} whilst the Council’s Parking Surveys show increasing unused capacity from 2010 to 2017\textsuperscript{58}. The appellant also notes that, although the Parking Surveys have apparently always shown a supply of unused spaces, this has never been used to defeat the planning of new car parking spaces on-airport. All these apparent anomalies only serve to further complicate matters, making drawing clear conclusions difficult.

21. However, a key factor that gives rise to a significant difference between the Council and appellant in terms of supply is a dispute about how many hotel parking spaces should be treated as authorised. The appellant assumes that all hotel airport related parking without express permission or a certificate of lawfulness will be enforced against and closed down. The appellant says the use for long stay parking does not fall within the normal use of a hotel, and therefore as a matter of law cannot be considered ancillary. The appellant also assumes that other unauthorised sites, including so called ‘pop-ups’ will be closed. If these spaces are included in the supply, the appellant’s shortfall is largely eliminated.

22. It is the case that GAL, in its analysis for the need for additional parking provision to 2022, assumes that all unauthorised sites will be closed down with the vehicles using them being accommodated on-airport\textsuperscript{59}. Crucially, however, GAL acknowledges that their closure is a ‘highly conservative
assumption’ and in reality ‘inconceivable’. The appellant’s approach to parking need whilst therefore consistent with GAL’s, appears not to acknowledge the inherent conservatism or improbability of the assumptions made. I have no reason to take issue with the Council that it is not expedient or realistic to take enforcement action. I accept that there is no guarantee of successful enforcement given that sites have operated for many years and may therefore be immune from action through the passage of time. Furthermore, a number of sites are outside the Council’s area, and so closure would be dependent on other local planning authorities taking enforcement action.

23. Whilst the appellant says there is no justification for any ‘relaxation’ in terms of unauthorised sites, and Policy GAT3 must be applied consistently, one must be realistic: this cannot be a purely abstract theoretical numerical exercise, but must be grounded in some degree of reality. Given the Council’s evidence, there seems very little likelihood that these unauthorised spaces will be closed down and so an important part of generating the appellant’s necessary shortfall falls away.

24. Other assumptions made by the appellant are that all multi-storey car parking spaces (MSCP) are short stay, and therefore should be excluded from the assessment. However, GAL provides cogent evidence that the MSCPs provide spaces not only for short term parking, but a significant proportion for medium to long-term parking. Hence it is wrong to exclude them from any assessment of supply.

25. GAL also explained that making a deduction or discount from the supply of spaces to account for ‘effective’ capacity is not appropriate because the availability of spaces is managed through ‘variable’ or ‘dynamic’ pricing, with active management of parking spaces so as to fill all available capacity on the airport, whilst ensuring sufficient space remains for ‘roll-up’ customers who have not pre-booked. Indeed both GAL and off-airport operators will price their products so far as possible to fill available capacity. Therefore, making a deduction is not appropriate. I see no reason to doubt the reliability of this evidence.

26. Much time could be spent debating parking demand and supply, with various assumptions and modelling techniques. However, standing back and looking at the broader picture, there is no cogent evidence ‘on the ground’ of stress in the system, nor that there is inadequate parking supply to meet demand. There is no evidence to suggest that customers wishing to park on-airport cannot to do so, or that any are turned away, even though airport passenger numbers have increased. In fact, all customers who wish to park at the airport – whether ‘pre-booked’ or ‘roll-up’ can be accommodated. There is no evidence of a shortage of on-airport spaces, such as cars queuing back on to the highway. The percentage of passengers being dropped off and collected at the airport – known as ‘Kiss and Fly’ - is not increasing, rather the trend is downwards. An increase might have been expected if parking spaces were difficult to obtain. In terms of unauthorised spaces, the trend is...
generally downwards since 2013, notwithstanding an increase in 2017\(^{64}\). Again, an overall increase would have been likely if there was an unmet need or shortfall.

27. There is no indication that GAL is unable to meet future parking need onairport. Various new schemes are in the pipeline\(^{65}\) and a new decked parking area over an existing surface car park has recently been completed within the airport comprising some 1,565 spaces. GAL states that there are plans to spend substantial funds over the next few years increasing parking capacity\(^{66}\), as identified in the Capital Investment Programme 2018\(^{67}\) and that potential exists to add around 10,000 spaces on existing parking areas within the airport should the need arise\(^{68}\). Although some schemes still need to pass through the relevant ‘tollgate’\(^{69}\) and need final approval by GAL to proceed, I see no reason why they should not be realised if they are required.

