



Appeal Decision

Hearing held on 14 March 2017

Site visit made on 14 March 2017

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

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

Decision date: 17 March 2017

Appeal Ref: APP/P1940/C/16/3154795

Land and building at Highwood Lodge, Highwoodhall Lane, Pimlico, Hertfordshire HP3 8SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Adam Victor Kenealy against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 9 May 2016.
- The breach of planning control as alleged in the notice is: *Without planning permission, the material change of use of the Land from its use for agriculture to a residential use including the erection of a building (hereinafter called "the Building" and shown cross hatched in blue on the attached plan) and associated structures (including gravel hardstanding, patio, close board fencing and domestic chattels/paraphernalia).*
- The requirements of the notice are: 1) cease the use of the Land and the Building for residential purposes; 2) demolish the Building, remove the close boarded fencing (including its concrete posts), gravel hardstanding, patio and all domestic chattels/paraphernalia within the Land; 3) following compliance with Steps 2 and 3 above, remove from the Land all debris and waste materials resulting from these actions; 4) following the removal of the gravel hardstanding and patio and compliance with Steps 2 and 3 above, re-seed that part of the Land with a native grass seed mix; and 5) following compliance with step 4 re-seed any part of the Land where the native grass seed mix dies or is dying within 5 years from the date this Notice takes effect.
- The period for compliance is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Act.

Decision

1. I direct that the enforcement notice be corrected by:
 - i. the deletion of the title "MATERIAL CHANGE OF USE" to the enforcement notice and its replacement with the words: "OPERATIONAL DEVELOPMENT";
 - ii. the deletion of the whole of paragraph 3 of the enforcement notice and its replacement with the following: "*Without planning permission, the erection on the Land of a building in use for residential purposes (hereinafter called "the Building" and shown in the approximate position cross hatched in blue on the plan attached to the notice) and associated structures (including gravel hardstanding, patio, close board fencing and domestic chattels/paraphernalia)*"; and,
 - iii. the deletion of the phrase "2 and 3" in point 3 of paragraph 5 of the enforcement notice and its replacement with the phrase: "1 and 2".
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

3. The Planning Inspectorate [PINS] issued a note to the main parties in advance of the Hearing, which raised a number of issues and gave rise to an exchange of correspondence between the parties. The first point to record is that in opening I gave reasons why I intended to proceed on the basis of a Hearing rather than cause an Inquiry to be convened. First, the Appellant did not lodge ground (d) on the appeal form. Second, he expressly requested a Hearing at that stage. Third, because no proof of evidence, or similar, has been provided by the Appellant I expressed concern that the Council might be prejudiced if I were to convene the event as an Inquiry. In opening I indicated that at that stage I had not ruled out the possibility of reconvening the event as an Inquiry at a future date. However, after the substantive discussion on ground (d) the Appellant conceded that he was: "...*happy with the situation as it is*", such that an Inquiry would not serve a useful purpose. So whilst I acknowledge that it might have been more appropriate to set down the event as an Inquiry once the ground (d) was confirmed, to allow evidence to be taken on oath, as there was a consensus that the broad version of events given by the Appellant at the Hearing is the truth no purpose would be served by adjourning to an Inquiry.
4. At the Hearing an application for costs was made by Three Rivers District Council against Adam Victor Kenealy. This application is the subject of a separate Decision.

Corrections to the enforcement notice

5. The note to the parties identified a tension on the face of the notice between the title, which says it concerns a "*material change of use*", and paragraph 4.1. of the enforcement notice, which refers to "*four years*". It is clear, for example from paragraph 1.7 of the Council's statement and paragraph 1.1 of its final comments, that the Council does not allege a change of use of the building to use as a single dwellinghouse, within section 171B(2) of the Act. Accordingly if the allegation were to stand it raises the prospect that the relevant time period is 10-years, having regard to section 171B(3) of the Act. However if I were to deal with the notice, and hence this appeal, on that basis, the Appellant's claim under ground (d) would be completely undermined and so any correction to the notice that might be required to this effect would plainly cause injustice. Even in the alternative that no formal correction, from 4 to 10 years, was necessary, the change of approach would prejudice the Appellant's ground (d) claim.
6. Having regard to the above I put forward 2 alternative corrections to the allegation in advance of the Hearing, which both focussed on the operations that had been undertaken rather than the use. Although the Council indicated that it would not suffer injustice from either formulation, the Appellant said that there would potentially be injustice if there was reference to a dwelling house rather than residential use. In the circumstances, given the preference of the parties and the agreement that the proposed correction would not cause injustice, I shall correct the allegation in the manner agreed at the Hearing. In my view the corrected allegation better reflects the breach of planning control that is now understood to have taken place in which the building facilitates the use, which could not survive without the existence of the building. There is a consequential change to the title of the notice, which is then consistent with the reference to "*four years*" in paragraph 4.1. of the enforcement notice.
7. The remainder of paragraph 4 of the notice essentially goes to ground (a) and so is spent after appeal stage. As the Appellant was professionally represented

