The Planning Inspectorate

Appeal Decisions

Inquiry Held on 29 & 30 June 2017

Site visit made on 30 June 2017

by Chris Preston BA(Hons) BPl MRTPI

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

Decision date: 06 September 2017

Appeals in relation to Enforcement Notice 1 (Operational Development)

Appeal A Ref: APP/R0660/C/16/3163915
Appeal B Ref: APP/R0660/C/16/3163916
Land at The Wharf, Bullocks Lane, Sutton, Cheshire SK11 0HE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Kenneth Mead and Appeal B is made by Mrs Barbara Mead against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 26 October 2016. The Council's reference is 13/00278E.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a building hereafter known as "the building" in the approximate position shown hatched red on the attached plan used for residential purposes and associated operational development including the creation of a paved patio area and paved pathway around the unauthorised building.
- The requirements of the notice are: (a) cease the use of the building for residential purposes; (b) demolish the building in its entirety; (c) remove all resultant material from the land; (d) remove all associated service connections to the building (electric, gas, water, sewerage, telephone, satellite or cable) from the land; and (e) Take up and remove the unauthorised patio and slabbed pathway from the land..
- The period for compliance with the requirements is: For requirements (a) 6 months after the notice takes effect; for requirement (b) 8 months after the notice takes effect; for requirement (c) and (d) 10 months after the notice takes effect; and for requirement (e) 8 months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on grounds (b), (c), (f) and (g). Since the prescribed fees have not been paid within the specified period in relation to Appeal B the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed in relation to that appeal.

Appeals in Relation to Enforcement Notice 2 (Material Change of Use)

Appeal C Ref: APP/R0660/C/16/3163917
Appeal D Ref: APP/R0660/C/16/3163918
Land at The Wharf, Bullocks Lane, Sutton, Cheshire SK11 0HE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C is made by Mr Kenneth Mead and Appeal D is made by Mrs Barbara Mead against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 26 October 2016. The Council's reference is

13/00278E.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised material change of use of land and buildings, hereafter known as "The land and Buildings" from a storage use in connection with a roofing business to a residential use associated with the unauthorised building on the land which is used for residential purposes.
- The requirements of the notice are: (a) cease the use of the land and buildings for residential purposes; (b) remove all domestic paraphernalia associated with the unauthorised use of the Land and buildings for residential purposes from the land, including all domestic flora; (c) remove the metal storage container located in the approximate position and hatched black on the attached plan.
- The period for compliance with the requirements is: For requirements (a), (b) and (c) 6 months after the notice takes effect.
- Appeal C is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal D is proceeding on grounds (b), (c), (f) and (g). Since the prescribed fees have not been paid within the specified period in relation to Appeal D, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed in relation to that appeal.

Decisions:

APPEAL A:

1. 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 1990 Act as amended.

APPEAL B:

2. The appeal is dismissed and the enforcement notice is upheld.

APPEAL C:

3. 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 1990 Act as amended.

APPEAL D:

4. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

5. The Council issued two enforcement notices, as described in the banner heading above. One of those related to operational development and the other to material change of use. I shall refer to them as Notice 1 (operational development) and Notice 2 (material change of use).

6. Appeals were submitted in relation to each notice and two appellants were named on each appeal form, Mr Kenneth Mead and Mrs Barbara Mead. The Planning Inspectorate refers to such appeals as 'Mr and Mrs appeals'. In such circumstances a reference number is given to each appellant. Therefore, four appeals fall to be determined in this case and I have referred to them as Appeals A, B, C and D. In terms of the structure of my decision I have set out my reasons in relation to Appeals A & B against Notice 1 followed by my reasons in relation to Appeals C & D against Notice 2.

7. Where an appeal is submitted on ground (a) a fee is payable and the appeal on that ground will only proceed if that fee is paid. For all four appeals to proceed on ground (a) four separate fees would be required. However, in the case of Mr and Mrs appeals it is common that the fee will only be paid in relation to one of the appellants, such that the appeal on ground (a) will only be considered in relation to one appeal. In this case one fee has been paid in relation to Notice 1 and one in relation to Notice 2. When asked at the Inquiry the parties were not sure which appeals those fees had been paid in relation to. I sought clarification after the event but it appears that the fees were submitted to the Council without specifying.

8. In those circumstances I have proceeded on the basis that the fees were paid in relation to Appeals A and C, those being the appeals submitted by Mr Mead who gave evidence at the Inquiry. Accordingly, the appeals on ground (a) will be considered in relation to those appeals but not in relation to Appeals B and D, which were those submitted by Mrs Mead. I am satisfied that is an appropriate way to proceed because it means that a ground (a) appeal will be considered in relation to each notice and the planning merits of the operational development and the material change of use will be considered. Consequently, no prejudice will arise.

9. The grounds of appeal in relation to Appeals A and B included grounds (b) and (c). However, the appellants did not dispute that the erection of a dwelling would amount to a breach of planning control. Rather, it was their position that the building had been erected as a warehouse and subsequently converted to a dwelling. In other words, their view was that the alleged breach, as described in the notice, had not occurred. Those arguments put forward under ground (c) are actually more relevant for consideration under ground (b). At the Inquiry the appellants confirmed that they were satisfied that I proceed on that basis. Accordingly, the appeals on ground (c) in relation to Notice 1 fall away.

