



Appeal Decisions

Inquiry Held on 17-19 July 2019

Site visit made on 19 July 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal A: APP/P0119/C/18/3203477

Appeal B: APP/P0119/C/18/3203478

Cherry Lodge, Bristol Road, Iron Acton

- 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 David Baber against an enforcement notice issued by South Gloucestershire Council.
- Appeal B is made by Mrs Lisa Baber against the enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 24 April 2018.
- The breach of planning control as alleged in the notice is the unauthorised change of use of the land edged red on the attached plan from agricultural use to ancillary residential use, including associated operational development.
- The requirements of the notice are:
 - a) Cease the use of the land edged red and the buildings marked 'A', 'B' and 'C' on the attached plan for ancillary residential use;
 - b) Remove the fencing shown in the approximate position for identification purposes only edged green on the attached plan;
 - c) Remove all residential paraphernalia from the area of land edged red and numbered '1' on the attached plan, including the aviary, football goal, benches, ornaments and street lamps;
 - d) Fill in the pond and re-seed with grass;
 - e) Remove the rockery next to the pond, level the ground and re-seed the area with grass;
 - f) Plant a native species of hedge around the boundary of the residential property (for clarity, between points D-E, E-F, F-G and G-D marked on the attached plan) where none exists currently; and
 - g) Restore the land edged red on the attached plan to its condition before the breach took place.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in sections 174(2), (d), (f) and (g); however, since the prescribed fees have not been paid within the specified period, 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.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with variations.

Appeal C: APP/P0119/C/18/3203480

Appeal D: APP/P0119/C/18/3203481

Cherry Lodge, Bristol Road, Iron Acton

- 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 David Baber against an enforcement notice issued by South Gloucestershire Council.
- Appeal D is made by Mrs Lisa Baber against the enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 24 April 2018.
- The breach of planning control as alleged in the notice is the unauthorised change of use from agricultural use to a sui generis mixed use of use for offices, general industrial use and commercial storage and distribution, including associated operational development.
- The requirements of the notice are:
 - a) Cease the use of the land edged red on the attached plan for use for offices, general industrial use and commercial storage and distribution;
 - b) Remove the buildings/structures numbered '1', '2', and '3' on the attached plan and on the attached photographs from the land edged red on the attached plan;
 - c) Remove all materials, vehicles, plant, machinery and storage vessels used in conjunction with the unauthorised uses from the land edged red on the attached plan;
 - d) Remove all hardstanding from the land edged red on the attached plan and re-seed the area with grass; and
 - e) Restore the land to its condition before the breach took place.
- The period for compliance with the requirements is 6 months.
- Appeal C is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal D is proceeding on the grounds set out in sections 174(2), (d), (f) and (g); however, since the prescribed fees have not been paid within the specified period, 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.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

1. All oral evidence was given under oath or affirmation.

Applications for costs

2. After the Inquiry an application for costs was made by South Gloucestershire Council against Mr David Baber and Mrs Lisa Baber. This application is the subject of a separate decision. In addition, an application for costs was made by Mr David Baber and Mrs Lisa Baber against South Gloucestershire Council. This application is also the subject of a separate decision.

Background

3. These appeals are made against two enforcement notices issued by South Gloucestershire Council that relate to the appellants' landholding at Cherry Lodge, Iron Acton. It is common ground between the main parties that the three parcels of land identified in the notices have materially changed in use during the period of the appellants' ownership and there have been no planning permissions for such material changes of use.
4. Cherry Lodge was originally constructed in 1981 following the grant of planning permission for a dwelling subject to an agricultural occupancy condition. In 1984 the previous owner of Cherry Lodge sought planning permission for an extension to the garage and a change of use of that building to a veterinary

surgery, which was subsequently allowed on appeal. In 2004 another planning application was made for a change of use of the veterinary surgery to a use associated with selling veterinary health products. That application was refused and the small holding was placed on the market for sale.