at the Hearing I am satisfied that the implications of the change for ground (a) was able to be dealt with; indeed both parties were placed in the identical position as a result of this change. The Council also drew attention to what is effectively a 'typo' in paragraph 5.3 of the enforcement notice, which should refer to steps 1 and 2 above. In the circumstances I am satisfied that these corrections can be undertaken without causing injustice to either main party.

8. Finally it is appropriate to record that whilst paragraph 2.5 of the Appellant's statement expressed concerns about the plan attached to the notice, it was agreed at the Hearing that there is no need to correct the notice plan. The OS base provided by the Appellant has the advantage of being to a recognised scale, but there appears to be a consensus that the building marked on that plan is likely to be the former stable building¹ and not the building that is the subject of this appeal. In the absence of an accurate survey or an obvious benchmark it is not appropriate to try to annotate the new building on the OS base. It was agreed that the plan attached to the notice broadly shows the siting of the new building. However I shall correct the allegation to make clear that the blue cross hatched area is approximate, which can be done without injustice because it fairly reflects the discussion that took place at the Hearing.

Ground (d)

9. The material date is 4-years prior to the date of issue of the notice, namely 9 May 2012. In the context of the agreed corrections to the notice, the onus of proof falls on the Appellant to show that the building was substantially completed prior to the material date, such that: *"...at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice"* [as per section (d) of the appeal form].
10. It is clear that the Appellant's ground (d) claim cannot succeed. The Appellant has not sought to dispute the veracity of the aerial photograph that has been provided by Skyscan, the invoice from which confirms that the image was captured on 26 May 2012, which is plainly after the material date. The image shows the former stable block and associated tack store to exist on that date. Noting the terms of the Appellant's email to PINS dated 31 July 2016, which said: *"Whilst ground (d) cannot be argued in respect of the current use of the building, ...it can be argued in respect of its retention"*, the photograph alone is a sound reason to dismiss the narrow basis on which this ground is pursued.
11. Notwithstanding the above, because it has implications for the remaining grounds of appeal and other matters, I shall record the broad parameters of what was discussed at the Hearing. The stable was erected in 2010 and the invoice dated 15 March 2010, the veracity of which there is no reason to doubt, is in respect of: *"...building works carried out"* prior to that date. The Council estimates that the building was 4.8 m wide, by comparison to another building on adjacent land², and its view is confirmed by scaling from the OS plan. The Appellant scales it as 5 m wide and says it had an overhang at the front that was between 1 m and 1.2 m wide, which the Council did not seek to dispute even though it had previously estimated the overhang to be 1.5 m wide. The Appellant said that the overhang was supported by 4 oak posts equally spaced along the frontage, the effect of which was to give rise to a covered walkway along the front of the stable. The length of the stable was estimated by scaling from the OS plan at between 11 m, Council, and 11.3 m, Appellant. The aerial

¹ Notwithstanding the date on the OS plan of 26 September 2016.

² Building B on the PCN plan at MR4 to the Council's statement.

photographs show the stable building had an offset ridgeline, which appears to be roughly above the façade of the stable block, at the rear of the overhang.