Appeals A and B in Relation to Enforcement Notice 1 – Operational Development

Appeals A & B on Ground (b)

10. The planning history relating to the site is familiar to the parties involved and I do not intend to repeat it in detail within my decision. Following unsuccessful attempts to obtain planning permission for residential development[1] the appellants marketed the site for its lawful purpose as a storage yard for a roofer/ building contractor. Although some interest appears to have been generated by that exercise no tenants were secured. According to the letting agents who conducted the marketing exercise that was for a variety of reasons including the lack of security at the site. They advised that it would have been more likely that a tenant would have been secured if there were more substantial outbuildings at the site.

11. As a result, Mr Mead obtained a certificate of lawful development for a proposed workshop building (a CLOPUD), based on permitted development rights set out within Class 8, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as was in force

[1] Applications dismissed on appeal under references APP/C0630/A/08/2090408 & APP/R0660/A/10/2128726

at the time[2]. The plans submitted in support of that application depicted a single storey building with what appears to be a large roller shutter door on the eastern elevation. No other windows or openings are shown on the plans. The walls were shown to be blockwork with cladding or boarding above. The plans are what one would expect for a builder's or roofer's lock-up, with minimal facilities but a large internal storage space with easy and secure access to the yard via the roller shutter entrance.

12. The plans submitted by Mr Mead for Building Regulations approval were noticeably different, showing a two storey structure with the ground floor space, a separate kitchen and an office and further storage at first floor level. In addition, a large number of window openings were shown and the roller shutter door on the eastern elevation had been replaced with doors of a much smaller scale. Whilst the external dimensions were similar to the plans submitted with the CLOPUD application the plans submitted for building regulations approval depict a building that is far more domestic in terms of its appearance.

13. That is not to say that the building could not have been occupied for storage purposes. However, to my mind the layout would have been impractical for use as a secure lock-up for a builder or roofer. The main entrance onto the yard from the eastern elevation is small and would not facilitate vehicular access to the building, unlike the roller shutter doors. In the absence of a vehicular access, materials would have to be laboriously taken into the storage area by hand at the end of each day's work. The corridor between the disabled toilet and kitchen is narrow and does not appear to have been designed to facilitate the easy storage of bulky building materials or scaffold poles and boards. The low floor to ceiling height would also have been less practical for the storage of large items.

14. Similarly, the staircase to the first floor, as shown on the plans, was of a domestic scale with a dog leg at the bottom, an arrangement that would hinder the storage of building materials at first floor level. In addition, if the stated intention was for a *secure* (my emphasis) storage building, the purpose of the additional windows and openings is not clear.

15. Taking all of the above factors into account I have significant reservations as to whether the building was designed as a storage unit from the outset, notwithstanding that the Council do not appear to have raised the issue at the point at which the Building Regulations application was made.

16. Construction work commenced early in 2013 and shortly afterwards, in May, a Planning Contravention Notice (PCN) was served. By that time the building had reached first floor level as is evident from the Building Control site visit log[3] which notes that steel for the first floor was being placed as were floor joists. Amongst other things, the PCN asked what the intended use of the building was and sought the views of Mr Mead as to whether he considered that planning permission was necessary for the structure and, if so, whether such permission existed.

17. Mr Mead sought legal advice prior to responding and a response was submitted on his behalf by professional planning consultants; Emery Planning. That

[2] LPA reference: 12/2122M
[3] Entry for 13 May 2013, produced at Exhibit 9, attached to Mr Keen's proof of evidence

confirmed that the intended use was for storage in connection with a roofing business and that ancillary facilities would be provided in terms of a WC and a kitchen for making snacks and drinks. The letter also refers to the plans submitted for the approved CLOPUD and notes that the footprint and height of the structure under construction was the same. However, it acknowledged that the insertion of a first floor would bring the building above the quantum of development permitted by Part 8 of Class A of the GPDO and suggested that the inclusion of the first floor was an error. The suggested remedy was to remove the first floor joists and to construct the rest of the building without fenestration.

18. Mr Mead decided not to remove the joists but to use them to support an insulated ceiling such that, in his view, there would be no floorspace at first floor level. The advice relating to fenestration also appears to have been ignored, judging by the number of openings at first floor level and the insertion of rooflights. Work continued and Mr Mead maintains that the building was substantially completed as a warehouse in April/ May 2014. However, as of 09 April, the Building Regulations log notes that the kitchen and WC were in the process of being fitted out and no insulation had been installed at first floor level. Insulation had been installed by 20 May but was deemed to be inadequate by the Building Control inspector. The log for 26 June notes that insulation was still to be completed and that tiling was taking place.

19. Certainly, there was no attempt to market the building at that point in time and, according to the account of Mr Mead, Building Control would not issue a completion certificate until the building was completed in accordance with the approved Building Regulations plans. Thus, having regard to the Building Control records and other evidence, there is nothing to support the assertion that the building was completed as a storage unit by May 2014. It would appear that work was on-going and continued throughout 2014.

20. Mr Mead maintains that he was in an impossible position because Building Regulations approval could not be granted unless he completed the development by inserting the staircase and boarded out the first floor but, at the same time, he knew that those works would result in a development that would not comply with the terms of the GPDO. However, it seems to me that situation was of his own making. Having been advised by Counsel, professional planning consultants and the Council's planning department the sensible approach would have been to remove the first floor and to submit revised plans to Building Control on the basis of a single storey structure, in line with the CLOPUD scheme. Mr Mead acknowledged at the Inquiry that he made no attempt to discuss amended plans with the Building Control office[4].