5. The sales particulars include photographs which show that a hedgerow that was present on site in 1999 had been removed by 2003. The particulars also describe the property as having a large garden laid to grass lawns, vegetable garden and a double garage. It also describes that outside that there was an attractive large garden mainly laid to grass lawns. Those details also show that part of the landholding had been planted as a tree nursery, but it is my understanding that most of these had been removed by the time the appellants purchased the property.
6. The appellants purchased Cherry Lodge and its associated land in December 2005 and it was their intention to establish an agricultural enterprise in rearing rare breed pigs, which subsequently started shortly after their acquisition of the land. Once established, the animals bred on the land were processed and sold in the farm shop which was established in the former veterinary rooms in early 2007. It is my understanding that the enterprise also included chickens and other fowl. Whilst establishing the smallholding the appellants continued to operate their business South West Ceramics.
7. In 2007 planning permission was granted for an agricultural barn on the land which was completed in late 2007 to facilitate the expansion of the farming enterprise. I also understand that other buildings, including the chicken shed and farrowing shed were erected and permission was granted for a new farm shop adjacent to the approved barn.
8. Although the smallholding grew relatively quickly, following the financial crisis in 2008 the appellants decided that they could no longer finance the rare breed and chicken business and therefore all equipment was sold and the farm shop closed. The South West Ceramics business had continued to operate during this period and in 2007 it was moved from an alternative site to the appeal site. I understand that another company, Small Works Construction, started on site in 2012 and has allowed the appellants to expand their business interests and employ more staff.
9. In summary, the previous owners of the property used the wider landholding for residential use, agriculture (forestry), commercial purposes (veterinary) and a vegetable plot/garden area. Since their purchase of the landholding the appellants have used it for residential, agriculture and commercial purposes.
10. The two enforcement notices the subject of the current appeals were served by the Council on 24 April 2018 and relate to the matters set out in the above banner heading. The first enforcement notice (EN1) alleges an unauthorised change of use of land from agricultural use to ancillary residential use, including associated operational development and the attached plan shows two separate parcels of land. It excludes most of the fields between Cherry Lodge and the main road, Cherry Lodge and also the land which is the subject of the second notice (EN2). EN2 alleges an unauthorised change of use for agriculture to a sui generis mixed use for offices, general industrial use and commercial storage and distribution, including associated operational development. The plan attached to EN2 shows an area of the landholding to

the west of the residential property, Cherry Lodge and also identified some buildings and structures on that land.

The Planning Units

11. The Council contends that both enforcement notices are correct in their characterisation of the planning units and the breaches of planning control that have occurred. Firstly there is a planning unit which is comprised of the dwelling, Cherry Lodge plus Area 1 and Area 2 as shown on EN1. Area 1 is used as a large ancillary garden area and Area 2 is currently used as a driveway and turning circle used in association with the dwelling. Secondly, the plan attached to EN2 shows a planning unit to the west of the dwelling which is currently used for sui generis mixed use purposes for office, general industrial and commercial storage and distribution.
12. The appellants are critical of the Council's approach with respect to EN1 by not identifying the entire residential planning unit and it seems to me that they are arguing that Areas 1 and 2 are themselves one planning unit and are ancillary to a separate planning unit which is not identified in the enforcement notice. By law the notice must specify the boundaries of the land to which the notice relates, but that need not necessarily be done on a plan identifying the respective planning unit. There is no legal requirement for a plan to be included in a notice which identifies the planning unit. In any case it is evident to me from reading EN1 that Areas 1 and 2 are part of a larger planning unit which also comprises the residential dwelling, Cherry Lodge, to which the alleged ancillary residential use relates. Consequently, I find there to be no need to address the matter raised by the appellants by amending section 4 or any other part of EN1 to clarify this particular point.
13. In any case, in determining these appeals it seems to me that the only way in which the precise demarcation of the residential planning unit is of relevance is whether the residential planning unit is physically and functionally separate from the site the subject of EN2 (EN2 site) which lies to the west. The Council's position is that the fields to the east are not part of the residential planning unit given that since 2013-2014 they have had little use. Even if the relevant fields are part of the residential unit that is of no consequence; the key point being whether the yard to the west is a separate planning unit.
14. Of greater consequence in relation to the construction of the enforcement notices is the appellants' concerns that the notices each take a portion of the wider landholding and allege a change of use from agricultural to different unauthorised uses. The appellants are concerned that the boundaries shown in the notices principally relate to the alleged unauthorised activities and uses rather than the history of the site and the wider landholding. Furthermore, whilst the Council considers that the use of the land prior to the current unauthorised use was agricultural the appellants argue that their evidence shows that this is clearly not the case.
15. The appellants Statement of Case did not put forward any arguments on ground (b) that the breaches alleged in the enforcement notices have not occurred as a matter of fact. Indeed their own Planning Consultant, Mr Campbell agreed in his written evidence that the notices are accurate regarding how they characterise the breaches that are alleged to have occurred. The written evidence of both main parties is based on the accuracy of the notices.

Furthermore, Mr Campbell confirmed in his oral evidence that his evidence with respect to ground (a) is based on the fact that the development for which planning permission is being sought in relation to EN1 is limited to ancillary residential use and in relation to EN2 the development for which permission is being sought is the office, general industrial and storage and scaffolding business uses and associated development as clearly set out in the notice.