28. In addition, GAL is promoting sustainable modes of travel to the airport so as to meet its public transport mode share target as set out in the recently published Airport Surface Access Strategy\(^{34}\). This target has recently increased to a 48% public transport share by 2022, up from 40% previously\(^{70}\). This is tied into a planning agreement entered into by GAL\(^{71}\) which makes provision for the payment of a public transport levy, to be used to improve public transport links to the airport. The modal split percentage between passengers arriving at the airport by public transport, as opposed to by private car, has increased in recent years.

29. To sum up, it is acknowledged that the appellant in this appeal is contesting the Council’s and GAL’s assessment of airport parking in far greater detail than at the earlier ‘Gasholder’ case. However, I find overall that the evidence does not conclusively or unequivocally demonstrate that there is a proven unmet need for additional off-airport parking that is so pressing that the clear conflict with Policy GAT3 should be disregarded. Indeed, granting permission contrary to GAT3 might set a precedent for off-airport parking proposals which would be difficult for the Council to resist. Consistent application of Policy GAT3 is required so as not to undermine the Local Plan’s strategy in respect of airport related parking.

30. I conclude on the first issue that the scheme would conflict with both limbs of Policy GAT3 of the Local Plan. The proposal would run counter to the Local Plan in terms of controlling the extent of airport related parking, thereby helping to encourage the use of alternatives, whilst ensuring sufficient parking is available to those who have no other option\(^{72}\).

\(^{64}\) This is mainly due to the expiry of a number of temporary permissions – Paragraph 96, Mr Nutt’s Proof (updated)
\(^{65}\) Mr Wallace’s Proof, Page 25, Section 3.2
\(^{66}\) Mr Wallace’s Proof, Paragraph 4.3.2
\(^{67}\) CD18/12
\(^{68}\) Mr Wallace’s Proof, Paragraph 4.5.5
\(^{69}\) A key decision point for GAL reflecting the status of a particular project
\(^{34}\) CD8/19
\(^{70}\) CD 8/19, Page 14, Target 1; this target was achieved despite a larger than forecast increase in passenger numbers
\(^{71}\) Under s106 of the Town and Country Planning Act, dated 10 December 2015 [CD 7/14]
\(^{72}\) Paragraph 9.20
Safeguarded Land

31. The appeal site forms part of the area safeguarded for a second runway where Policy GAT2 ('Safeguarded Land') applies. This policy safeguards land from development which would be ‘incompatible’ with the construction of a second runway. The second part of the Policy allows for ‘minor development’ within the safeguarded area. Although not specifically defined, examples are given of acceptable development, which includes changes of use and small scale building works, such as residential extensions. Temporary permission may also be granted where appropriate. The reasoned justification makes clear ‘incompatible’ development within safeguarded land is that ‘which would add constraints or increase the costs or complexity of the development or operation of an additional runway”73.

32. In my view, the scheme proposed cannot be realistically regarded as ‘minor development’, given the nature and extent of the works, nor is it a simple change of use. This is because it involves the construction of a central ‘hub’ office building and reception area, with toilets and so on, as well as the provision of other infrastructure, and extensive areas of parking. In my judgement, a development of this size and extent, together with bunds and landscaping, and other infrastructure, would be incompatible with the construction of a second runway, and is likely to add constraints, or increase the costs or complexity of providing it.

33. The Appellant argues that incompatibility with Policy GAT2 can be avoided by granting a temporary permission, with a planning obligation to restore the site at the end of a five year period74. I acknowledge that the recently published Airports National Policy Statement (NPS)75 has identified Heathrow as the preferred location for an additional runway. That decision is itself highly controversial. Importantly, however, the NPS does not deal with the question of whether continued safeguarding of land for a second runway at Gatwick is required. This matter is expected to be addressed in a future Aviation Strategy for the UK. The NPS is subject of legal challenges which are due to be heard this year. The outcome of these challenges is currently unknown. Given this uncertainty, the possibility of the site being required for a second runway, including for preliminary or investigatory works, whilst arguably remote, cannot be ruled out within the next five years. This being so, and until the Council has initiated a review of Policy GAT2, and a new policy framework exists at the airport, I see little justification for departing from the adopted development plan which identifies the appeal site as falling within ‘safeguarded land’ where this proposal would not be appropriate.

34. To sum up on the second issue, I find the proposal to be in conflict with Policy GAT2 which seeks to safeguard land from development which would be incompatible with expansion of the airport to accommodate the construction of an additional wide spaced runway if required by national policy.