21. Instead, he chose to continue building work and inserted the stairs, boarded out the first floor and installed a new kitchen. That work was undertaken between May and November 2014 and the detailed Building Regulations log depicts a steady continuation of work throughout 2014, with nothing to suggest that work was completed in April or May of that year.

22. Unlike the initial plans which depicted a small kitchen or tea room in a separate room, the kitchen occupies space in the main ground floor room which was shown as a storage area on the Building Regulations plans. It is a fully fitted kitchen with modern units with a white gloss effect finish, a large cooker with

[4] In response to my question.

extraction hood and all the appliances one would expect in a domestic kitchen. The floor tiles are of a high quality and the ground floor has been fitted with underfloor heating, a luxury that is beyond what could reasonably be described as necessary for a roofer's storage unit. Judging by the level of finish and the fact that it occupies a substantial proportion of the suggested storage area, I find it highly implausible that the kitchen was intended to serve as an ancillary facility to serve a roofing business.

23. Moreover, the internal walls are plastered and painted and domestic style recessed rooflights are fitted in the ceiling across the ground floor. The openings throughout the property are of domestic scale and appearance. The ground floor bathroom has domestic style fittings and tiling. When those points are added to my concerns about the practicality of the layout, as submitted for Building Regulations, and Mr Mead's clear reluctance to remove the first floor contrary to legal and professional advice, the evidence strongly points to the fact that the building was constructed, from the outset, as a dwelling and not as a storage warehouse for a roofing business.

24. When completed the building had all of the facilities required for residential use and the layout was different from the Building Regulations plans because the kitchen was situated in the main ground floor room as part of an open plan layout. It seems to me that the structure would be entirely unsuited to use as a warehouse. In view of the above I find no evidence to indicate that the building was completed as a warehouse and subsequently converted into a dwelling. On the balance of the evidence before me I conclude that it was constructed as a dwelling as a single operation and that the breach of planning control, as specified in the notice, did occur. Consequently, Appeals A and B on Ground (b) must fail.

Appeal A on Ground (a)

25. At the Inquiry, the appellant accepted that the breach, if it did occur, would have amounted to 'inappropriate development' within the Green Belt for the purposes of national and local planning policy. Paragraphs 87 and 88 of the National Planning Policy Framework (the Framework) note that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be attached to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

26. In that context, the main issues in the determination of the appeal on ground (a) are:

    i) The effect of the development on the openness of the Green Belt;

    ii) The effect on the character and appearance of the area and the Macclesfield Canal Conservation Area;

    iii) Whether the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to suggest that planning permission should be granted.

The Effect on the Openness of the Green Belt

27. Openness is one of the key characteristics of the Green Belt, as described at paragraph 79 of the Framework. The effect of development on the openness of the Green Belt can have a visual and a physical dimension. The erection of a building on land that was previously free from built development will inevitably result in an incursion into the open space that previously existed. Purely in a physical sense, the openness of the Green Belt would be reduced, irrespective of whether the structure was visible from the public realm. In this instance, the building is not insubstantial and occupies a part of the site where no buildings previously existed. Consequently, in a physical sense the structure has reduced the openness of the Green Belt.

28. The building is situated on a small plateau on the highest part of the site and is readily visible from the well-used Canal towpath which passes to the north. The roof can also be seen as one approaches the site from the north along from Bullocks Lane and from the canal towpath further to the north-east, beyond Skew Bridge. An established hedgerow along the Bullocks Lane frontage helps to minimise the visual impact of the building when stood on the carriageway at close quarters but, when taken in the round, the structure is prominent and clearly visible from a number of public vantage points.

29. The trees and shrubs that have been planted on land surrounding the building do not disguise the visual impact and the effectiveness of the screen planting is likely to be reduced in the winter months when vegetation is not in full leaf. Moreover, the character of the land surrounding the site is predominantly rural and undeveloped. Aside from the comparatively small buildings on the land adjacent to the dwelling the southern bank of the canal i.e. the land on the opposite side of the towpath, is largely free from built development within the vicinity of the appeal site. A number of dwellings are located on Bullocks Lane but they are set back from the edge of the canal by some distance.

30. In contrast, the building at the appeal site is particularly noticeable from the towpath and would be equally visible from the waterway itself, if one was passing by boat. Therefore, in the context of the predominantly undeveloped character of the surrounding area the effect of the development on the openness of the Green Belt is emphasised. The visual impact is limited to vantage points within the local area and taking account of that fact, and considering the scale of the building, the development has caused a moderate degree of degree of harm to the openness of the Green Belt. That harm is contrary to one of the principle objectives of Green Belt policy which is to safeguard the countryside from encroachment.

The effect on the character and appearance of the area and the Macclesfield Canal Conservation Area

31. Two previous Inspectors have concluded that new dwellings at the site would cause harm to the character and appearance of the Macclesfield Canal Conservation Area[5]. Both noted the history of commercial use at the site but considered that use to be less out of character with the canal side setting than the residential development proposed. The Inspector in the 2009 appeal noted that new residential development would represent a more overt

[5] Planning Inspectorate references: APP/C0630/A/08/2090408 & APP/R0660/A/10/2128726

encroachment of urban form in the countryside. In her decision in relation to the 2010 appeal the Inspector noted that the storage and distribution of materials is not unusual in canal side wharfs and concluded that the previous use, if resumed, would not look out of place.