16. The appellant's written evidence on ground (d) is that the land the subject of EN1 (EN1 site) 1 has been continuously used for residential purposes for a period of more than 10 years up to the date the Council issued the enforcement notice and EN2 site has been used for a mix of uses being agriculture and commercial purposes for a period in excess of 10 years to the date the Council issued EN2.
17. The appellants' witness Mr Hardwick's plans show that until around 2014-2015 the residential use taking place in EN1 site fluctuated in spatial extent and encroached into EN2 site and these changes do not correspond to physical boundaries on the site. The plans for EN2 site also show that various commercial uses that are present on the site grew annually and did not correspond to any physical boundaries until around 2014-2015 when the uses covered EN2 site and the land was divided from EN1 site by a fence.
18. It is clear to me from the overlay plans exhibited by the appellants' witness that the commercial uses associated with Cherry Lodge are confined to EN2 site and residential uses are confined to Areas 1 and 2 as shown on EN1 and the dwelling Cherry Lodge, itself. Indeed, Mr Hardwick's evidence confirmed that the commercial uses correspond directly with the boundary formed by the fence and laurel hedge which physically separates the land from the residential and garden land to the east. This is a position which I understand the Council largely agrees with, although there does remain a dispute as to when the commercial uses began which I will discuss in more detail in the section on the appeals on ground (d).
19. The appellants' arguments with respect to the tests for establishing a planning unit as identified in the *Burdle* case¹ do not adequately deal with the test which requires there to be functional and physical separation before an area within an existing planning unit can form a new and separate planning unit. The appellants argue that their entire landholding is a single planning unit with a sui generis mixed use of commercial, residential and agricultural uses which has existed since 2000. Consequently, there has been little effort on their behalf to separate the various uses which fall under the general description of 'commercial', despite accepting that this term contains a number of different uses that are materially different, nor has a case been made that the mix of commercial uses has remained materially the same over a continuous 10 year period. The evidence clearly shows that the mix of commercial activities taking place on EN2 site has changed significantly during the requisite period.
20. It is the appellants' case that the planning unit comprises their entire landholding. This appears to challenge the notices with respect to the alleged matters that have occurred on the land and therefore it seems to me to be advancing an argument under ground (b) that the alleged breaches have not occurred as a matter of fact. Indeed, at the Inquiry the appellants appeared to

¹ *Burdle & Williams v SSE & New Forest* RDC [1972] 1 WLR 1207

concede that there are now appeals on ground (b) and therefore I will deal with those in due course.

21. There being ground (b) appeals, the proofs of evidence provided by the appellant's witnesses and their oral evidence in fact harms the appellants' case because it supports the enforcement notices with particular reference to the fact that they identify two separate parcels of land which are both physically and functionally separate from one another. The oral evidence of Mr Baber, Mr Bartley and Mr Hardwick all confirm the degree of separation between the two parcels of land. Mr Baber agreed that the boundary hedges to the north, south and west of EN2 site provide security and therefore perform the role of separating the appellants' landholding from land outside the ownership. In addition, a post and rail fence separates the east side of EN2 site from the garden area in the EN1 site.
22. It seems to me that all parties agree that the areas are physically separated by a post and rail fence and a hedge. In addition, Mr Baber has stated that the fence was erected to prevent the vehicles using the yard from driving into the laurel hedge, therefore containing the vehicles within the commercial yard area. The requirement is for a planning unit to be functionally and physically separate, not that there is an impermeable barrier between the two. However the appellants argue that the commercial uses occurring on the EN2 site are functionally linked to EN1 site and vice versa.
23. It was agreed at the Inquiry that the commercial activities are isolated to EN2 site and the ancillary residential area associated with the dwelling, Cherry Lodge, is isolated to EN1 site. Mr Baber clearly stated that he does not want his businesses to operate from his back garden, nor does he wish to use EN2 site for recreational purposes associated with his dwellinghouse. Those that work at his businesses have their own facilities and eat their lunches and carry out other related activities within the barn within EN2 site and certainly not within the dwelling. The dwelling is occupied by the appellants and their son and not by any other workers.
24. In addition, commercial vehicles access EN2 site through an entrance to the north of the yard which is separate from the residential vehicular access. There is a common access road across some fields, but that does not mean the commercial area forms the same planning unit as the dwellinghouse. In addition, commercial vehicles do not need to cross the residential land, including the turning circle area or any part of the garden.
25. At my site visit I observed that there are pedestrian gates which potentially provide access to EN2 site from EN1 Area 1. One of these has never been used according to the evidence of Mr Baber and the other is used by Mr and Mrs Baber to access the barn. It is also my understanding that a few employees have keys, but not the general workforce.
26. Commercial vehicles mainly park on EN2 site and the residential parking area is mainly on the turning circle at EN1 Area 2 which provides capacity for at least five cars. When the yard is very busy there may be some overflow parking of commercial vehicles on the turning area. Indeed, at my site visit I observed a number of commercial vehicles on the residential turning space.