12. The building subject of the enforcement notice is depicted on a block plan and in elevation form on plans that were submitted at the Hearing³ [Document 2]. The parties scaled from those plans and agreed that the length of the building shown thereon was in the range between 11.5 m and 11.6 m, with a width of between 5.9 m and 6 m. However these measurements were superseded by actual measurements of the building taken on site, which were agreed to show that the building is 12.14 m long and 6.21 m wide⁴. The walls were measured to be 335 mm wide, including what was agreed to sound like a central cavity⁵, plus the width of the facing brick, which was agreed to be 102 mm wide. Based on the Appellant's estimate of the length of the former stable block it is at least conceivable that what was described as the 'C', i.e. the rear half of the side walls together with the rear wall, formed the basis of the building that exists⁶.
13. Notwithstanding the above, again noting the onus of proof, it is clear that even if I were to give the Appellant the benefit of the quite considerable doubt and assume that the stable had concrete block walls, which were incorporated into the current building, that would not be enough to succeed on ground (d). The Appellant admitted that the whole of the roof was removed, together with the entire facade [south side] of the stable, the 4 oak posts and the external wood cladding. He could not recall whether the internal partitions of the stable were retained but given that there were said to be 4 stables, and hence presumably 3 partitions, I consider, on the balance of probability, they were. In reaching this view I have noted the internal layout of the new building and it must be relevant that it is materially wider than the stable allowing for the walkway⁷.
14. I am in no doubt that the works that are now agreed to have been undertaken to the building in 2013⁸ did materially affect the external appearance of the building and, as such, was development having regard to section 55 of the Act. Although in closing it was suggested that the ridge and eaves height of the building has not materially changed, the Appellant has not discharged the onus of proof to show this claim is correct. The roof was replaced and it is possible that the new roof is at a different pitch and/or that the perimeter walls are built to a different height. Even if the claim might be true, there being no clear evidence either way, it is evident that the footprint of the building has materially increased because the Appellant admitted that it had extended forward and this is clearly evident from Figure 7. Among other things the Appellant said that more had been added to the front of the slab, what he called being squared off, but he could offer no explanation for this aspect of the "Quote" from Farrugia Construction, which is considered in more detail below.
15. For the following reasons I consider that there is doubt as to whether the Appellant's recollection of events, as given at the Hearing, can be relied upon:
 - i. No evidence was taken on oath and so the weight to be attached to the Appellant's oral testimony, whilst moderate, is less than significant;

³ Prior to the Hearing whilst the plans had been provided they were not at A3 and so it was not possible to scale from them given that they both unambiguously say: "Scale 1:50 A3".

⁴ Measurements taken along the dwarf perimeter walls on the southern and eastern elevations, respectively.

⁵ Agreed aurally by knocking various parts of the wall, which suggested a central void or cavity.

⁶ Taking the Appellant's estimate of 11.3 m and adding on 2 x 335 mm and 2 x 102 mm = 12.17 which, allowing for a margin of error in scaling or measuring, is roughly the same as the measured length of the current building.

⁷ Taking the Appellant's estimate of 5 m and subtracting the width of the overhang at up to 1.2 m, would suggest that the partitions in the stable were approximately 3.8 m whereas the building that now exists is 6.2 m wide.

⁸ As recorded in paragraph 8 of the Statement of Fact [Document 3].

- ii. At the Hearing the Appellant initially talked about the stable having a timber frame with uprights to support the roof and said he could not remember how many uprights there were or whether they were retained. However after the site visit he said there were a minimum of 2 uprights in the rear corners of the stable. Nevertheless I remain unclear why one might have had a timber frame and a block wall on a fairly rudimentary stable block. Neither the Building Contractors nor the Appellant's wife were called to give evidence about the stable to corroborate whether, or to what extent, there was any blockwork;
 - iii. The Appellant said on numerous occasions that he could not remember the detail of the construction phase, which I do not find surprising given that he was going through personal difficulties. He said that he left it to the builder and viewed the site every other day to see what they had done. However he also said that whilst the entire project took 6-8 weeks the builder was not there every day. Nobody from Farrugia Construction or SJ Interiors were called to give evidence about the construction phase of the new building; and,
 - iv. The "Quote" from Farrugia Construction was acknowledged by the Appellant to be nothing of the sort; he said there was no invoice at the time that the works were undertaken and that the quote and invoice [Document 4] was obtained after the event. I therefore accept the Council's submission that the "Quote" is in fact a record of the works that the company undertook. Amongst other things it says: "...remove existing slab floor. Lay new reinforced slab concrete floor, build in brick and block dwarf perimeter wall with cavity insulation. Reinforce existing timber structure..." [*my emphasis*]. This evidence strongly suggests that to the limited extent that any part of the stable block might have been retained it was structural timbers rather than any concrete block wall. It appears to be entirely illogical to remove a slab floor and lay a new concrete floor if the weight bearing element of the foundations, i.e. under the block wall of the 'C', is not altered because the blockwork is retained. That explanation is at odds with the plain language of the "Quote" to build a block perimeter wall.
16. I appreciate that Mr King said that the "Quote" from Farrugia Construction might be a worst case scenario; his explanation for its terms was that some of the works, such as replacing the slab, might only have been necessary if a trial hole had shown the existing slab to be defective. This is however speculation and the Appellant's concession that the "Quote" was sought after the event makes this scenario less than probable in my view. The suggestion that the company might have merely added a screed does not fit with the precise words that the company has chosen to use on the face of the document.
17. Taking the evidence before the Hearing in the round I conclude that there was little if anything of the stable building retained and incorporated into the new building that is the subject of this notice. The Council place considerable weight on the "Quote" from Farrugia Construction; I agree. It strongly suggests that not only was a completely new slab floor laid, but also that a new block wall was erected on top of the reinforced slab. If any of the timber structure was retained, the Appellant has quantified that to have been just 2 uprights in each rear corner, but he cannot even remember if they were retained or replaced. Just as the cladding was removed and reused it is possible that structural timbers were also. In the context of evidence that a new reinforced slab concrete floor was laid I consider it is more likely than not that no part of the stable was retained in situ and that the stable was demolished to enable the building that exists to be built, albeit reusing some timbers, including cladding.