32. The character of the canal changes along its length as it passes through town and countryside. The Conservation Area appraisal (the CAA)[6] carried out by the Council places the site in Character Area 7 (CA7). That stretch essentially follows the canal as it leaves the town and passes into the country. The description of the area beyond Skew Bridge, which is adjacent to the site, is described as a far more open section of canal bound only by a low hedge to the canal towpath side. The CAA describes the views that are available across the adjacent countryside. Key characteristics of CA7, as described, include two storey vernacular buildings, open and closed views of the surrounding countryside, surrounding pastureland and open fields, the rural setting and tranquillity.

33. To my mind, that accurate description of the area beyond Skew Bridge is highly pertinent to the present appeal. The area is described as being far more open than other sections of canal and the predominant character is rural with views of surrounding countryside. There is an absence of canal side residential development in the vicinity and dwellings on Bullocks Lane are set further back from the canal.

34. Having regard to that context I share the views expressed by previous Inspectors that residential development appears at odds with the prevailing character of the Conservation Area. Openness itself is described as a key characteristic and, for the reasons outlined in the previous section, the building has had a negative effect in that regard. The loss of openness is harmful not only in Green Belt terms but in terms of the effect on the prevailing rural character of the Conservation Area as a result of the encroachment of suburban development.

35. The external appearance of the dwelling has some elements that give the impression of a small workshop or agricultural store, for example the timber boarding, but the windows and rooflights betray the residential use within. It is a modern building with no particular architectural merit. The CAA notes that key characteristics of CA7 include two storey vernacular buildings and brick and stone buildings. The structure fits into neither of those categories. In addition it is tucked in the top corner of the site and set at an angle to the canal such that it appears to have little functional or visual relationship with the waterway. In that sense the structure has little in common with traditional canal side developments, such as a lock keeper's cottage or canal side wharf, which would have a more direct relationship with the water. Consequently, I find that the layout and appearance of the dwelling are at odds with the character and appearance of the Conservation Area.

36. I also find that the residential character of the dwelling, and the associated garden, is more at odds with the character of the Conservation Area than the former use which would was more closely related to the industrial heritage of

[6] Macclesfield Canal Conservation Area Appraisal and Management Proposals (2009)

the canal. The CAA cites the impact of residential gardens as having a negative impact.

37. In view of the above, I conclude that the development has caused harm to the character and appearance of the area and the Conservation Area and, for those reasons, the development is contrary to the aims of saved policy BE3 of the Macclesfield Borough Local Plan (2004) (the LP) which states that development will only be permitted which preserves or enhances the character or appearance of the Conservation Area. When considering the impact of development on the significance of a heritage asset, paragraph 132 of the Framework, notes that great weight should be given to the asset's conservation. Where any harm to the significance of a designated asset would be less than substantial, that harm should be weighed against any public benefits of the proposal, including securing its optimum use.

38. In terms of the potential fall-back of a resumption of the previous use, or the erection of a storage building, there is little firm evidence that such an eventuality is likely, having regard to the limited response to previous attempts to market the site. In any event, given that I share the views of previous Inspectors that a use for storage would be no more harmful, and in some respects, more appropriate to the canal side setting reference to such a fall-back does not represent a public benefit in favour of the development.

Whether the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to suggest that planning permission should be granted

Other Considerations

39. Previous Inspectors have concluded that a storage related use would be less at odds with the character and appearance of the Macclesfield Canal Conservation Area than residential use. For the reasons given above, I concur with those views. The residential use represents a more overt incursion of suburban form into the countryside.

40. In terms of the openness of the Green Belt, it is the case that the dimensions of the building, as constructed, are the same as the building for which a CLOPUD was granted. The marketing exercise for the site did not result in any tenants or purchasers being found but feedback was apparently received to the effect that a lack of secure storage was a factor that made the site less appealing. The fact that those expressing an interest were put off by the lack of secure storage would appear to run contrary to the argument that extensive amounts of material would be stored outside if the previous use was resumed. On the basis of that evidence it is likely that any future users would store the majority of their materials or equipment within the building, if such a facility was available.

41. However, there is little evidence to indicate that a storage building would be erected if the enforcement notice was upheld. Mr Mead himself is retired and appears to have no need for such a building and, from the evidence before me, did not intend to construct a warehouse. Consequently, there is significant doubt as to whether he would build a workshop if the notice was

upheld. Thus, there is no real evidence to suggest that the fall-back scenario presented is likely to materialise and, even if it did, I am not convinced that it would have a materially greater impact on the openness of the Green Belt than the present dwelling.

42. I have also had regard to the unilateral undertaking (UU) that was submitted at the event which would require the removal of two existing outbuildings and the cessation of the residential mooring. The outbuildings are of a smaller scale than the dwelling and much lower and less conspicuous within the surrounding area. Therefore, their demolition would not off-set the harm to the openness of the Green Belt resulting from the development as built.

43. The residential mooring is a perfectly normal function in the context of a former wharf on the canal and there would be no benefit to the character and appearance Conservation Area from withholding the right to moor alongside the land. The permitted use as a mooring relates to the canal itself and the Council refused to grant an LDC in respect of the residential use of the land adjacent to the canal. Consequently, anyone using the mooring would not have rights to introduce domestic paraphernalia or structures onto the land. In view of the above I am unconvinced of any perceived benefits in terms of the character and appearance of the area.

