

Appeal Decision

Inquiry held on 12 and 13 April 2017

Site visit made on 13 April 2017

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

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

Decision date: 02 May 2017

Appeal Ref: APP/X0415/C/16/3150596

Land at Tall Trees, Nashleigh Hill, Chesham, Buckinghamshire HP5 3JP

- 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 Petrynski against an enforcement notice issued by Chiltern District Council.
 - The enforcement notice, numbered 2015/00280/AB/EN/1, was issued on 11 March 2016.
 - The breach of planning control as alleged in the notice is: The change of use of the Land from residential (Use Class C3) to a mixed use of residential and open storage of building materials and other materials including (but not limited to) planks of wood, fence panels, pallets and other processed wood, windows, doors, glass, bricks, rubbish, metal and plastic (Use Class C3 and B8).
 - The requirements of the notice are:
 1. Cease the unauthorised use of the Land for the open storage of building materials and other materials as described in paragraph 3 above.
 2. Remove from the Land all building materials and other materials which are stored in the open including (but not limited to) planks of wood, fence panels, pallets and other processed wood, windows, doors, glass, bricks, rubbish, metal and plastic.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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DECISION

1. It is directed that:

- The enforcement notice be corrected in paragraph 3 by the deletion of the wording of the alleged breach of planning control and the substitution of "The material change of use of the Land from residential (Use Class C3) to a mixed use of residential and storage on open land of building materials and other materials including (but not limited to) planks of wood, fence panels, pallets and other processed wood, windows, doors, glass, bricks, rubbish, metal and plastic."
 - The enforcement notice be varied in paragraph 5.1 by the deletion of "for the open storage of building materials and other materials" and the substitution of "for the storage on open land of building materials and other materials"; and in paragraph 6 by the substitution of twelve months as the time for compliance.
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2. Subject to the correction and variations above, 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.

PRELIMINARY MATTERS

The Inquiry

3. During the opening session of the inquiry it became clear that reasonable adjustments needed to be made to normal practice in order (i) to ensure equality of arms under Article 6 of the Convention¹, and (ii) to ensure due regard was given to advancing equality of opportunity in the proceedings under the public sector equality duty. I am satisfied that as a result of the process adopted the conduct of the inquiry was fair and that the appellant was not placed at a disadvantage.
4. Mr Petrynski had hoped that he would be able to call Mrs Sarah Armstrong as a witness. Mrs Armstrong was a senior planning enforcement officer who had involvement with the site between May and December in 2015, before she left the employment of the Council. The Council confirmed that copies of all available written records of telephone conversations and correspondence had been provided in the Appendices of its planning witness, Miss Elliot. I will return to the relevance of this matter later in my decision.

The Enforcement Notice

5. On the site visit it was clear that the Land, as defined on the plan attached to the notice, did not include the driveway serving Tall Trees or an adjacent sliver of elevated land fronting Nashleigh Hill. The Council indicated that the omission of this land was an error. I do not intend to correct the plan, and indeed the Council made no such request, as to do so would cause injustice to the appellant.
6. An enforcement notice must tell the recipient what he has done wrong and what he must do to remedy the alleged breach. The appellant questioned what open storage meant and more particularly whether it included materials stored under a tarpaulin or an open sided structure. The Council suggested if the term was found to be unclear, a correction could be made to the effect that open storage did not include any items stored inside a building or a structure with at least three sides and a roof, for which planning permission or permitted development rights existed.
7. The description of the alleged breach references the open storage to Use Class B8, which describes a land use rather than a building type and, furthermore, uses which may be conducted entirely on open land². This is the type of storage use being attacked by the notice and 'open storage' is a generally recognised term. The meaning of "building" includes any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building (s336(1) of the 1990 Act). As a general rule open land is land free from buildings as so defined.

¹ European Convention on Human Rights as incorporated into UK law by the Human Rights Act 1998.

² Town and Country Planning (Use Classes) Order 1987 Class B8: Use for storage or as a distribution centre. The Explanatory Note to the Order states a feature of the B8 Use Class is that it extends to use of open land.

8. Consequently the alleged breach means what it says, that is, storage of materials on open land outside a building. I do not favour the amendment suggested by the Council because it takes insufficient account of the meaning of "building" in the 1990 Act and introduces further complications by reference to permitted development rights. An alternative approach is to state the 'storage of materials on open land', which more closely reflects the terminology of the Use Class Order. By way of illustration, the alleged breach includes materials stored beneath a tarpaulin but does not include the storage taking place within the garage. A tarpaulin may provide cover and protection from the weather but it is not a building or a structure and hence the materials are being stored on open land.
9. The meaning of development in section 55 of the 1990 Act includes "the making of any material change in the use of any buildings or other land". I will correct the alleged breach of planning control by inserting the word 'material'. Such a correction to the description will not cause any injustice because the Council's evidence was clear that the notice was directed at such a breach and the matter was expressed in those terms at the inquiry. A mixed use is a sui generis use, a use in its own right outside of a Use Class. Therefore I will delete the 'Use Class C3 and B8' reference. Again no injustice would result. There is no requirement to state the previous use, although Miss Elliot in her proof states that the lawful use of the Land is residential (Use Class C3). I have no reason to doubt this description.