73 Paragraph 9.18
74 The appellant has drawn my attention to the Inspector’s conclusions on safeguarding in the ‘Southways’ decision but the Council did not cite this factor in the reasons for refusal in that case [ID29, Paragraphs 57-58]
75 Published in June 2018
**Character and Appearance**

35. The appeal site, which lies outside the defined Built-Up Area, forms part of a wider area that comprises predominantly undeveloped countryside. Policy CH9 (‘Development Outside the Built-Up Area’) is therefore applicable. It is located in the ‘Upper Mole Farmlands Rural Fringe’\(^{76}\) which is described as a flat low lying pastoral landscape between the open environment of the airport to the north and the urban edge of Manor Royal to the south. Although the site lies immediately to the east of a lawful long term off-airport car parking facility at the former Lowfield Heath Service Station that fronts the A23 London Road, the local landscape remains largely intact. It comprises a traditional individual field pattern delineated by hedgerows with areas of woodland copse. It is composed of relatively small scale pastoral fields, punctuated and peppered by intermittent deciduous tree cover and hedgerow boundaries. This creates an intimate and pleasing character.

36. The scheme would accommodate around 3,000 cars on site, including 2,868 block parked cars\(^{77}\), along with 72 spaces comprising an arrivals / drop off area, and 211 spaces in a customer collection point. There would also be a modular building to accommodate a reception, office and toilets. The site would be enclosed by a 2.4m high green steel mesh fence, with numerous 5m high lighting poles with LED direction floodlights. Cameras would also be positioned around the site to provide security and surveillance.

37. The introduction of such an expansive area of car parking along with associated offices and other necessary paraphernalia would result in a serious incursion into the open countryside and materially harm the rural character of the locality. It would result in a large urbanising feature within open countryside that currently forms an important gap between Gatwick and Crawley. Policy CH9 refers to the Upper Mole Farmlands as having an important role in maintaining the separation of Gatwick Airport from Crawley. This scheme would erode this important ‘separation’ function.

38. In terms of the wider landscape, I observed the site from various points. There would be longer distance views of the proposal from the public footpath at a high point at Rowley Farm. I acknowledge the view from here would be filtered to an extent, but there are nonetheless clear views towards the site. From here the site is seen at a distance and within the context of a larger panorama. At present, the view is essentially a rural one. The proposal would result in a major urbanising feature, especially in the winter months when deciduous trees lose their leaves. There would also be prominent views of the site when viewed from the pedestrian path on the A23 to the north.

39. I acknowledge that the scheme proposes additional landscaping measures including bunds, structural planting to supplement existing vegetation, and trees to minimise its impact. It is proposed to retain as far as possible the existing field pattern and hedgerows. It is also proposed to use porous surfaces for areas of hardstanding, and ‘no dig’ methods to ensure trees are not harmed. The lighting columns have been designed to minimise light spillage. However, I am not convinced that these measures would be effective

\(^{76}\) Landscape Character Assessment 2009
\(^{77}\) Parked bumper to bumper in closely packed rows

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in altering the perception of a large urban feature within the open countryside. The temporary nature of the permission sought would also limit the landscaping from fully maturing over time and providing dense screening.

40. To sum up on the third issue, the appeal proposal would conflict with Policy CH9 of the Local Plan which seeks to ensure, amongst other things, that Crawley’s compact nature and attractive setting is maintained. The proposal would also fail to recognise the individual character and distinctiveness, and role of the landscape character area in which it is proposed.

Overall Conclusions and Planning Balance

41. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The National Planning Policy Framework (‘the Framework’ states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by the economic, social, and environmental dimensions and the interrelated roles they perform. The Framework also requires the planning system to contribute to building a strong and competitive economy, and to proactively drive and support sustainable economic growth.

42. The proposal would generate economic benefits, including jobs and boost spending in the local economy. It would provide additional long stay parking and increased choice for airport customers. I have taken into consideration that one of the planning obligations seeks to provide funds for sustainable public transport initiatives in the locality and to the airport. I appreciate that the appellant is the UK’s largest independent provider of airport car parking spaces, is a reputable operator, and that the proposal would be well run. I acknowledge that the site would be restored at the end of the five year period, as per the second obligation. I also acknowledge that there is no evidence to suggest that GAL’s public transport mode share would not be achieved in the event the appeal were to be allowed.