44. No boat is moored adjacent to the site at present and the appellants have sold the boat in which they used to reside. Consequently, it is not clear if they or anyone else would make use of the residential mooring in future. Moreover, the effect on the openness of the Green Belt resulting from the removal of any moored boat would not compensate for the loss of openness that has resulted from the construction of the dwelling which is much more substantial and permanent. The cessation of the residential mooring would have a very limited impact on the openness of the Green Belt due to the likely scale of a moored boat and the fact that it would sit down in the water, thereby limiting its visual impact.

45. Therefore, the obligations within the UU would not off-set the harm to the character and appearance of the Conservation Area and would not compensate for the loss of openness caused by the dwelling which is more prominent, of greater height and has a much greater physical presence than the buildings put forward for demolition.

46. There would be a minor beneficial effect on the openness of the Green Belt if the effect of the dwelling, minus the two outbuildings and residential mooring was compared to a situation where a warehouse was constructed in line with the CLOPUD, in addition to those outbuildings and the residential mooring. However, for the reasons set out I am not satisfied that fall-back position is likely to materialise. In any event, given the scale of the buildings and their limited visual impact, when compared to the dwelling, any benefits to the openness of the Green Belt would be small and there would be no benefit in terms of the character and appearance of the Conservation Area would arise through their demolition.

47. I must also consider the circumstances of the appellants who would be required to demolish their home if I were to refuse to grant planning

permission and uphold the requirements of the notice. As of June 2017[7], Mr Mead was 80 years of age and Mrs Mead was 76. Both have various health problems as described by Mr Mead in his proof of evidence. Article 8(1) of the European Convention on Human Rights, as enshrined in the Human Rights Act (1998) states that everyone has the right to respect for his private and family life, his home and his correspondence. To my mind this is undoubtedly a case where Article 8 is engaged because a decision to refuse planning permission and uphold the enforcement notice would interfere with the home and family life of the occupants.

48. Article 8(2) identifies that there shall be no interference by a public authority with the exercise of Article 8 rights except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the prevention of crime and disorder, the protection of health or morals, or for the protection of the rights or freedoms of others.

49. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.

50. Mr and Mrs Mead have clearly expressed a desire to stay in the current dwelling to be close to other members of the family. Moving home would no doubt be difficult and stressful as a result of their age and medical conditions and the loss of the current home would be costly in a financial sense. Those factors are matters that attract weight in favour of granting planning permission.

51. Mr Mead did not wish to be drawn on his financial position at the Inquiry but did note that he "would not be skint" as a result of the requirements of the notice. In those circumstances it seems likely that the appellants would be able to find alternative accommodation in the local area, close to family, whether that was through a house purchase or rented accommodation. Furthermore, whilst the stress of seeing the building demolished would no doubt be great, the physical work could be undertaken by others and no evidence has been submitted to show that the health issues affecting the appellants require them to stay in this particular dwelling over and above any other in the local area. All of those factors moderate the weight I attach the interference with the Human Rights of the appellants, when considering the proportionality of any decision in the overall planning balance.

Very Special Circumstances

52. The development represents inappropriate development within the Green Belt and has reduced openness; one of the key characteristics of the Green Belt. I am required to give substantial weight to the harm in those respects. The building has also caused harm to the character and appearance of the Macclesfield Canal Conservation Area. I also attach significant harm in

[7] The date of Mr Mead's proof of evidence

relation to those matters, having regard to the terms of the Local Plan, the Framework and the statutory duty to preserve or enhance the character and appearance of the Conservation Area.

53. For the reasons given, I attach little weight to the suggested fall-back scenarios or to the alluded benefits that would arise from the demolition of other structures on the land. I am very mindful of the personal circumstances of the appellants and the interference with their Article (8)(1) rights. However, I find no reason to conclude that they would be unable to find alternative accommodation in the local area that would be equally appropriate to their needs. Given my conclusions in that regard I see no particular merit in the suggestion that a personal permission be granted for the benefit of the appellants. Personal circumstances will seldom outweigh more general planning considerations and national planning policy, as outlined in a letter from the Government's Chief Planner, dated 31 August 2015 and subsequent Written Ministerial Statement (the WMS)[8], makes clear that, subject to the best interests of the child, personal circumstances are unlikely to clearly outweigh harm to the Green Belt, and any other harm, so as to amount to very special circumstances. In this case, there appears to be nothing specific about the property, as opposed to any other property in the local area that would require them to stay on site.

54. When considered in the round I conclude that the interference of the human rights of the appellants, including the loss of their home and the effect on their family life would be lawful, necessary and proportionate. The weight that I attach to those interests does not outweigh the very strong public and community interest in preventing inappropriate development within the Green Belt and preserving the character and appearance of the Conservation Area. Consequently, I am not satisfied that any material considerations have been put forward that clearly outweigh the harm to the Green Belt and the other harm that I have identified.

55. Accordingly, very special circumstances do not exist to justify the development and I conclude that planning permission should not be granted having regard to the terms of the Framework and the Local Plan and the appeal on ground (a) fails.

Appeals A and B on Ground (f)

56. An appeal under ground (f) is made on the basis that the steps required by the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case it is clear that the Council is seeking to remedy the breach of planning control, and not simply the injury to amenity.

57. The breach of planning control is the erection of a building used for residential purposes, with associated operational development, as described in the notice. Under ground (b) I have found that the breach, as described in the notice did occur. In other words, what was erected was a dwelling and not a warehouse.