REASONS

Appeal on ground (e)

10. The main issue centres on whether or not copies of the notice were served as required by section 172 of the 1990 Act and if not whether the appellant or the person concerned (who was not served with a copy of the notice) suffered substantial prejudice.
11. In summary, the appellant argued that a copy of the notice was addressed to the Occupier (single) and not the Occupiers (plural) of the dwelling. Linked to that concern, his sister Madeleine had not been served with a copy of the notice.
12. Section 172(2)(a) of the 1990 Act requires that a copy of an enforcement notice shall be served "on the owner and on the occupier of the land to which it relates". The Council supplied a list of persons on whom a copy of the notice was served. The list included Mr Peter Petrynski and also The Owner/Occupier, both with the address of Tall Trees, Nashleigh Hill, Chesham. The list indicates that two copies were served by hand on The Owner/Occupier at Tall Trees.
13. The use of the word 'Occupier' is consistent with the term used in the statute and hence is acceptable. As a result of Mr Petrynski being served with a copy of the notice in his own name, the copy addressed to The Owner/Occupier would have amounted to service on his sister. I conclude that copies of the notice were correctly served in respect of the owner and occupier of the land to which the notice relates.
14. For the avoidance of doubt I will also address the second consideration. Mr Petrynski is his sister's registered carer and in knowledge of this the Council sent a copy of the notice to Buckinghamshire County Council Social Services

under a covering letter. The appellant accepted that his sister probably would not have been able to understand the notice. The injustice he identified to his sister was as a result of the problems caused to himself by reason of the enforcement action, not substantial prejudice as a consequence of the means of service. Mr Petrynski appealed on all grounds and consequently an opportunity to pursue a ground of appeal was not denied to his sister. His sister was present throughout the inquiry.

15. I conclude that a copy of the enforcement notice was correctly served on Mr Petrynski and his sister Madeleine and that substantial prejudice was not caused to either the appellant or his sister by reason of the manner of the service of copies of the notice. The appeal on ground (e) does not succeed.

Appeal on ground (b)

16. The issue is whether as a matter of fact building and other materials were on the Land and, related to that, whether the presence of the materials amounted to open storage.
17. The appellant agreed that there were materials on the Land. His aim was to use the materials in carrying out building and other works, including the erection of a workshop, the erection of fencing and in renovations to the house. The appellant described pallets, sheets of plywood, timber posts and made reference to other types of timber, doors, windows and other materials. On the site visit all these types of materials and other items such as pipes, cabling, bricks, parts of a metal boiler flue, were plain to see. These materials were in the open, outside of any building. The Council's photographs indicated a similar position in October 2015 and February 2016, the period leading up to the issue of the notice in March 2016.
18. The second consideration is linked to whether a breach of planning control has occurred, a matter for the ground (c) appeal. There the focus will be on whether the storage, if it has occurred, amounts to a primary use of the land as part of a composite use. However, as a preliminary consideration, the use of the word storage in the allegation needs to be explored. Storage occurs when something is put away for a period of time because its use is not contemplated in the short term³. No business element need be involved⁴. Applied to the current appeal regarding Tall Trees, the word storage conveys the sense of keeping the building and other materials and items for future use.
19. The appellant repeatedly maintained that the materials are to be used in the construction of a workshop in the garden area and other building works about the house and garden. However, the materials were on site for some time before the notice was issued. The appellant confirmed that he began acquiring pallets in 2010 to build a shed and that he had the idea of building a workshop also in 2010. No definite timescale exists for carrying out the proposed projects, although a minimum period of four years was stated. The workshop was identified as the first project but there is no certainty that a good proportion of the materials accumulated to date would be used in that building. In my view, storage of building and other materials is taking place.
20. I attach very little weight to the fact that no issue was raised about storage by the local authorities when visiting the property in the past, reportedly some

³ *Crawley Borough Council v Hickmet Limited* [1998] 75 P&CR 500

⁴ *Newbury DC v Secretary of State for the Environment* [1981] AC 578

time in 2003 and 2008. The relevant period in respect of this ground of appeal is the time around March 2016 when the notice was issued.

21. In conclusion, storage of building and other materials in the open has occurred on the site as a matter of fact. The alleged breach reasonably describes the range and type of materials stored in the open. The appeal on ground (b) does not succeed. As to whether the use of land for open storage amounts to a material change of use is appropriately dealt with in the appeal on ground (c).