18. In reaching this view, whilst I have no reason to think that the Appellant did not tell the truth at the Hearing, I am in no doubt that he is prepared to lie in order to retain the building in which he resides. He admitted that he influenced Farrugia Construction to put the wrong date on their invoice. The Appellant admitted that he knew the date on the invoice was not correct and that he submitted the invoice with the false date in an attempt to mislead the Council. I am in no doubt that the same is true of the date on the SJ Interiors invoice.
19. The Appellant also admitted that he told his wife what to write in the response to the Planning Contravention Notice [PCN]⁹, such that the content of the PCN reply was his in substance, albeit that she wrote the false answers for him. These include the answers to questions 4.1 (vi), 4.3 (i), 4.3 (ii), 4.3 (v) (a), 4.3 (v) (d) and 4.3 (ix) which, given the date of the PCN reply, 6 November 2015, are contradicted by the Skyscan aerial photograph and invoice. Although the Appellant initially claimed that the response to the PCN was a "*mishap*" he subsequently agreed that it too was done to mislead the Council and admitted at the Hearing that I: "*...put my hands up there, it's wrong*".
20. Much more serious even than this was the clear admission that the content of the Appellant's statutory declaration dated 3 February 2016 is wrong. Relevant false statements include paragraphs 4, 6 and 8. When asked whether it was a conscious decision to take the oath¹⁰ and give wrong dates he agreed. It is a matter for others as to what the consequences of that false declaration are but I do note with a little concern that the declaration is given by reference to the Statutory Declarations Act 1935. I am not a solicitor and I might be wrong but at face value there appears to be no such Act¹¹. There is however a Statutory Declarations Act 1835¹² and there appears to be no reason to think that the Appellant did not consider that he was making a solemn declaration with legal consequences when he signed his statutory declaration.
21. In the circumstances, given the clear admissions that the date on the invoice from Farrugia Construction is false, that key answers on the PCN response are wrong and the Appellant's conscious decision to provide incorrect dates in his statutory declaration, I am unable to attach any weight to this evidence¹³. Moreover whilst I repeat that there was a consensus at the Hearing that the version of events given at the Hearing was broadly the truth, I cannot be certain that aspects of it, e.g. in relation to the slab and block walls, are wrong. I am not saying that aspect of the evidence that was given is false, although I cannot completely rule out that possibility, but it might be that the Appellant simply does not recall the situation accurately¹⁴. The bottom line is that I am not persuaded that the version of events he gave at the Hearing should be given a great deal of weight because it appears to be contradicted by other evidence before the Hearing, notably the "*Quote*" from Farrugia Construction. Moreover it is not precise and unambiguous because the Appellant admitted several times that he could not remember what had happened. In closing it was said for the Appellant that it was unclear how much of the stable building remains in the current building. If that is the Appellant's case at its highest that plainly fails to discharge the onus of proof or show the required precision.

⁹ Appendix MR4 to the Council's statement.

¹⁰ The statutory declaration is witnessed by "A Solicitor empowered to administer Oaths".

¹¹ See: <http://www.legislation.gov.uk/1935?title=Statutory%20Declarations%20Act%20>

¹² See: <http://www.legislation.gov.uk/ukpga/Will4/5-6/62/enacted>

¹³ As noted at the Hearing this does not apply to other components of the PCN and statutory declaration, such as paragraph 7 of the latter, but these have limited bearing on the key matters at issue in this appeal.