43. However, balanced against these factors is the clear conflict with the adopted development plan, in particular Policy GAT3, which requires all new airport parking to be within the airport boundary, on the basis that this is the most sustainable location. The scheme would conflict with both limbs of Policy GAT3 of the Local Plan, and its wider sustainability objectives. It is not within the airport boundary, but is ‘off-site’. In my judgement, the evidence before me does not conclusively or unequivocally demonstrate that there is a proven unmet need for additional off-airport parking that is so pressing that the clear conflict with Policy GAT3 should be disregarded.

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78 Section 38(6) of the 2004 Act
79 July 2018
80 Part 6
81 Paragraphs 80-81
82 A total of 74 jobs are predicted to be created, Mr North’s Proof, Table 7, Page 216
83 The Council and GAL have raised concerns that there are no specific projects identified to which the contribution could be applied, and that the financial contribution per space would be far less than that required of GAL under the terms of the planning agreement.
84 ID25
44. Indeed, granting permission contrary to GAT3 could set a precedent for offairport parking proposals which would be difficult for the Council to resist. I see no good reason to set aside the provisions of Policy GAT3 of the Local Plan, which has been subject to scrutiny through a Local Plan Examination, and also in the High Court. The fact that this appeal relates to a temporary permission does not outweigh the clear policy conflict. Equally importantly, the proposal would also conflict with the safeguarding objectives of Policy GAT2, as well as the principles of Policy CH9 relating to development outside the built-up area, and is unacceptable in these respects.

45. The appellant suggests that the appeal site is in a sustainable location in terms of the proximity to the airport, notwithstanding that it is off-airport. However, a temporary permission for a development of this size and scope raises wider questions of sustainability. Granting temporary permission for a development of this size, involving the carrying out of substantial works and provision of infrastructure so as to allow the operation of the facility, only for it to be removed within a five period after the expiration of the temporary permission, would not in my judgement amount to a sustainable form of development.

46. Overall, the benefits of the scheme put forward by the appellant do not justify departure from Policies GAT2, GAT3, and CH9 of the Local Plan. I find there are no material considerations of sufficient weight that would warrant a decision other than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

Matthew C J Nunn

INSPECTOR

APPEARANCES

FOR THE COUNCIL:
David Forsdick of Queens Counsel, Instructed by Crawley Borough Council

He called
Marc Robinson Principal Planning Officer, Development Management Team, Crawley Borough Council

Tom Nutt Planning Officer, Forward Planning Team, Crawley Borough Council

FOR THE APPELLANT:
James Pereira of Queens Counsel, Instructed by Holiday Extras Ltd

He called

85 CD11/1

https://www.gov.uk/planning-inspectorate
DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening submissions of the Appellant
2. Opening submissions of the Council
3. Opening submissions of Gatwick Airport Ltd
4. Crawley Borough Local Plan 2015-2030 and Proposals Map
6. Mr Nutt’s Summary Evidence in Chief
7. Mr Wallace’s sensitivity tests in response to Howard Dove’s updated Table 7
8. Updated Table 7 of Howard Dove’s Proof and emails from CAA (David Young)
9. Council’s Parking Survey 2010
10. List of applications for Certificates of Lawfulness in respect of airport parking
11. Gatwick Airport Ltd - Retail Profiler Quarterly Data 2016-2017
12. Email (with attachments) from Robert Herga (Gatwick Airport Ltd) dated 27 September 2018
13. Letter from Alex Authers (Gatwick Airport Ltd) dated 5 October 2018
14. Signed & agreed Statement of Common Ground
15. Gatwick Airport Ltd & Appellant Parking Data Summary Comparison
16. Objection from Mike Wilson
17. Agreed list of suggested conditions
18. Draft Unilateral Undertaking (unsigned): Public Transport Levy
19. Draft Unilateral Undertaking (unsigned): Restoration
20. Council and Appellant Parking Data Summary Comparison
21. Closing submissions of Gatwick Airport Ltd
22. Closing submissions of the Council
23. Closing submissions of the Appellant
24. Site visit Route

DOCUMENTS SUBMITTED POST INQUIRY

25. Signed Unilateral Undertaking (Restoration) dated 17 October 2018
26. Signed Unilateral Undertaking (Public Transport Levy) dated 17 October 2018
27. Letter dated 23 October 2018 from Tim North regarding Gatwick Airport Draft Master Plan 2018
28. Letter dated 29 October 2018 from Robert Herga (Gatwick Airport Ltd) in response to Tim North’s letter
29. Appeal decision APP/Q3820/C/17/3175231 (‘the Southways decision’) dated 9 January 2019
30. Appellant’s comments on the Southways decision dated 17 January 2019