[8] Letter to Chief Planning Officers from Steve Quartermain, dated 31 August 2015 and WMS relating to Green Belt Protection and Intentional Unauthorised Development, dated 17 December 2015

58. The appellant did not specify what lesser steps would, in his view, remedy the breach, despite a request for clarity on that point at the outset of the Inquiry. However, the essence of the argument put forward is that the demolition of the building would be excessive given that its external dimensions are not materially different to the warehouse building approved under the CLOPUD application. Rather, it is put forward that the removal of internal fixtures and fittings would be sufficient.

59. Had the building been lawfully constructed as a warehouse and subsequently converted to a dwelling it would be excessive to require the demolition of the structure. In that case, all that would be required to remedy the breach would be the cessation of the use and removal and/ or demolition of any elements that facilitated the residential use. However, in this case the notice relates to the construction of a dwelling and the planning permission granted for a warehouse/ storage building by virtue of the GPDO was never implemented.

60. The removal of internal fixtures and fittings would not turn a building that was erected as a dwelling into a warehouse. What would remain would be the empty shell of a dwelling and the building would not benefit from planning permission. The deemed planning application on ground (a) seeks planning permission for the erection of a dwelling. I could not grant planning permission for the erection of a dwelling subject to a condition that the building could only be used as a warehouse/ storage building which would amount to a different form of development. Consequently, it appears to me that nothing short of complete demolition would remedy the breach of planning control and, thus, no lesser steps have been put forward that would remedy the breach in this instance. The appeals on ground (f) therefore fail.

Appeals A & B on Ground (g)

61. The notice requires that the residential use of the building should cease within six months of the date the notice takes effect, that demolition and removal of the patio should be undertaken within 8 months and that all materials should be removed and services disconnected within 10 months. The appellants maintain that a period of 12 months should be granted for the cessation of the residential use with a further 6 months for compliance with other steps.

62. In relation to the ground (a) appeal I have considered the personal circumstances of the appellants and the likely effect on their health. I am very mindful of those factors. Nonetheless, no particular evidence has been presented that would lead me to conclude that six months would be an inadequate period of time for the appellants to find alternative accommodation. I appreciate that property transactions can take some time to complete but, equally, it is not uncommon of those looking to purchase a property to move into rented accommodation for a short period whilst matters are completed.

63. I also note the serious nature of the breach and the resultant harm to the Green Belt and Conservation Area and am mindful of the need to ensure expediency in the enforcement of the planning system. When considered in the round I am satisfied that six months represents an appropriate period of time to cease the residential use. That period would also be sufficient to put in place arrangements for the demolition of the building and no evidence has been presented to suggest that the demolition would take longer than two months once the residential use has ceased. Given the scale of the building a demolition team should be able to complete the work in that period. The

additional two months for the removal of resultant material and disconnection of services is also reasonable.

64. Consequently, I am satisfied that the time periods set out in the enforcement notice are reasonable and the appeals on ground (g) fail.

Appeals C & D in Relation to Enforcement Notice 2 – Material Change of Use

Appeals C & D on Ground (b)

65. The appellants' case is based upon the premise that the land identified on the plan attached to Enforcement Notice 2 can be divided into four distinct areas of which only one has been used for residential purposes. They contend that the area relating to the lawful residential mooring represents a separate planning unit, that the remaining outbuildings are still rated separately as commercial premises, and that the turning and manoeuvring areas are essentially a shared space in mixed use between commercial and residential.

66. The whole of the site has a domestic air. The garden is manicured and contains domestic plants and ornaments. Whilst the outbuildings may be rated for commercial use there is no evidence that any commercial storage activity was taking place at the time the notice was served. The items stored in the buildings appear to be of a domestic nature, including tools and equipment belonging to Mr Mead. At the Inquiry relating to the lawful development certificate (LDC) in 2012 the Inspector noted a number of domestic items on the land and within the buildings. However, in his view, those items did not point to any permanent residential use of the land. He also concluded that the use of the land for purposes ancillary to the residential mooring was *de minimis* to the primary use of the land.

67. On the basis that no material change of use had occurred he concluded that the lawful use of the land remained that of a storage use in connection with a roofing business. The circumstances have altered significantly as a result of the construction and occupation of the dwelling on the land. In the context of the dwelling and the associated domestic garden, the presence of domestic items within the outbuildings can no longer be said to relate to any other use beyond the residential use of the site. In the absence of any on-going commercial storage use there is no doubt, in my view, that the outbuildings have taken on a role as domestic buildings in association with the primary use of the land which is residential.

68. Moreover, I find no reason to depart from the conclusions of the previous Inspector regarding the use of land in connection with the residential mooring. The LDC relating to the mooring relates specifically to the canal, up to its bank, and the Council issued a split decision to make clear that the lawful use as a residential mooring did not extend to the land adjacent to the canal. Therefore, I am not convinced by the argument that a separate planning unit exists in relation to part of the land in association with the residential mooring.

69. In any event, Mr and Mrs Mead had moved into the dwelling in October 2015 and subsequently sold the boat. Thus, by the time the enforcement notice was served in the notice was served in October 2016, there can be no argument that any of the land was being used in connection with a residential mooring

because no such use was taking place. Rather, the entirety of the land was used as a garden associated with the dwelling.

70. In view of the above, at the point the notice was served, on the balance of probability I find that the use, as described in the notice had taken place and the appeals on ground (b) must fail as a result.