¹⁴ My concern is reinforced by the apparent agreement to the fifth bullet-point of paragraph 9 of Document 3.

22. Despite the blatant attempts to mislead the Council, it has elected not to rely on an argument of deception. I checked that at the start of the Hearing and again after the admissions set out above had been given. In the circumstances this is not a matter that I need to consider. However ultimately it makes no difference to my conclusion. The Council doubtless realised the strength of its position in relation to ground (d) and this might have influenced its stance.
23. I conclude that the ground (d) appeal must fail because: (i) there is clear and unambiguous evidence, in the form of the Skyscan aerial photograph and invoice, that the stable existed after the material date; (ii) the building that now exists was only substantially completed in 2013, which is well after the material date; and, (iii) for the reasons I have set out at length above there can be no doubt that the works undertaken in 2013 did materially affect the external appearance of the building and indeed appear to have replaced the stable. In an appeal on ground (d) the burden of proof lies with the Appellant and as this has not been discharged the appeal under ground (d) must fail.

Ground (a): *The planning policy context for these appeals*

24. The Development Plan [DP] includes the Local Development Framework Core Strategy [CS] and the Development Management Policies Local Development Document [DMP], which were adopted in 2011 and 2013, respectively. Relevant DP policies include CS Policy CP11 and DMP Policy DM2. The former, by virtue of its age, falls to be assessed against advice in paragraph 215 of the National Planning Policy Framework [*"the Framework"*]. At the Hearing no reasons were given as to why CS Policy CP11 was inconsistent with the Framework and in those circumstances I attach the policy significant weight in this appeal. Conversely given that the DMP has been adopted since the Framework it must have been found to be sound which, as set out in paragraph 182 thereof, includes the test that it is consistent with national policy.

Main Issues

25. There are 3 main issues in the deemed application that falls to be considered. The first is whether the development would be inappropriate development in the Green Belt having regard to relevant DP policies and the Framework. The second is the effect on the openness of the Green Belt. The third is whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations and, if so, whether this would amount to the very special circumstances required to justify the development.

Reasons: (i) Inappropriateness

26. Section 38(6) determines my starting point is the DP, but in this instance DMP Policy DM2 expressly refers to the Framework in saying that the construction of new buildings in the Green Belt is inappropriate. The relevant paragraph is 89, which says that the construction of new buildings is inappropriate unless it is for one of six specified exceptions. As was submitted for the Council in closing this is a closed list. Moreover, and for the avoidance of doubt, given my finding on ground (d) I reject the Appellant's submission that the deemed application falls to be assessed under bullet-point 4 of paragraph 90 of the Framework. It is a new or replacement building rather than the re-use of a building because I have found that little if anything of the original stable has been retained. The stable might have been of permanent and substantial construction, although the position is unclear, but I am satisfied that it has been replaced. In these circumstances the criteria in DMP Policy DM2 f) are simply not applicable here.

27. Focussing on the exceptions listed in paragraph 89, for essentially the same reason I find this building does not fall within the third bullet-point because there was little if anything of the original stable to be extended or altered. The term original building is defined in Annex 2 of the Framework and in the circumstances of this appeal can be taken to be as built originally. The stable was built in 2010 and so by 2013, when it is agreed that further building works were undertaken, the stable building itself might not have been lawful¹⁵. This point is not however determinative given my conclusions under ground (d) that the stable was replaced rather than extended or altered.
28. The most relevant exception is therefore the fourth bullet-point in paragraph 89. It imposes 2 tests, the first of which is that: "...the new building is in the same use". Those words should be given their natural meaning. The stable was used for the keeping of horses or alternatively some sort of agricultural use in which those horses might conceivably have grazed on the paddock. There is no evidence of jumps or a manege. So whilst the Appellant seeks to describe it generically as a recreational use, I consider it should be categorised more precisely as a use for the keeping of horses or for agriculture. Again it is material that the Appellant's wife was not called to give evidence on this point.
29. However even if I did adopt the Appellant's description, a stable for outdoor recreation might have fallen within the second bullet-point of paragraph 89 and hence not been inappropriate. In contrast the erection of a residential building that is plainly not a form of infill would not fall within the limited exceptions in paragraph 89 of the Framework. Accordingly it follows that the respective uses are materially different and distinguished as such in the Framework. In these circumstances it is wrong to seek to generically describe both uses as ancillary.
30. In contrast to the historic stable the building is now used for a residential use. Although the Appellant appears to have resisted the alternative revision to the allegation that referred to use as a dwelling having regard to this exception, there is no doubt that the use that is made of the building on the appeal site is not ancillary to Highwood Lodge. The "*Ground Floor Plan*" [Document 2] shows that it has a bathroom, kitchen, living room and 2 bedrooms. As such it is a self-contained property that is not dependent in any way upon the facilities in Highwood Lodge in order to meet the Appellant's day-to-day needs.
31. Although both properties share the same access, given that the Appellant's car business is served from the same entrance I do not find this to be conclusive. The Appellant acknowledged that he had a mobile device to open the electronic gates. Whilst some of the services are shared, such as the septic tank, this too does not lead me to the conclusion that the building is a detached annex, as claimed. I acknowledge there is a family link, including that the Appellant's children live in Highwood Lodge, but that does not alter the fact that the building subject of this appeal meets all of the Appellant's day-to-day needs.
32. At the Hearing it was implied for the Appellant that the use is not development because it is a purpose incidental to the enjoyment of the dwellinghouse as such, and hence within the exemption in section 55(2)(d) of the Act. I have a number of problems with any such claim. First it has not been shown that the building is within the curtilage of the dwellinghouse¹⁶. Second the use includes