Appeal on ground (c)

22. The issue is whether as a matter of fact and degree there was a material change in the use of the land from a lawful residential use to a composite residential and storage use. A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to the lawful use.
23. A starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of change. Referring to the leading case of *Burdle*⁵, a useful working rule is to assume that the unit of occupation is the appropriate planning unit.
24. The Land identified by the enforcement notice includes most of the property known as Tall Trees, which is owned and occupied by the appellant. I have noted above that due to an error the driveway and some frontage land do not form part of the Land. However, the driveway is functionally and physically part of the unit of occupation.
25. The Land also extends south west over a small parcel of land which according to Land Registry documents is in separate ownership. The owners of a nearby residence Ivy House confirmed in writing on 18 February 2016 that they own this small parcel, together with a strip of adjoining land along the property boundaries. They said that the area is out of sight of their property and that they only very occasionally went up to the land. It was only after the Council had contacted them in February 2016 that they investigated and saw materials there. The appellant maintained that he (and the previous occupiers of Tall Trees) had use of the land parcel since 1946. He acknowledged that the storage of materials had spilled over onto the land parcel. On the site visit it was noted that Mr Petrynski had moved most of the materials back onto the adjacent Tall Trees land.
26. There is no physical separation between the land parcel and the adjacent main area of the Land, although a single metal fence post was pointed out on the site visit. The ground levels are similar – the main change in level occurs on the boundary with Rendcombe to the south west. The trees and vegetation spread across the areas. In terms of use, the probability is that the land parcel related functionally more to Tall Trees primarily because of proximity, which is supported by the comments from the appellant and the owners of Ivy House. There is nothing to suggest that the land parcel had become a physically distinct and separate area from Tall Trees.
27. I conclude that the appropriate planning unit comprises the Land and the driveway to the front of the house. It is not essential for the notice to identify the planning unit as a whole, although an assessment of the materiality of

⁵ *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240

change in land use has to be directed at the identified unit to ensure no prejudice to the appellant. By reason of the inclusion of the land parcel shown to be in the same ownership as Ivy House the planning unit is not necessarily the same as the curtilage to the dwelling at Tall Trees. I note that Miss Elliot considered that the land parcel was not in the curtilage of Tall Trees.

28. Within the planning unit the dwelling house is towards the front of the plot and a long garden slopes down towards the south. Additional amenity space, more particularly on the south western side and to the front of the house forms part of the woodland setting. These features convey a residential character, which is strengthened by the nearby detached housing and gardens accessed via lightly trafficked residential streets to the east of Nashleigh Hill.
29. There is limited evidence on the character of the site prior to May 2014. The appellant stated that storage had taken place since about 1973 and that the majority of materials date back to that time, such as bricks, wood, windows and doors. He explained that his father was a joiner and cabinet maker and that some of the old materials were stored at the side of the house covered by a tarpaulin. Other bricks were left over from an extension in 2003. Logs and wood were stored as fuel for the house. He also confirmed in his oral evidence that he started collecting pallets on the site since from about 2010.
30. The appellant's family have lived at Tall Trees for many years (probably since 1946). According to the neighbours, at one time and before the appellant lived in the house, old cars were kept on the land, sometimes as many as three. These were towed away after the appellant's brother died. They stated that although the appellant's father was a carpenter by trade he was retired and there were no quantities of wood and other materials lying around out at the front.
31. The Council's investigations date back to May 2014 as a result of a complaint about the untidy appearance of the appeal site. The photographs show timber and miscellaneous materials stacked in the main near the end of the driveway, towards the front and side of the house. The introduction of the materials was reported to have started around October 2013. The appellant advised at that time that the timber was to be used in the construction of a shed on the land. Photographs taken by the Council in October 2014 indicate that the amount and position of materials had changed little when compared to earlier in the year.
32. As a result of the Council's investigations, on 16 January 2015 a notice was served under section 215 of the 1990 Act concerning land adversely affecting the amenity of the area (an untidy land notice). The recitals stated that part of the front and rear gardens of the residential property Tall Trees was overgrown and in an untidy condition, being used for the open storage of materials, including bricks, wooden pallets, timber, doors and windows. Furthermore, over a number of years the garden has become increasingly unkempt and overgrown, various materials had been accumulated and stored in the garden, with a significant amount having been acquired in the past 12 months. The local planning authority took the view at that time, as a matter of fact and degree, the storage of materials at Tall Trees was not in breach of planning control.
33. Therefore the picture emerging from the evidence is that Tall Trees was a family dwelling house with a generous garden in a woodland setting. No

business activity was carried out. Small quantities of materials were stored outside in the garden, whether because of Mr Petrynski senior's trade or as result of building works to the property. In later years the garden became increasingly overgrown but even so the single primary use was residential. From around October 2013 up to October 2014 the amount of building materials on the property significantly increased. Nevertheless the Council concluded at the end of October 2014 that the accumulation of materials resulted in untidy land but that no material change of use had taken place. Account was taken of the proposed use of the materials and it was accepted that the temporary storage of building materials in preparation for the commencement of building works or during the course of such works does not normally require express planning permission. The storage of materials was considered to be incidental to the single primary residential use of the property and as such no development was involved⁶.