Appeals C & D on Ground (c)

71. The only argument advanced under ground (c) is that a small area of land adjacent to the canal mooring had an authorised residential use and, therefore, that no change of use had taken place on that land. As noted, the Council made clear when granting an LDC for the use as a residential mooring that it would not be lawful to use the land adjacent to the canal bank for residential purposes. The LDC was granted in relation to the use of the canal as opposed to the use of the land.

72. As with any mooring, it would be necessary to secure the boat to the adjacent land in some fashion, normally by rope attached to some form of hook or stake within the canal bank. Permanent and temporary moorings are commonplace on the canal network, with boats often moored directly adjacent to the towpath. It does not follow, to my mind, that the use of the land adjacent to the canal bank is residential. Rather, the residential use takes place within the boat which floats on the canal itself. Having regard to that point, the content of the LDC relating to the residential mooring, and the findings of the previous Inspector who noted that any residential use associated with the mooring was *de minimis* I am not satisfied that the land adjacent to the canal bank had a lawful residential use prior to the service of the notice.

73. Consequently, the use of the land for residential purposes in association with the use of the dwelling on the land represents a breach of planning control and the appeals on ground (c) must fail.

Appeal C on Ground (a)

74. There is clearly a degree of overlap between the material planning considerations relating to the two enforcement notices. Many of the issues addressed in relation to Appeal A in relation to ground (a) will also apply in relation to Appeal C. The main issues are therefore similar and are as follows:

    i) Whether the development represents 'inappropriate development' within the Green Belt for the purposes of national and local planning policy;

    ii) The effect of the development on the openness of the Green Belt;

    iii) The effect on the character and appearance of the area and the Macclesfield Canal Conservation Area; and

    iv) If the development represents inappropriate development whether the harm to the Green Belt by way of that inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to suggest that planning permission should be granted.

Whether the Development Represents Inappropriate Development within the Green Belt

75. Paragraphs 89 and 90 of the Framework identify the kinds of development that are 'not inappropriate' within the Green Belt. Case law has established that the two paragraphs represent a closed list. In other words, if a development does not fall within them, it will amount to inappropriate development within the Green Belt. Paragraph 89 relates to the construction of buildings and is not relevant in this case. None of the five bullet points at paragraph 90 refer to the material change of use of land. In that context, the development described in Enforcement Notice 2 would constitute inappropriate development, as defined in national policy.

76. Saved policy GC1 of the Local Plan is silent in relation to the approach to material change of use of land; the policy simply states that approval will not be given, except in very special circumstances, for the construction of new buildings, unless they fall within seven identified exceptions. Policy PG3 of the emerging Local Plan essentially defers to national policy in terms of the approach to 'inappropriate development'.

77. Consequently, having regard to local and national policy, the change of use of the land represents inappropriate development within the Green Belt.

The Effect on the Openness of the Green Belt

78. The use of the land for residential purposes has brought with it associated domestic paraphernalia, such as outdoor seating, facilities for drying washing etc. However, the majority of such features are located in the relatively private area surrounding the dwelling and are not overly prominent in the wider area or from the canal bank. For the most part the garden remains open, albeit with areas of domestic planting. Whilst I have concluded that the dwelling has had a harmful effect on the openness of the Green Belt, the associated use of the land has not had an undue impact.

79. Historically it would appear that substantial amounts of material were stored in the open at the site. However, that material has been cleared by Mr Mead. One of the stated reasons for not finding a tenant was the lack of indoor storage which would indicate that current roofing or building contractors may not be happy to store items in the open at the site. Therefore, there is little to indicate that any significant external storage would take place if the site was used for its lawful purpose.

80. Accordingly, I find that the impact on the openness of the Green Belt stemming from the use of the land is roughly neutral.

The Effect on the Character and Appearance of the Conservation Area

81. When assessing the effect on the character and appearance of the area it is difficult to separate the impacts of the use of the land and from the impacts relating to the building itself. The two are inextricably linked. I have set out my observations on the character of the Conservation Area within the vicinity of the site above. Beyond Skew Bridge the character is predominantly rural and there is no pattern of canal side residential development. The residential use of the land, with associated domestic planting is therefore at odds with the prevailing character and appears incongruous in that context.

82. Previous Inspectors have also noted that the former use for commercial purposes would be more reflective of the industrial heritage of the canal and I concur with those views. Consequently, whilst the dwelling has had the most noticeable effect on the character and appearance of the Conservation Area by virtue of its size, design and position within the site, the associated use of the land for residential purposes has also caused harm to the character and appearance of the Conservation Area. That harm has been less than substantial but no public benefits have been put forward that would outweigh it.

83. For those reasons, the development is contrary to the aims of policy BE3 of the Local Plan which states that development within or adjoining Conservation Areas will only be permitted where it preserves or enhances the character and appearance of the area. It is also contrary to the objectives of the Framework which notes that great weight should be given to the conservation of heritage assets.

Whether the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to suggest that planning permission should be granted

Other Considerations

84. If considered in isolation in relation to the material change of use application there may be some benefit in terms of the openness of the Green Belt resulting from the terms of the unilateral undertaking. Given that I have concluded that the material change of use has a broadly neutral impact on the openness of the Green Belt, the removal of two outbuildings and the undertaking not to use the residential mooring could be considered to bring benefits to the openness of the Green Belt.