¹⁵ It did not benefit from express planning permission and it is unclear why it might have been permitted development; no claim has even been made to this effect. The stable would not have benefitted from immunity.

¹⁶ The planning permission for which was granted in 1997, but no copy of the permitted plans have been provided. However the map at Appendix MR1 appears to show the curtilage of Highwood Lodge, coloured yellow.

- primary accommodation, as described above, rather than just ancillary rooms such as might be associated with a summerhouse or conventional outbuilding.
33. Crucially, whilst I understand that no Lawful Development Certificate [LDC] has been issued in respect of the car sales business, I understand that the Council regard that use to be lawful by virtue of the passage of time. The effect is that either there is a commercial use on a separate planning unit between Highwood Lodge and the appeal site or that the curtilage of that dwellinghouse is now in mixed use, for car sales and residential, such that the exemption in section 55(2)(d) of the Act can no longer be invoked or relied on at this stage.
34. In the first scenario any ancillary link is lost by the intervening commercial use and in the second there is no dwellinghouse, just a residential component that now forms part of a planning unit in mixed use. In that context the idea that a detached building outside what on the ground and on plan form appears to be the historic curtilage could be ancillary to a mixed commercial and residential use is not one that I am able to endorse. In advancing the claim that the use of the building that is the subject of this appeal is ancillary to Highwood Lodge, the existence of the car sales activity has been completely overlooked, but I am not able to do so because it is highly material to any such assessment.
35. Turning to the second test in the fourth bullet-point in paragraph 89, the test is whether the building is: “...*materially larger than the one it replaces*”. I am only able to work with the measurements that are known. The footprint of the stable, which necessarily excludes the overhang, was up to 3.8 m x 11.3 m¹⁷, which is approximately 43 m². The footprint of the building that is the subject of this appeal is 6.2 m x 12.14 m, which is over 75 m². Even if I were to assume that the respective buildings had the same eaves and ridge height, the volumetric calculation would exacerbate this difference because the volume of the roof would be greater given the increase in its forward projection. However even based on the respective footprints the increase is approximately 75 %¹⁸. Whilst this fairly crude calculation can only be a guide it does suggest that the replacement building is materially larger than the one it replaced.
36. The Appellant says that it is necessary to also take account of the tack store, but its existence is not shown on any of the plans before the Hearing¹⁹, which casts doubt as to whether it was a building rather than a mere chattel. It is questionable whether any part of the footprint of the building subject of this appeal overlaps with the area on which the tack store was sited. I also note that the tack store was not removed from the Appellant’s landholding when the building subject of this appeal was first erected because it was initially moved into the field to the west²⁰. Although it has subsequently been removed from the Appellant’s landholding that action appears to be unrelated to the erection of the new building which did not therefore replace the tack store, only the stable. For these reasons I decline to take the tack store into account.
37. On balance, even if I might be wrong about the tack store and/or my estimate of the extent to which the replacement building is materially larger than the one it replaced, the key finding that leads me to conclude that the new building does not fall within the fourth bullet-point in paragraph 89 of the Framework is

¹⁷ Note I have used the Appellant’s estimates in order to give a maximum figure. For comparison the minimum figure based on the Council’s estimates would be approximately 3.6 [4.8 – 1.2] x 11 = less than 40 m².