34. The Council came to the conclusion that no development had taken place with the benefit of local knowledge, visits by planning officers to the property and discussions with the appellant. In the absence of any new evidence to the contrary I have no reason to depart from that conclusion. I now turn to consider the period between October 2014 and the date the notice was issued in March 2016.
35. The appellant stated that around September, October 2015 more materials came onto the site, comprising 20 or 25 sheets of plywood, 30 to 40 pieces of treated timber and about 15 posts. The materials, which he considered to be good quality, were obtained with the agreement of a site manager of a nearby building site. On site materials were moved to different parts of the land, further away from the driveway. Fencing was erected beyond the end of the hard surfaced driveway and a start was made on erecting a fence along the top of the embankment to Nashleigh Hill.
36. The Council maintained that the quantity and nature of materials stored on the land increased and evolved over the period between October 2014 and October 2015 such that a material change of use occurred. The storage went beyond that which would ordinarily be expected to be stored in the open within the curtilage of a dwellinghouse in an incidental capacity. The materials remained stacked haphazardly and were not put to use for the construction of a shed/workshop, contrary to the information given by the appellant. The Council was also of the opinion that the majority of materials stored on site were unlikely to be suitable for domestic building works.
37. By all accounts the amount of materials on site has not significantly changed since the notice was issued, although the position and height of the stacks of materials have changed because the appellant has moved the materials around within the site. I observed on the accompanied site visit that most of the building materials were stored on the area between the side of the house and the south western boundary of the land. Pallets, plywood and timber were the predominant materials in that area, although on closer inspection doors, windows, plastic strips and other materials were also present. Immediately outside the house the amounts and type of materials were of a more domestic nature, such as logs, old domestic appliances and bikes, together with scaffold

⁶ The use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not involve development of the land (section 55(2)(d) of the 1990 Act).

- poles, bricks/tiles, a door and other items. No storage was apparent on the sizeable area of garden sloping down to the rear boundary.
38. The appellant emphasised that he intended to use the materials to first construct a workshop and then to carry out necessary works to the house. The erection of fencing was underway and he said he had started on groundworks for the workshop. He did not have sufficient materials before 2015 to start the project and to carry out structural works.
39. A point being made was that the intended use of the materials in connection with the home contributed to their incidental nature. However, to be incidental there has to be a functional relationship with the primary residential use and the functional relationship should be one that is normally found. In my opinion the open storage on site fails both those tests. The storage use is a means to an end in that the materials are proposed to be used in building and renovation works. Also, the materials have been accumulating over a protracted period of time, resulting in an atypical quality of permanency. Whilst appreciating that health, finance and other reasons may have delayed progress on a workshop and that the plans were in the appellant's head rather than on paper, there was little to demonstrate that the workshop would take shape and become a reality in the short term. The acquisition of materials sounded to be very much on an opportunistic basis and as a result the materials may not necessarily be adequate for the intended workshop.
40. The evidence leads me to conclude that there was a significant difference in the character of the use of land at Tall Trees. Instead of a single main residential purpose with incidental activities, the position was reached where it was no longer possible to say that the open storage was incidental to the residential use. Two main activities were carried on – the residential use and an open storage use where one use was not incidental or ancillary to the other and the activities were not confined to separate and physically distinct areas of land. A material change of use occurred, resulting in a mixed use within the planning unit.
41. The appellant submitted that he had done what had been asked of him by the Council following the withdrawal of the section 215 notice and he could not understand why the Council alleged a breach of planning control. The appellant's recollection was that he had an agreement with Mrs Armstrong that it would be sufficient to move the materials from the front to the side of the property, which he had done by the end of November 2015. He was adamant that he was not required to remove the materials from the site or that there were any requirements re the timing of the building works. Consequently he felt aggrieved and that the Council was persecuting him.
42. The Council's position was that there was no such agreement. Furthermore, even if there was it would not prevent a subsequent material change of use in the context of more materials coming to the site and/or the passage of time making it plain that the materials are being stored rather than being kept short term for the purpose of building works.
43. The documentation of the site visits, telephone conversations, letters/email correspondence and committee reports provide no evidence of an agreement with Mrs Armstrong. All documents confirm that Mrs Armstrong's concern consistently was that the increase in materials constituted a breach of planning control. The flexibility applied was in extending the time to clear the materials

from the site. In a letter to the appellant dated 28 September 2015 Mrs Armstrong expressed her concern about merely moving the materials from the front to the side and it meant the further accumulation of large quantities of recycled materials that were going to be stored for long periods. Miss Elliot, who accompanied Mrs Armstrong on site visits in September / October 2015, confirmed at the inquiry that she recalled no verbal agreement.