85. However, it is difficult to assess the suggested benefits offered through the s.106 agreement in relation to the material change of use application alone. The UU was put forward primarily as an attempt to off-set the loss of openness resulting from the erection of the dwelling. For the reasons given, I have concluded that the measures contained within it would not overcome the harm resulting from the erection of the dwelling in terms of the loss of openness in the Green Belt and the effect on the character and appearance of the Conservation Area.

86. In a situation where I have decided to dismiss the appeal in relation to operational development, and uphold the notice with regard to the demolition of the dwelling, there would appear to be little rationale for granting planning permission for the residential use of the associated land. The result would be an anomalous situation where planning permission was granted for residential use of land without association with any particular residential unit. That would be a perverse outcome that would lead to uncertainty over the status of the land moving forward.

87. Furthermore, the obligations within the UU would not overcome my concerns with regard to the effect of the development on the character and appearance of the Conservation Area resulting from the domestication of the land. In view of the above, I am not satisfied that the obligations within the UU are matters that weigh in favour of granting planning permission for the use of the land for residential purposes.

88. I have also considered the personal circumstances of Mr and Mrs Mead, taking account of their age and medical issues. Given that the use of the garden is closely associated with the use of the home it seems to me that Article 8 is engaged because a decision to refuse planning permission and uphold the enforcement notice would interfere with the home and family life of the occupants. Although not ideal, it is not uncommon for residential properties to have no external space and, in that sense, the requirements of Notice 2 are less severe than Notice 1, which would see the demolition of the dwelling.

89. I have noted that there is no reason to suppose that Mr and Mrs Mead would be unable to find accommodation within the local area. That factor, in addition to the content of the WMS, and my observations on the severity of the requirements in comparison to those in relation to Notice 1, are matters that moderate the weight that I attach to the implications for the human rights of Mr and Mrs Mead in the planning balance.

Very Special Circumstances

90. As required by the Framework I attach substantial weight to the harm to the Green Belt resulting from the inappropriate development. I also attach significant weight to the harm to the Conservation Area. For the reasons given I attach little weight to the suggested benefits put forward within the UU, or to the suggestion that a resumption of the lawful use would have a much greater impact on the openness of the Green Belt.

91. The protection of the Green Belt and of heritage assets are two key elements of the planning system and the enforcement of the breach of planning control can be said to be strongly in the public interest in those respects. It strikes me that the harm identified in relation to openness and the character and appearance of the Conservation Area is less severe than that arising from the erection and use of the dwelling.

92. However, with regard to the impact on the home life of Mr and Mrs Mead, and of their specific circumstances, I have also noted moderating factors such as the likelihood of them being able to find accommodation elsewhere and the fact that Notice 2 requires the cessation of the use of the land surrounding the dwelling, as opposed to the demolition of the dwelling itself. In other words, the effect of the notice is less severe than that relating to Notice 1.

93. When all of those factors are considered in the overall balance the end result is the same; I find that the impact on the property and family life of Mr and Mrs Mead would be lawful, necessary and proportionate. The weight that I attach to those interests does not outweigh the very strong public and community interest in preventing inappropriate development within the Green Belt and preserving the character and appearance of the Conservation Area. Consequently, I am not satisfied that any material considerations have been put forward that clearly outweigh the harm to the Green Belt and the other harm that I have identified.

94. Accordingly, very special circumstances do not exist to justify the development and I conclude that planning permission should not be granted having regard to the terms of the Framework and the Local Plan and Appeal C on ground (a) fails.

Appeals C & D on Ground (f)

95. Within his proof Mr Jenkins argues that there are no grounds to require the domestic paraphernalia to be removed because such paraphernalia is contained within the site and causes no harm to amenity. However, the requirements of the Notice are intended to remedy the breach of planning control and not simply the injury to amenity, as confirmed by the Council at the Inquiry. The domestic paraphernalia has been brought onto the land in connection with the unauthorised change of use and it is necessary to remove those items in order to remedy the breach. The requirements are not excessive in that respect and it would be inappropriate to leave domestic items such as washing lines, barbeques and other features in situ once the residential use has ceased.

96. I have concluded that the land does not benefit from any lawful residential use in respect of the mooring but it is clear that it is necessary to cross the site to access the boat on the canal or to remove refuse from the boat etc. I am satisfied that the terms of the notice do not prevent such activity and, as a result are not excessive, having regard to the established residential mooring.

97. In view of the above, the appeals on ground (f) fail.

Appeals C & D on Ground (g)

98. The appellants consider that the period for the cessation of the residential use and the removal of domestic paraphernalia should be extended to 12 months, for the same reasons given in relation to Notice 1. It appears to me that little action is required to cease the use of the land surrounding the dwelling for residential purposes and the removal of domestic paraphernalia would be a straightforward task that could be completed in a matter of days. Consequently, I am satisfied that six months is sufficient for the appellants to carry out the required steps and to find alternative accommodation, for the reasons given in relation to Notice 1. The appeals on ground (g) therefore fail.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Peter Dixon	Of Counsel
He called	
Mr Kenneth Mead	Appellant
Mr Nicholas Jenkins BSc DipSurv MRICS	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Josef Cannon	Of Counsel
He called	
Mr Vincent Farrell	Enforcement Officer (retd)
Mr Matthew Keen MSc	Senior Planning Officer

Documents Submitted at the Inquiry

1) Signed and executed Unilateral Undertaking, dated 30 June 2017