27. Since 2013/2014 there has been no functional relationship between EN2 site and the fields to the east, although I understand that Mr Baber has kept a horse or two on this area of land. Since 2017 a koi carp business has occupied Building C, but access to this building is normally by quad bikes or foot rather than larger commercial vehicles and the route used is either the track along the southern edge of the site or the access road to the north.
28. Given the above, the appellants' case in relation to the single planning unit appears to rest on a plan produced by Mr Campbell, the presence of a speed boat on the commercial site and occasions when the appellants have hosted members of their workforce at their dwelling. Firstly, the plan produced by Mr Campbell shows only potential linkages rather than functional linkages. There is insufficient evidence before me that the plan represents a clear indication of whether uses occurring in the wider landholding functionally encroach onto other areas within the site. It is clear to me that the commercial uses are isolated to EN2 site and the residential uses to EN1 Areas 1 and 2.
29. The presence of a speedboat on EN2 site does not provide evidence that it is being used for recreational purposes – as far as I can see there are no opportunities to use the speedboat on EN2 site; it is merely being stored there for the convenience of its owner. The fact that the appellants choose to entertain their staff and employees at their home does not make it part of the workplace or evidence of any commercial use taking place at their dwelling. Instead, it provides some evidence of their dwelling being used for entertaining and recreational purposes ancillary to their enjoyment of the dwelling.
30. For the reasons set out above there have been two separate planning units since 2014. I have not seen or heard sufficient evidence to conclude otherwise.

The Appeals on Ground (b)

31. The ground of appeal is that the breach of planning control alleged in the enforcement notices has not occurred. In order to succeed on this ground the appellant will need to have demonstrated that the change of use from agricultural use to ancillary residential use including operational development has not occurred and that the material change of use from agricultural use to a suit generis mixed use for offices, general industrial use and commercial storage and distribution, including operational development has not occurred.
32. Given my conclusions with reference to the planning units and in particular my conclusion that there have been two separate planning units since 2014, the evidence presented at the Inquiry, including the written and oral evidence of the appellants and their witnesses, and my own site observations the respective unauthorised changes of use have occurred as a matter of fact. Therefore, the appeals on ground (b) must fail.

The Appeals on Ground (d)

33. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action. In this respect and with reference to each of the appeals, 10 years continuous use starting from the date of the breach is required, so that material date is 24 April 2008.

34. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of Gabbittas² the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
35. It is the Council's view that the two planning units the subject of the enforcement notices were formed at some point between 2013-2014 following the separation of EN2 site from the rest of the appellants' landholding. It appears to me that before that time the areas were in a single mixed use comprising a shifting mix of commercial and residential activities. In determining this appeal the key date is not necessarily that date when the planning units that currently exist were formed, but rather to establish whether they were created less than ten years before the enforcement notices were served. Therefore, for that reason alone the appeals on ground (d) fail. However, there is further evidence before me which demonstrated clearly why the appeal on ground (d) with respect to EN2 should fail.
36. The evidence presented to me shows that the mix of uses on EN2 site has not continued in its current form for a continuous period of over 10 years. New and materially different uses have started on Site 2 during the requisite 10 year period. At the time when a new use commenced on site 2 or ceased to be taking place on EN2 site, this may amount to a material change of use, severing the ten year period. The courts have held³ that "where in respect of one planning unit a use comprising uses A, B and C is joined by use D, there is a change of use, which may or may not be a material change of use to uses A, B, C and D...Uses A, B and C are not treated as distinct uses unaffected by the additional uses unless they are carried out in a distinct planning unit. This was accepted as a matter of principle at the Inquiry.
37. The Council contends that there have been four material changes of use following the material date of 24 April 2008. The evidence before me shows that the farming business ended in 2009, which is after the material date. Also, a carp business, SWC Koi began in 2017. My view is that in 2009 the cessation of agricultural activity resulted in a significant element of the mixed use lapsing and therefore a material change in use occurred after the material date. There is a material difference between operating a 9 acre farm and a small construction firm in a barn and a yard and then ceasing agricultural activities and subsequently using the land for a construction business, the activities of which have increased significantly.
38. Also, in 2017 SWP Koi was introduced into Area 1 (Building C on EN1). Before that date Carp were kept in the pond and they were present as a visual feature in the pond and therefore constituted part of the recreational use of the garden area. That is materially different from setting up equipment and processes in a specific building and show and sell those fish under a separate company. Irrespective of whether the carp business is agricultural or sui generis it nevertheless introduces a new use which overall results in there being a material change in the use of the site.

² Gabbittas v SSE & Newham LBC [1985] JPL 630

³ Beach v Secretary of State [2002] JPL 185 at [18]