¹⁸ The calculation is 75.27 less 42.94 = 32.33 which, expressed as a % of the original, is an increase of 75.29 %.

¹⁹ See plans in Council’s Appendices MR1, MR2, MR3 and MR4, and OS plan attached to the Appellant’s statement.

²⁰ See distinctive colour of its top in the image dated 28 August 2013 at MR14 to the Council’s statement.

that the new residential building is not in the same use as the stable. In these circumstances, since the construction of the new building does not fall within the closed list of exceptions in paragraph 89, it necessarily follows that it is inappropriate in the Green Belt. As such the development is contrary to CS Policy CP11 and DMP Policy DM2. I attach significant weight to this overall finding on the first main issue.

(ii) Openness

38. The Skyscan aerial photograph shows the stable block and what appears to be a well-used gated entrance from the vicinity of the stable into the field. That suggests that the stable might have been an appropriate facility for outdoor recreation that preserved the openness of the Green Belt. In contrast the building on the appeal site has a domestic appearance, including a large glazed opening on its front elevation. The residential use spills into the surrounding area, as is evident from the photographs, which record vehicle parking, outdoor seating and domestic paraphernalia, such as a bin, barbeque and washing line. This also has a physical expression in the form of the patio, gravel and fencing.
39. For these reasons the development has detracted from the openness of the Green Belt, which conflicts with the fundamental aim of Green Belt policy identified in paragraph 79 of the Framework. Whilst the development is not prominent when seen from the surrounding public footpaths, openness is a more holistic concept than visual impact and so the building's limited visibility does not alter my adverse finding in terms of openness. For these reasons I conclude that the development fails to preserve the openness of the Green Belt. As such I find a conflict with CS Policy CP11 and the provisions of the Framework. I attach significant weight to this finding on the second main issue.

(iii) Other considerations

40. Paragraph 87 of the Framework says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework says that very special circumstances will not exist unless the harm by reason of inappropriateness, together with the additional harm that I have identified in my consideration of the second main issue, is clearly outweighed by other considerations. Whilst the Appellant has not expressly identified any such considerations I shall take account of all other arguments advanced by the Appellant under this head.
41. The first and primary consideration is security. The Appellant says he needs to live on his property to protect his high value vehicle import/sales business. However the fact is that Highwood Lodge stands adjacent to the gated entrance to the property, which is an obvious deterrent to any would be intruder. Whilst the Appellant said that he would not expect his wife to fulfil the role of 24-hour on site security, I suggest that it is the physical presence of the house that does so. In any event the Appellant said that he works irregular hours and can start work from 0400 hours and is sometimes there until 2200 hours. There was also what the Appellant called the valeting guy on site at the time of my inspection and hence there is a physical presence on the site by persons other than the Appellant's wife and children at various times of the day and night.
42. In addition to the fairly constant human presence on the site the Appellant said he has 2 dogs and a CCTV system, as well as the secure gates and high fencing that screens public views. The business is operated by appointment only and so it is not the case that random individuals can get onto the site. It might be

that the CCTV system or existing security lighting might need to be enhanced or steps taken to have an enhanced burglar alarm, monitored either by a third party, such as a security firm, or to send a signal to the Appellant's mobile. However such solutions are clearly technically feasible. Accordingly I am only able to attach this argument very limited weight in this appeal.

43. The second consideration is the prospect of attaching conditions to address the harm. At the Hearing the Appellant offered to accept a condition to remove the fencing and areas of hardstanding, including the patio and gravel driveway, with just a 1 m wide path to serve the property. Although this might go some way towards addressing the second main issue, in terms of openness, it does not address the harm by reason of inappropriateness. Moreover neither would it stop domestic paraphernalia, such as outdoor seating or washing lines from impacting on openness. I therefore attach this argument very limited weight.
44. The other condition that was offered at the Hearing is to link the use of the building in some way to Highwood Lodge, but I have given reasons why the use is not ancillary and why it is not a detached annex. Given the Appellant's manner of use of the building it would not be possible to devise a condition that would be enforceable or, to the extent that it might be, the condition would be breached on day one because the Appellant would occupy the building totally independently of the dwelling. As such I attach this offer very limited weight.
45. Finally under this heading, with one eye on the ground (f) argument, I have considered whether planning permission should be granted for "*the whole or any part*"²¹ of the development that has been undertaken [*my emphasis*]. In my view the residential use is contingent upon the existence of the building and so that is not an option. No lesser scheme has been put forward in respect of the building and there is no such obvious alternative. Accordingly, whilst I have considered the possibility, I attach the prospect of issuing a conditional or split planning permission for part of the development very limited weight.