44. However, it is clear that over the period from September 2014 to February 2015, the appellant was encouraged by Council officers to tidy the site, possibly by rearranging the materials so that they were better screened within the property and not readily visible from neighbouring land or public areas. The erection of fencing or a gate to screen some of the materials was also suggested as a means of improving the situation. It may be that the appellant recalled a telephone conversation with Ms Olson (not Mrs Armstrong) in November 2014 when such actions were encouraged.
45. Notwithstanding the earlier attempts by the Council to ensure the site was tidied and the steps taken by the appellant to follow the advice, nothing was in the form of an agreement. Moreover, an important change in circumstances was the significant increase in the amount of materials stored on site around September / October 2015. By then the storage had been taking place a considerable period of time. These factors resulted in a new type of notice being issued against a material change in the use of land, with specific requirements to remedy the alleged breach. In that context I agree with the Council that in the unlikely event of any previous agreement with Mrs Armstrong, it would be of little significance.
46. The meaning of development includes the making of a material change in the use of land. The change to a mixed use as described in the notice would require planning permission. There is no record of a specific permission being granted at Tall Trees.
47. In the alternative, the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) in Article 3 grants planning permission for the classes of development described as permitted development in Schedule 2 to the Order. None of the classes provide for a change of use to a mixed residential open storage use. The situation is not one where structures, plant and machinery are being provided temporarily in connection with a building operation. Therefore Class A of Part 4 of Schedule 2 does not apply⁷.
48. My conclusion is that as a matter of fact and degree the amount and type of open storage increased to such a degree that the character of the planning unit materially changed from a single primary residential use to a mixed residential, open storage use. Development took place for which no planning permission was granted by the local planning authority. This material change of use is not permitted development under the provisions of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

⁷ Class A Part 4 of Schedule 2 of the GPDO permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on adjoining land.

Appeal on ground (d)

49. In relation to a breach of planning control consisting of a change of use of land to a mixed use no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (s171B(3)).
50. The main issue is whether the material change of use took place before 11 March 2006, with the mixed residential open storage use continuing for at least ten years thereafter. The onus is on the appellant to prove his case on the balance of probability.
51. The appellant relied primarily on the existence of materials on the site since the 1970s, as referred to in the ground (c) appeal. The probability is that some building materials and other items were on the land for many years but the level of storage could reasonably be considered incidental to the primary residential use. The materials stored under a tarpaulin, attributed to the appellant's father, were shown on the site visit to be a single, low pile of materials close to the house, to which materials had been added more recently. The storage taking place in the garage had the appearance of dating back many years but would not be caught by the notice because it is within a building and not in the open. The appellant has not discharged the onus of demonstrating that open storage on the land long ago in the past amounted to a material change of use.
52. The probability is that after the appellant moved into the dwelling around 2009 the level of storage began to increase, so for example the pallets were identified as being acquired from about 2010. However, even if the change of use occurred at that time the required ten year period would not have been achieved to provide immunity from enforcement action.
53. In the alternative, the Council referred to information from neighbours that the materials were only present since the appellant's mother died. The Council's Revenue and Benefits Department dated her death to May 2006. The appellant stated that his mother died in 2005 but in the light of the contrary evidence from the Council, the onus of proof has not been satisfied on this point. Furthermore, the Council concluded in October 2014 that no material change of use had occurred. Whether 2005 or May 2006 is taken as the relevant date a ten year period of continuous use was not achieved.
54. The balance of the evidence demonstrates that there was a significant increase in the amount of materials stored in the open during 2015. Taking into account this and other factors I concluded under the ground (c) appeal that on the balance of probability a material change in the character of the use of the planning unit took place in 2015. On that timescale the mixed use cannot be lawful.
55. In conclusion, on the balance of probability the material change of use took place during 2015. Therefore the mixed use has not become lawful and has not gained immunity from enforcement action through the passage of time. The appeal on ground (d) does not succeed.

Appeal on ground (a), deemed planning application

Main issues

56. The appeal site is within the Metropolitan Green Belt. In that context the main issues are:
- Whether the material change of use amounts to inappropriate development.
 - The effect of the development on (i) the openness of the Green Belt, (ii) the character and appearance of the site and surrounding area, and (iii) the amenity of nearby residents, with particular regard to outlook.
 - In the event inappropriate development has occurred, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations to enable the development to be justified by very special circumstances. The other considerations include the proposed building works on the site, the personal circumstances of the appellant and his Convention rights.
57. The appellant's Convention rights at issue are under Article 8 (right to respect for private and family life and the home) and Article 1 of the First Protocol (peaceful enjoyment of land and property). These are qualified rights, which require a balance between the rights of the individual and the needs of the wider community and the public interest.
58. A refusal of planning permission would not result in the loss of the home and the residential use of the property would be unaffected. The appellant would not be deprived of his possessions in the sense that there would be no expropriation of property. Nevertheless, the consequences of the interference with the appellant's Convention rights would be sufficient to engage the operation of Article 8 and Article 1 of the First Protocol.

Inappropriate development and Green Belt

59. The development plan for the area includes the Chiltern District Local Plan adopted 1 September 1997 (including alterations adopted 29 May 2001) consolidated September 2007 and November 2011 (the Local Plan). Policy GB2 states the general presumption against inappropriate development in the Green Belt. Planning permission may be given for certain categories of development including the making of a material change in the use of land which maintains openness and does not conflict with the purposes of including land in the Green Belt. The appeal site is located within a Green Belt settlement where Policy GB5 allows for limited residential development in defined circumstances.
60. The storage of materials is taking place in the open rather than within new buildings erected for storage purposes. The siting of the materials has not been fixed and a certain amount of moving around has taken place. Even so the open storage has a physical presence and detracts from the visual amenity of the Green Belt. Openness has not been maintained. In view of the location of Tall Trees within a Green Belt Settlement and the previous single primary residential use, the change of use has not involved encroachment into the countryside or a conflict with any other of the purposes of the Green Belt. Nevertheless, as a result of a loss of openness the change of use is inappropriate development for the purposes of the development plan.