39. The other two material changes in the use of the site is demonstrated through the change in the commercial uses taking place in EN2 site after the material date. The evidence presented shows that before the material date the only commercial uses taking place on the site were an office in the barn and the use of part of the barn and the yard area for storage in connection with a construction business. Furthermore, it was agreed that storage and distribution activities associated with the scaffolding business were introduced in 2013 when the scaffolding business started. The scaffolding business also uses a large rack and two buildings for repair work and welding. It is evident that the scaffolding business introduced a new business activity to the site in 2013 which is materially different from the construction business which was limited to storage and distribution. Consequently, the scaffolding business constitutes a material change in the use of the land.
40. It was also agreed at the Inquiry that after the material date there was an increase in the intensification of the storage and distribution use occurring in EN2 site. The courts have held ⁴ that intensification of a use can constitute a material change of use as a use transitions from an ancillary use to a separate use component of a mixed use. In this case, the storage and distribution uses that took place before the material date were very limited including there being some tiles, adhesive and drainage equipment being stored in the barn associated with the ceramic tiles business.
41. It is my understanding that the barn was also used for agricultural purposes until 2009 which is the purpose for which planning permission was granted. The construction materials were moved into the barn after the lease on a site in Kingswood was terminated in 2007. I understand that the material stored was relatively small and at that time there was little construction business occurring compared to a time previously when it operated out of the Kingswood site and later years. The evidence provided by Mr Baber described that the construction business was subsidising the farm. There is inconsistency in the evidence given with respect to precisely how the barn was being used for storage – Mr Hardwick recalled that the materials in the barn were associated with the extension of the residential property, but Mr Baber himself did not agree with this. That disagreement combined with Mr Baber's admission that he is not good at remembering precise dates brings uncertainty as to what was actually occurring in the barn before the material date.
42. Furthermore, in 2009 an Inspector granted planning permission for an extension to the dwelling based on the need for additional residential space to serve the farm. If at that time the storage element in the barn had been significant or had there been other commercial vehicles around the site, these would have been noted and would have gone against the appellant's case at that time. Instead, the Inspector granted the extension on the grounds that it was needed to serve an agricultural enterprise.
43. The above evidence strongly indicates that the storage and office use reached an intensification level sufficient to constitute a material change of use after the date when the farming activity ceased and the construction business recommenced. The evidence presented by Mrs Baber suggests that winning

⁴ London Borough of Brent v Secretary of State [2019] EWHC 1399 (Admin)

the contract to refurbish RAF Innsworth in July 2009 represented a significant change in the level of construction work being undertaken.

44. Based on my conclusion that the notices are correct in identifying two separate planning units the appellants cannot demonstrate 10 years continuous use starting with the date of the breach. Therefore, the appeals on ground (d) must fail.

The appeals on ground (a)

45. With respect to Appeals A and C the main issues are:

- i. Whether or not the proposal is inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework);
- ii. The effect of the proposal on the openness of the Green Belt and on the character and appearance of the landscape; and
- iii. If the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Inappropriate development in the Green Belt

46. The Framework advises that that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In relation to the Green Belt, Policy C5 of the CS states that other proposals for development in the Green Belt will need to comply with the provisions of the Framework or relevant local plan policies. CS34 states that development must protect the Green Belt from inappropriate development.
47. When considering planning applications substantial weight should be given to any harm to the Green Belt by reason of its inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Paragraph 146 of the Framework lists a number of forms of development that are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Among other purposes, the Green Belt serves to safeguard the countryside from encroachment.
48. With respect to EN1 the change of use of the land from agricultural use to ancillary residential use could fall within the change of use category, but the alleged breach and therefore the proposal under ground (a) is also for operational development including the erection of an aviary with other engineering operations such as the construction of the pond and hardstanding area. It is my view that those elements of operational development take the proposal outside the exception relating to changes of use. As such the development is inappropriate in the Green Belt. I attach substantial weight to the harm arising due to the nature of the development as inappropriate within the Green Belt.
49. Regarding EN2 it is agreed that the external storage and structures identified in the notice is inappropriate development in the Green Belt. In such

circumstances the proposal should not be approved except in very special circumstances.

Openness of the Green Belt and Character and Appearance of the Landscape

50. With respect to openness the courts have held⁵ that the inclusion of material change of use within paragraph 146 of the Framework imply that it is the Government's view that there is nothing inherent with a change of use of land that makes this type of development harmful to the Green Belt. However, in my opinion there is harm to the Green Belt because of the residential character that has been introduced and also the operational development. As stated above, a key purpose of the Green Belt is to safeguard the countryside from encroachment and the development which includes a pond, rockery, fences, aviary and hardstanding all comprise residential elements which encroach into the countryside and therefore conflict with the Framework.
51. Regarding EN2, the harm to the openness of the Green Belt associated with the operational development is harmful to the Green Belt both in terms of the actual volume of development that has occurred and visually. The operational development, which comprises the three buildings including a large scaffolding rack are incongruous in this rural location. Furthermore, the level of activity generated by the development is significant and is at odds with the rural setting. In addition it is quite clear to me that the development conflicts with the purpose of the Green Belt designation which is to protect the countryside from encroachment. Furthermore, it is also evident to me that the development is harmful in terms of its conflict with the Green Belt objective of assisting urban regeneration by encouraging the recycling and re-use of derelict and other urban land. These matters have significant weight in this case.
52. Furthermore, although I appreciate that as a consequence of boundary hedges and landscaping the appeal sites are not highly prominent in the landscape from the adjacent main road or public rights of way network, there is no doubt in my mind that the development proposals before me impact negatively on the agricultural landscape. The residential character associate with the first notice and the commercial character associated with the business activities taking place on EN2 site are at odds with the characteristic agricultural landscape of the surrounding area with open fields and hedgerows. As such the proposals conflict with Policies CS1 and CS9 of the CS and PSP2 of the PSP Plan which, among other objectives seek to ensure that developments conserve and where appropriate enhance the quality of the landscape.