Balancing exercise and overall conclusion on the deemed application

46. I conclude that no considerations of sufficient weight exist that amount, either individually or cumulatively, to the very special circumstances that are required to clearly outweigh the harm by reason of inappropriateness, to which, in accordance with paragraph 88 of the Framework, substantial weight should be given, and the other identified harm. For these reasons, having regard to all other matters raised, I conclude that there are no considerations sufficient to clearly outweigh the policy harm and the identified conflict with DP Policies. In these circumstances, for the reasons given above and having regard to all other matters raised in the representations and at the Hearing, I conclude overall that the ground (a) appeal, the deemed application, should fail.

Ground (f)

47. Section 173(3) of the Act says a notice shall specify the steps required to be taken in order to achieve any of the purposes set out in section 173(4) of the Act. The Council has indicated that in drafting the notice its objectives were to remedy the breach by (i) discontinuing the use; (ii) restoring the land to its condition before the breach took place; and, (iii) by otherwise seeking to remedy any injury to amenity which has been caused by the breach. Dealing with each in turn the first requirement of the notice reflects the first objective. There is no lesser step to achieve that objective and so it is not excessive. It

²¹ As per section 177(1) of the Act.

- would not be appropriate to return the building to what the Appellant calls its "*pre-conversion use*" because the Appellant said the horses were sold prior to him moving out and so that use had ceased well before the breach took place.
48. Turning to the second step I deal initially with the building. The grounds of appeal appear to be referring to this step in saying it is excessive given that the building predates the notice by more than 4 years such that restoration to its pre-conversion "*appearance*" would be sufficient to remedy the breach. However I have given reasons under the ground (d) head why I do not accept this version of events. Based on the evidence, the stable was demolished in substance if not in totality prior to the breach of planning control, namely the erection on the Land of a building, which was designed and subsequently used for residential purposes. The Appellant conceded at the Hearing that I did not need to speculate as to which part, if any, of the stable existed at the date of the breach and so I can exclude this as an option. By way of example it would be ludicrous to require 2 timber uprights to be erected at the rear corners of the demolished stable block and it is unclear if that was the condition of the Land prior to the breach in any event. Accordingly the demolition of the building would restore the Land to its condition before the breach took place, which was its condition after the stable had been substantially demolished.
49. The close board fencing, gravel hardstanding and patio are all relatively minor developments that have occurred as part of, or subsequent to, the erection of the building. This is evident from the aerial photographs but also as a matter of common sense because the constrained nature of the site would mean that such accoutrements could only have been added once the main structure was substantially completed. They are therefore part and parcel of the breach and their removal is a necessary part of seeking to restore the Land to its condition before the breach took place. It is material that whilst the Appellant offered to accept a condition to remove such features no similar argument was advanced under ground (f) as to why this aspect of the requirements is excessive.
50. The third requirement is merely a consequence of the first 2 substantive requirements. The fourth and fifth requirements appear to go beyond restoring the Land to its condition before the breach took place, but at the Hearing it was said for the Council that section 173(4) (b) of the Act should be given a wide interpretation. In the absence of satisfactory argument to the contrary I find no basis to disagree. In the circumstances, subject to the minor correction detailed above, the requirements of the notice reflect the provisions of the Act.
51. In the circumstances I conclude that no reason is advanced as to why the requirements of the notice exceed what is necessary to remedy the breach and any injury to amenity, which is the limited scope of the ground (f) appeal. For these reasons this ground of appeal must also fail.

Overall conclusion

52. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the corrected enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew King BA (Hons), BPL, MRTPI	Principal partner of Andrew King and Associates.
Adam Kenealy	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Tim Comyn	Counsel.
Matthew Roberts	Principal Planning Officer.
Matthew Barnes	Principal solicitor - Planning.

DOCUMENTS SUBMITTED AT THE HEARING

Document	1	Bundle of A3 photographs, which were provided by the Council at the Hearing.
Document	2	A3 copies of plans of the building, which were provided by the Appellant at the Hearing.
Document	3	Statement of fact, annotated in line with the discussion at the Hearing to reflect the extent of agreement that was reached between the main parties.
Document	4	Second page of the Farrugia quote, which was provided by the Council at the Hearing.
Document	5	Second consultation letter, which was provided by the Council at the Hearing.