61. The National Planning Policy Framework confirms the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is by definition harmful to the Green Belt and should not be approved in very special circumstances. Paragraphs 89 and 90 set out the categories of development that are not inappropriate. A material change of use is not included in the stated exceptions. It follows the development that has occurred at Tall Trees is inappropriate and should not be approved except in very special circumstances.
62. Local Plan Policy GB2 reflects the national policy in place at the time of its adoption and consolidation and is not consistent with the current national policy. Nevertheless when assessed against both development plan policy and the Framework the material change of use is inappropriate development. There is some minor additional actual harm by reason of loss of openness. The harm to the Green Belt has substantial weight.

Character and appearance

63. The detached two storey dwelling, built in the mid 20th century, is sited in a generously sized plot which is enhanced by a number of mature trees. A woodland tree preservation order (TPO) covers a spinney adjoining Nashleigh Hill and a plantation of mixed conifers on the west/southwestern side of the site. Tall Trees is part of a low density residential area in an attractive woodland setting in the vicinity of Nashleigh Hill/Lycrome Road.
64. The open storage use is not in keeping with and seriously detracts from the mature landscaped residential plot. The haphazard nature and range of stored materials adds to the unattractive appearance. The development of the mixed use also is out of keeping with the strong residential character of the surroundings, even when taking account of the non-commercial nature of the new use.
65. Tall Trees is accessed via a driveway from Sycamore Dene, a residential street to the north. The appeal site is quite well enclosed by reason of its position off the residential cul-de-sac and the woodland setting. Nevertheless, the elevated land fronting Nashleigh Hill is prominent from the highway, a Class A road. Some storage has spilled over onto the elevated land and glimpses are possible of materials stacked some two metres high near to the boundary. In addition the area near the driveway is publicly visible from the residential street. Whilst the materials have been moved back from the driveway the open storage still may be glimpsed from the residential area.
66. A purpose of a woodland TPO is to safeguard the woodland as a whole. It follows that all trees are protected, including trees and saplings which grow naturally or are planted within the woodland area after the Order is made. The storage use has encroached into the protected woodland. Building materials are propped against trees, stacks of materials cover the root protection areas, saplings are confined, new vegetation growth stifled and timber has been nailed to trunks. The probability is that the storage is adversely affecting the health of the trees and preventing natural regeneration.
67. The Council did not identify harm to protected trees as a reason for issuing the notice. However, at the inquiry a concern was acknowledged. My conclusion is that the amenity value of the protected woodland is not being safeguarded by the mixed use.

Neighbour amenity

68. Tall Trees occupies an area of land between two residential properties. The dwelling and garden at Four Levels has a common long side boundary with the appeal site. A number of mature trees effectively screen the rear garden of the site and it is unlikely that the stored materials on the south western side of the site would detract from the outlook of neighbouring occupiers when enjoying their garden. The side elevation of the neighbouring house has ground floor windows that face directly over the site. The windows are at high level and so any effect on outlook would be insignificant. Materials stored at the end of the driveway would detract from the outlook at the front and approach to the neighbouring property, but if positioned well within the site there would be little effect on neighbour amenity.
69. In an attempt to address the Council's concerns the appellant moved the materials away from the front to the side of the property. A fence was erected with a view to screening the relocated materials. To a large degree this action has addressed the harm to the neighbour's outlook but the high close boarded fence is somewhat harsh in the woodland setting and not of sufficient quality to provide a permanent solution.
70. The adjacent house to the south west, Rendcombe, is at a much lower level and a garage is the nearest building to the common boundary with the site. The probability of any adverse effect on the occupiers of that house is very low. According to the appellant new occupiers moved in about a month or so ago and had informed him they had no issues with the storage.

Mitigation and use of planning conditions

71. No specific mitigation was proposed by the appellant and so reliance would have to be placed on planning conditions to mitigate the identified adverse effects of the development. A list of conditions was produced for discussion at the inquiry. I will deal with the suggested temporary/personal condition in due course.
72. Details of and subsequent erection of suitable boundary treatment at the end of the driveway and along the Nashleigh Hill boundary could reasonably be required in order to protect the visual amenity of the area and the amenity and outlook of occupiers of nearby dwellings. For a similar reason a limit on the height of materials could be imposed. The Council proposed a maximum height of 1.8 metres and the appellant preferred a height of 2 metres. However, such requirements would not overcome the harm to openness and the character of the area. Also, despite a limitation on storage height, additional materials could be brought onto and stored on the site, leading to a further erosion of openness.
73. The Council suggested a requirement that no materials should be stored within the area covered by the TPO or within 10 metres of the protected area. However, whilst addressing the potential harm to the woodland, most of the materials are now stored in such an area. The restriction could be regarded as unreasonable given the use to be permitted. In the alternative, a probable result would be the relocation of the stored material to different areas of the site that in turn may be more harmful to residential amenity. A site layout scheme could be required to identify areas where open storage would be permitted and excluded. However, the site conditions suggest there would be

little probability of such a scheme being successful in addressing the identified harm. In any event the inappropriateness of the development and the incompatibility of the mixed use with local character could not be overcome.