Other Considerations

53. The harm to the Green Belt can only be approved if very special circumstances exist. This will only be the case where the harm to the Green Belt by reason of inappropriateness and also in this case the harm to openness and character is clearly outweighed by other considerations.
54. With respect to EN1 the considerations that outweigh the harm to the Green Belt are very limited. I understand that the appellants may enjoy having a larger garden area, but there is insufficient evidence before me to conclude

⁵ Europa Oil and Gas Ltd v Secretary of State [2014] 1 P&CR at [640]

that their original garden area was insufficient in size to serve the residential property. The extended additional ancillary residential use may also have provided some improvements to the access to the residential property. However, I have insufficient evidence that the original access was inadequate or unsafe. In addition, in circumstances where the unauthorised commercial activities on the adjacent site are dismissed, the improvements to the residential access are not needed in any case.

55. The appellants have identified several matters which they consider amount to very special circumstances with respect to the commercial operation of the site. Firstly, the business employs a significant number of people with a core of around 60 employees, although the exact number fluctuates depending on the workload. It is also advanced by the appellants that they make a contribution towards addressing the local housing crisis and the wider local economy.
56. I consider that the above cannot be material considerations in support of the development if there is sufficient space for the activities currently taking place on EN2 site to be located at alternative locations because the same activities and associated benefits could be derived from the businesses being located elsewhere. Therefore, I conclude on this factor that these arguments add little to the appellants' arguments in support of the development taking place on the appeal site. It is also argued by the appellants that due to the local nature of their business activities they can only operate viably within a relatively small geographical area. Their evidence suggests that current business activities take place within a wide area covering an approximate 25 mile radius from the appeal site. Therefore, I have insufficient evidence to show that the businesses need to be located at the appeal site rather than any other site within a wider geographical area that offers the same or even better access. The businesses are not situated on this site to serve particular business needs from Iron Acton itself.
57. I am not satisfied that the appellants have demonstrated that the uses on EN2 site have particular locational requirements and their needs could reasonably be met on alternative accessible and secure locations in the wider area. Indeed, Mr Baber agreed that there are other sites in the wider South Gloucestershire area that could provide the levels of security and accessibility required.
58. The appellants also contend that where employees reside is significant in the suitability of Cherry Lodge for business activities. However, the relevant plan submitted as evidence shows that employees live across a dispersed area, although some do live close to Iron Acton. In addition, it has also been shown that there are other sites which are equally or more convenient for employees to access. There may be some employees who may not wish to travel to an alternative site, but that does not mean to say that an alternative location would render the businesses unviable if they were required to be moved. The availability of a suitable workforce in the wider area is illustrated by the evidence that the number of employees fluctuates significantly within relatively short periods of a few months.
59. It is clear to me that the applicants did not specifically choose the appeal site due to locational advantages, but rather it was based on the fact that they owned the land and it is adjacent to their place of residence. There are advantages of its location in terms of saving rent, for example, but this along

with other factors such as the appellants' personal preferences carry little weight in the overall planning balance.

60. I appreciate that upholding the enforcement notices would cause considerable upheaval for the appellants' businesses, but that would be a consequence of them having set up their businesses in this location without the benefit of planning permission in the first place. Should the outcome of the appeals result in a reduction on the levels of business activity being undertaken by the appellants or the closure of businesses then I understand that there would be material harm with respect to employment and the level of economic activity in the area. However, there is insufficient evidence before me to convince me that the employment and activities taking place on Site 2 could not be accommodated at another site or sites at alternative locations.
61. The Council has raised the issue of protecting the best and most versatile agricultural land (BMV) as a reason for issuing both enforcement notices. However, although I can see that this issue is embedded within Policy CS34 of the CS, the context in which this is identified in both of the notices is clearly in terms of the landscape impact of the alleged breaches of planning control and not in the context of the loss of the best and most versatile agricultural land and opportunities for food production. Nonetheless, the fact that the issue is not specifically identified in the enforcement notices is not a reason for taking it into account.
62. The notification level for Natural England for the loss of BMV is 20 hectares and in this case the loss would be significantly less than that. Policy CS34 requires development proposals to protect the best and most versatile agricultural land and therefore by seeking to remove an area of BMV from agricultural use there is a conflict with the provisions of CS34 and the Framework which also requires development to recognise the benefits of BMV land.