74. Therefore planning conditions would not satisfactorily mitigate all the adverse effects of the development.

Other considerations

75. The appellant argued that there was no harm to the Green Belt, protected trees, residential amenity or the local environment. I disagree with those aspects of his case, as explained above.
76. The appellant indicated that the main purpose of storing the building materials is to enable him to build a workshop and then to carry out renovation works to the house. In addition timber was needed to erect a fence to reduce the noise from traffic on Nashleigh Hill. Other small works mentioned included brick walls and also fencing around a tree for safety reasons. The implication is that the materials are being stored temporarily. Because of a lack of finance, the appellant stated he had to gradually accumulate the materials when the opportunity arose, rather than buy them from a supplier.
77. The appellant's evidence indicates that he has a number of aspirations and projects in mind. Re-use of salvaged materials generally is to be encouraged. Health problems and his commitments as a carer for his sister are reasonable factors to be taken into account, especially when thinking about timescales and lack of progress on building work. However, the build-up of materials has been ongoing for some considerable time. A start has been made on a fence along the frontage but there was little evidence to support a real prospect of work progressing on the workshop in the near future. Furthermore there are doubts as to whether the materials would be suited to the proposed projects.
78. The planning history is important to the appellant because he believed that he did everything the Council asked him to do. There is some support for that view in that he was encouraged to move and rearrange the materials so that they were in a less prominent place and the erection of a fence as a screen was suggested. Nevertheless matters moved on in so far as more materials were brought onto site and there was little indication that the storage would be significantly reduced by the use of the accumulated materials in the construction of a proposed workshop.
79. The appellant referred to 900 new houses proposed to be built in the Green Belt to the north east of his property, which in turn would increase traffic and noise on Nashleigh Hill. In the context of the proposed development he questioned why the alleged development on his land should be unacceptable. The adopted Local Plan shows that the appeal site is surrounded by Green Belt. Limited residential development may be acceptable in the area of Nashleigh Hill/Lycrome Road covered by Policy GB5. A site to the north is identified on the Proposals Map as a major development site in the Green Belt allocated for housing under Policy CS7. A further major release of land for housing, large enough for some 900 homes, would have to be part of an allocation in a new Local Plan. The merits of the mixed use at issue in this appeal have to be assessed against the current policy position. Therefore the future proposal described does not weigh in favour of the mixed use.

80. The quality of life within the home and the appellant's ability to care for his sister may be adversely affected in the event of delay or inability to carry out necessary works to the home. The health and well-being of the appellant and in turn his sister, although not detailed, is a relevant consideration in respect of the effect on private life. The requirement to remove the building and other openly stored materials off-site would deprive the appellant of the ability to use them as he proposes in his own timescale.
81. An interference with the appellant's rights would have a clear legal basis and would be in accordance with the law provided that planning policy is lawfully applied. Interference would be necessary to regulate land use in an area that has a high level of protection in the public interest. The action must be no greater than necessary to address the pressing need and must be proportionate. The appeals on grounds (f) and (g) will be relevant in this respect should the planning balancing exercise direct the refusal of planning permission.

Green Belt balance

82. My conclusion is that the harm to the Green Belt has substantial weight and the harm to local character through the introduction of a non-compatible mixed use has very significant weight. The concern over the adverse impact on the amenity of the protected woodland has significant weight, whilst the effect on neighbour amenity has limited weight. The failure to adequately protect the amenities of the locality conflicts with Policy GC3 of the Local Plan and a core planning principle set out in the Framework. On the other side of the balance the personal circumstances of the appellant have moderate weight, as do the considerations related to well-being of the appellant and his sister. The planning history and the reuse of existing resources each add some positive weight in support of the development.
83. On the analysis above the harm by reason of inappropriateness, and the additional identified harm, are not clearly outweighed by other considerations. Very special circumstances do not exist to justify the development. The development fails to comply with Policy GB2 of the Local Plan and national planning policy in the Framework to protect the Green Belt.
84. Conscious that the outcome must be proportionate and no greater than necessary leads to consideration of the possibility of a temporary planning permission. A period of four or five years would be consistent with the appellant's evidence on the purpose behind the storage of building materials. A permission in such terms would support a self-build project and recognise the health, financial and other constraints on the ability of the appellant to make progress on the workshop and other renovation projects. These factors suggest that any permission should be personal as well temporary.
85. A time limited permission would reduce the duration of the harm, although during the time period the actual harm may increase through the acquisition of more materials prior to any commencement of building work. As shown through the consideration of mitigation and planning conditions, securing suitable mitigation and planning control would be challenging by reason of the site characteristics and constraints. Approval of a mixed residential and open storage use in a mature residential environment, even for a temporary period and to address unusual circumstances, would not be in the public interest.