Planning balance and conclusion – ground (a) appeals

63. In respect of the enforcement notices, the breaches of planning control constitute inappropriate development in the Green Belt. Harm has been caused to the openness of the Green Belt and I have identified some conflict with the purposes of the Green Belt. The harm attracts substantial weight. I have also found there to be to the character and appearance of the landscape as a consequence of the unauthorised developments which have taken place. The weight given to the Green Belt harm, arising from the breaches of planning control is not clearly outweighed by the identified other considerations sufficient to demonstrate very special circumstances. Therefore, and on balance, the developments do not accord with the Green Belt aims of the Framework and LP. Therefore, the ground (a) appeals fail.

The Appeals on Ground (f)

64. The ground of appeal is that the steps required in the notices to be taken exceed what is necessary to achieve their purposes. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
65. Since EN1 requires the cessation of the use of the land for ancillary residential use, the removal of fencing, residential paraphernalia, filling in the pond,

- removing the rockery, planting native species hedge around the boundary of the residential property and restoration of the land to its condition before the breach took place, the purpose is to remedy the breach. Measures short of those identified in the Notice would not achieve that purpose.
66. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With respect to requirement (a), Building C is currently being used by SWC Koi and accordingly it is accepted by the Council that it is not in residential use. Consequently, the main parties have agreed that this requirement should be removed from the Notice. The remaining buildings A and B clearly facilitate the ancillary residential use of the land as consequently their removal is not excessive in the context of the Council's overall requirement to remedy the breach of planning control.
67. The fence which is situated along part of the western boundary of the land is not required for the agricultural use of the land and as such its removal is entirely reasonable. The appellants contend that it is outside the planning unit identified by the plan attached to the enforcement notice; however, as structure which facilitates the unauthorised use of the site it should be removed. Although requirement (c) relates to relatively small items, it appeared to me at the Inquiry that the appellants had no objection to their removal. Although the items in question are not visually prominent in their surroundings, they facilitate the unauthorised use of the land as ancillary residential use and contribute toward the harmful change in the character of the land. As such they should be removed in accordance with the Notice.
68. It is my understanding that the pond is not used in association with the koi carp enterprise occurring in Building, but rather is part and parcel of the ancillary residential use of the land. In addition, as a pond it has a domestic appearance and contributes to the landscape harm associated with the change of use of the land. The rockery is functionally associated with the pond and as such requirement (e) should be removed along with the pond. Although it is part of the filtration system for the pond it has a domestic appearance and as such should be removed as part of the wider requirements to cease the unauthorised use of the land. I am aware that planning permission has been granted previously for a pond at the appeal site but in a different location to the one that has been constructed and which adds to the overall harm associated with the unauthorised change of use of the land.
69. Area 2 identified on the enforcement notice plan does not appear to accurately correspond with the area where the residential turning circle has been created. As part of the breach of planning control it is reasonable for the Council to require the area of land in question to be removed, including paving and hardstanding within the area edged red. However, due to the doubt with respect to the precise area in question I consider that a variation of this requirement is necessary. As such a variation to read "Remove all paving and hardstanding shown approximately by the land edged red on the attached plan and re-seed the areas from which it has been removed with grass" is suggested.
70. The appellants consider that requirement (g) relating to planting a native hedge around the residential property is absurd. I understand that there is no specific need to demark a boundary between the land ownership; however, for certainty I agree with the Council that a boundary should be put in place. The

appellants witness, Mr Campbell, suggested that a fence rather than a boundary would be suitable and I agree with that suggestion. As such the notice should be varied accordingly. In addition, a boundary feature in the location set out in the Notice would be a continuous feature which would not allow vehicular or any other access to Cherry lodge. Therefore, a further variation to EN1 is needed to ensure that the necessary access to the residential property is provided for.

71. The final requirement (h) seems to me to be excessive since the remaining requirements would ensure that return of the land to agricultural land. Furthermore, there remains some uncertainty about precisely when the change of use of the land occurred it is unreasonable for the Council to specify that the land is returned to its condition before the breach took place.
72. With respect to EN2, the requirements are to cease the use of the land for offices, general industrial use and commercial storage and distribution, to remove various structures, materials, vehicles, plant, machinery and storage vessels associated with the unauthorised uses, remove all hardstanding and restore the land to its condition before the breach took place. Therefore, again the purpose is to remedy the breach. Measures short of those identified in the Notice would not achieve that purpose.
73. Requirement (a) is a basic requirement to cease the mixed use operation of the site. In order to remedy the breach of planning control on the site it is reasonable for the Council to require the cessation specified. I acknowledge the appellants' views that there is no recognise that there is no harm with specific reference to the use of the barn itself, but nevertheless, as part of the mixed use breach, the activities taking place on the site should cease. Any measure short of that would clearly fail to meet the overall objective of the Notice.
74. Requirement (b) relates to structures which are clearly associated with and facilitate the mixed use of the site and constitute operational development which is specified in the alleged breach of planning control. As such, they should be removed. It is my understanding that the appellants no longer object to requirement (c) of the Notice.
75. The appellants argue that it is excessive to remove all the hardstanding since part of it was created for the purpose of the authorised barn building. However, there is insufficient evidence before me that the area of hardstanding would be required for the operation of any agricultural activities on the land. As such, as an area of hardstanding that facilitates the unauthorised change of use of the land for mixed use purposes it should be removed.
76. I find that requirement (e) is excessive given that the other requirements of the Notice would in effect return the land to its previous condition. As such it should be deleted from the Notice.

The Appeals on Ground (g)

77. The ground of appeal is that the time given to comply with the requirements is too short. The three calendar months would be sufficient to cease the use of the land, remove fencing, residential paraphernalia, the rockery and paving and hardstanding areas and fill in the pond. The appellants have expressed

their wish to explore with the Council whether planning permission may be granted for certain elements of the overall development. On that basis I consider that the compliance period should be extended to six months to enable the appellants to explore with the Council whether there are alternatives which may be acceptable.

78. Furthermore, the Council agrees that there should be a variation to the time period under requirement of the Notice which relates to the hedge planting to form the boundary to the original residential unit. Should the appellants wish to plant a hedge rather than a fence, then the period should be extended to the planting season following the date of this decision. The wording in the Notice with respect to the timescale should be amended according.
79. To these extents the appeal on ground (g) succeeds with respect to EN1.
80. The appellants suggest that a period of two years would be appropriate for compliance with the requirements of EN2. However, as indicated by the Council that would amount to a temporary planning permission. I understand the challenges that the appellants will face with respect to finding accessible and suitable alternative premises to continue their businesses, but against that issue I must reconcile the harm that continues as a consequence of the unauthorised development. I consider the harm to the Green Belt to be significant in this case and attach great weight to that matter in determining these appeals.
81. Overall, I consider six months to be a suitable timescale in this particular case. As such with respect to EN2 the appeal on ground (g) fails.

Formal Decision

EN1: APP/P0119/C/18/3203477 and APP/P0119/C/18/3203478

82. I direct that the enforcement notice is varied by:

- a) The deletion from paragraph 5(a) of the words "B' and 'C'" and the substitution of the words "and B"
- b) The deletion from paragraph 5(f) of the word "from" and the
- c) substitution of the words "shown approximately by "
- d) The addition in paragraph 5(g) of the words "or fence" after the word "hedge" and also the addition of ", allowing for the inclusion of a suitable gap for vehicular and pedestrian access to the residential property Cherry Lodge " after the word "plan"
- e) The deletion of paragraph 5(h)
- f) The deletion from paragraph 6 of the words "3 months" and the substitution therefor of the words "6 months" as the time for compliance with the requirements.
- g) The addition to paragraph 6 of the words "Should a hedge be planted pursuant to requirement 5(g) then the period for planting is extended to the planting season following the date of this decision" after the words "takes effect"

83. Subject to these variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

EN1: APP/P0119/C/18/3203477 and APP/P0119/C/18/3203478

84. I direct that the enforcement notice is varied by:

h) The deletion of paragraph 5(e)

85. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Horatio Waller	of Counsel, Instructed by South Gloucestershire Council
He called	
Mr Neil Howat	South Gloucestershire Council Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mr Christian Hawley	of Counsel, Instructed by Thrings Solicitors
He called	
Mr David Baber	Appellant
Mrs Lisa Baber	Appellant
Mr Marcus Bartley	
Mr Mitchell Rees	
Mr David Hardwick	
Mr Mark Campbell	Evans Jones Surveyors and Planning Consultants

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Statement on Behalf of Mr and Mrs Baber
2. Opening Submissions on Behalf of South Gloucestershire Council
3. Closing Statement on Behalf of Mr and Mrs Baber
4. Closing Submissions on Behalf of South Gloucestershire Council
5. Agricultural Planning Appraisal, Planning Application for Proposed New Farm Shop/Meat Processing Facility and Extension to Agricultural Dwelling by Robert P Fox BSc (Hons) FAAV of Gloucestershire County Council dated 12 January 2009
6. Appeal Decision APP/P0119/A/09/2103318 dated 26 November 2009
7. Extract from Planning Policy Statement 7: Sustainable Development In Rural Areas
8. *Burdle and Another v Secretary of State for the Environment and Another* [1972] 1 WLR 1207
9. *Gladman Developments Ltd v Canterbury City Council* [2019] EWCA Civ 669
10. *Murfitt v Secretary of State for the Environment and Another* [1980] 40 P. & C.R. 254
11. *Somak Travel Ltd v Secretary of State for the Environment and Another* [1988] 55 P. & C.R. 250
12. *The London Borough of Brent v The Secretary of State for Housing, Communities and Local Government, Oakington Manor Primary School* [2019] EWHC 1399 (Admin)