86. In conclusion, in respect of a time limited and personal permission, the harm by reason of inappropriateness, and the additional identified harm, are not clearly outweighed by other considerations. Very special circumstances do not exist to justify the development.

Proportionality assessment

87. The purpose of a proportionality assessment is to determine whether the protected rights of the appellant and his family would be disproportionately interfered with if the rights of the community are upheld. The assessment has a wider scope than the planning balance and is of a multi-stranded nature. Relevant considerations regarding the appellant's circumstances and the welfare of his sister are similar to those in the planning balance. Nevertheless, in respect of the public interest, harm of substantial weight has occurred. Weighing all the factors up, I consider that withholding a planning permission would represent a fair balance.

Conclusion

88. The change of use is not compliant with the Local Plan and no considerations merit a decision other than in accordance with the development plan. The refusal of planning permission is proportionate and necessary in the circumstances and would not result in the violation of the appellant's Convention rights. The appeal on ground (a) does not succeed.

Appeal on ground (f)

89. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
90. To briefly recap, the requirements are to cease the use of the Land for the open storage of building materials and other materials and to remove all building materials and other materials from the land. No other lesser steps were put forward by the appellant to support his case although he submitted that it would be unreasonable to require the removal of materials that had been on-site for more than 10 years.
91. Enforcement powers are to be given a purposive and not a literal interpretation. There has to be a link between the specified requirements and the achievement of the purpose(s) of the notice. The notice seeks to remedy the breach by securing the discontinuance of the open storage use (and hence the mixed use) and the restoration of the land to its previous condition by the removal of the offending materials sustaining the unauthorised use. In so doing the injury to amenity would be addressed. Reasonably, no requirements are made in respect of the residential element of the mixed use. There is no need to insert a saving for that which is obvious. By way of example, there is no need to specifically exclude the logs for domestic fuel from being removed from the site. The requirements do not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with. Therefore the steps are not excessive.
92. The appellant maintained that he had complied with the agreement he had with the Council following the withdrawal of the section 215 notice in that he had moved the materials out of sight and erected a fence. However, around the same time other events led to a material change to the character of the land and a breach of planning control. The enforcement notice is a different notice

to the untidy land notice. A requirement to reflect the action taken by the appellant involving the re-siting of materials elsewhere on the land would not remedy the breach.

93. The matters presented by the appellant related to the planning merits of the storage use have been more appropriately considered under the ground (a) appeal.

94. In conclusion, the appeal on ground (f) does not succeed.

Appeal on ground (g)

95. The issue is whether the compliance period of 3 months is reasonable, taking account of the Convention rights of the appellant and the need to ensure a proportionate approach.

96. At the inquiry the appellant said 3 months was an impossible time period. He considered the period unjust. He referred to the start he had made on the workshop and identified other factors, such as his need to buy a new mobility vehicle, his health problems and the need for time to sort through the 'stuff' on site. In the grounds of appeal a minimum of 4 years was put forward as a suitable compliance period, which was stated to be the period required to carry out the proposed works at his property.

97. A compliance period is informed by what will have to be done in practice to carry out the remedial steps and how much time it is reasonable to permit for that purpose. The cessation of the use in this instance is very much bound up with the second step requiring removal of the materials, which suggests that a single period for compliance is the appropriate approach. The quantity of materials to be removed is not on a large scale and which, under certain circumstances, could physically be removed within the time period stated in the notice. However, in the domestic and site specific context the operation may be daunting and probably would raise matters such as the need to sort through and group similar materials, identify the means and a place of disposal, arrange assistance and organise transport, and time and health constraints. In the alternative, efforts may be directed toward utilising the building materials on site for their intended purpose.

98. From a different perspective, the enforcement notice was issued to address the harm to local amenity and area character. In the public interest the harm should cease as soon as reasonably possible.

99. A long standing rule of thumb is that a compliance period should not normally exceed one year, unless justified by some exceptional circumstance. The minimum four year period sought by the appellant would be more appropriately achieved by means of a temporary planning permission, not an extended compliance period. I have concluded that a time-limited permission is contrary to prevailing planning policy and is not acceptable. No exceptional circumstances are present.

100. The conclusion I have reached is that a period of one year strikes the right balance. To this extent the appeal on ground (g) succeeds.

OVERALL CONCLUSION

101. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Peter Petrynski The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Leanne Buckley-Thomson	Of Counsel, instructed by Ms Karen Jordan, solicitor to the Council
She called	
Miss Kirstie Elliot	Planning Enforcement Officer, Chiltern District
BA(Hons) MSc	Council

DOCUMENTS submitted at the inquiry

- 1 Position statement and supporting documents on Green Belt
- 2 Extract from Tree Preservation Order TPO/1948/077 and location plan
- 3 List of planning conditions
- 4 *Crawley Borough Council v Hickmet Limited* [1997] 75 P&CR
- 5 Closing submissions on behalf of the Council.