



Appeal Decision

Accompanied site visit made on 13 March 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/G1630/C/19/3224766

Land adjacent to Oaklands, Gloucester Road, Staverton, Cheltenham, GL51 0TF

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
- The appeal is made by Shaun Dean Gorman ("the Appellant") against an Enforcement Notice issued by Tewkesbury Borough Council ("the Council").
- The Enforcement Notice was issued on 7 February 2019.
- The breach of planning control as alleged in the Enforcement Notice is:
- Without Planning Permission:

1. Within the area shaded green on the plan attached to the Enforcement Notice to the west of Oaklands:

A material change of use of agricultural land for use as a commercial depot and base for 'Pave Drive' Limited, a building construction company, including works for;

(a) The construction of a 0.225 hectare size 'compound' laid with a compacted gravel surface area; the construction of a close-boarded fenced perimeter with floodlighting and a gated access with brick piers; an externally planted border along the compound south boundary, and a compacted hard core access track.

Within the compound:

(b) The construction of a large industrial type building with CCTV and external lighting installations and the construction of a concrete 'pad' with drain.

(c) The erection of 2 x smaller brick buildings (marked 'X' on plan attached to the Enforcement Notice)

At the south boundary adjacent to the B4063 and part boundary with Oaklands:

(d) Between the positions marked A and B along the black dashed line as indicated on the plan attached to the Enforcement Notice; the construction of brick walling, brick piers and gates and the unauthorised formation, laying out and construction of a means of access and where adjacent to the highway exceed 1 metre in height.

2. Within the land shaded blue on the plan attached to the Enforcement Notice to the east of Oaklands:

(a) A material change of use from agricultural land to a use for the storage of building materials and associated paraphernalia, plant and machinery.

(b) The construction of an access track.

At the south boundary of the land to the east of Oaklands

(c) Between the positions marked C and D along the black dashed line as indicated on the plan attached to the Enforcement Notice; the construction of close-board fencing, bricks walls, brick piers and gates adjacent to the B4063 and which exceed 1 metre in height.

- The requirements of the Enforcement Notice are:

Within 1 month of the effective date of this notice, permanently cease the use of the land for use as a commercial depot and base for 'Pave Drive' Limited and revert the use of land for the purposes of agriculture.

Within the land shaded green to the west of Oaklands:

- (1) Remove the lighting columns and the entire means of enclosure comprising the compound perimeter, including gates, brick piers, close-boarded fencing, concrete posts and all materials fixtures, fittings and footings comprising their construction.
- (2) Remove all buildings including their floor-slabs and materials that comprise the buildings' construction.
- (3) Remove the entire compound gravel surface, the concrete pad and close up the drain.
- (4) Remove the planted border and plants from the south boundary of the compound.
- (5) Remove the access track and all material comprising its construction.
- (6) Restore the land shaded green to its condition before the breach took place by levelling the ground, laying topsoil and re-seeding it with grass.
- (7) Between the positions marked A and B along the black dashed line indicated on the plan attached to the Enforcement Notice: Remove the brick walling, brick piers and gates and replace with post and rail stock proof fencing and gates not to exceed 1.2 metres in height.
- (8) Remove from the land all debris resultant from compliance with steps 1 to 7

2. Within the land shaded blue to the east of Oaklands:

- (1) Cease the use of the land for the storage of buildings materials, associated paraphernalia, plant and machinery.
- (2) Permanently remove from the land all building materials and associated paraphernalia, plant and machinery and do not re-site within any of the land comprising land registry titles GR123641; GR328357; GR267830 unless authorised by an express grant of planning permission.
- (3) Except for the first 30 metres from the entrance off the B4063 remove the access track and all materials comprising its construction and return the land to its previous condition by levelling the ground, laying topsoil and re-seeding it with grass.
- (4) Between positions marked C and D along the black dashed line indicated on the plan attached to the Enforcement Notice: Permanently remove the close-boarded fencing, concrete posts, brick walls and gates from the south boundary of the land adjacent to the B4063 and replace them with stock-proof post and rail fencing and gates not to exceed 1.2 metres in height.

(5) Remove from the land all debris resultant from compliance with steps 1 to 4.

- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice is upheld with corrections and variations.

Definitions

1. In this Appeal Decision I will refer to:

- a) The Plan attached to the Enforcement Notice as "the Plan".
- b) The land edged red on the Plan as "the Appeal Site".
- c) That part of the Appeal Site shown shaded green on the Plan as "the Green Area".
- d) That part of the Appeal Site shown shaded blue on the Plan as "the Blue Area".
- e) The compound within the Green Area as "the Compound".
- f) The internal access road leading to the Compound as "the Internal Road".
- g) The construction of a close-boarded fence around the majority of the perimeter of the Compound as "the Compound Fencing".
- h) The planted border along the Compound's southern boundary as "the Planted Border".
- i) The large industrial type building with CCTV and external lighting installations as referred to in the Enforcement Notice as "the Compound Building".
- j) The brick walling, brick piers and gates between the positions marked A and B along the black dashed line on the Plan as "the A-B Boundary".
- k) The close-board fencing, bricks walls, brick piers and gates adjacent to Gloucester Road between the positions marked C and D along the black dashed line as indicated on the Plan as "the C-D Boundary".
- l) The dwelling-house and its curtilage which is adjacent to Gloucester Road and the Appeal Site as "Oaklands".
- m) The public highway along the frontage of the Appeal Site as "Gloucester Road".
- n) That part of the public footpath that links Gloucester Road with the B4634 and which runs adjacent to the west side and to the rear of Oaklands as "the Public Footpath".
- o) The agricultural building that was granted conditional planning permission by the Council on 12 January 2017 under Council Reference 16/01066/FUL as "the Approved Agricultural Building".

Procedural Matters

2. The Enforcement Notice states that it relates to a material change of use. However, it also includes operational development along parts of, or near, the south boundary of the Appeal Site. This operational development is not part and parcel of the change of use but is operational development in its own right. The Enforcement Notice can be corrected by adding the words:
 - a) "AND OPERATIONAL DEVELOPMENT" after the wording "MATERIAL CHANGE OF USE" in the heading.
 - b) "4/" before the figure 10 in line 2 of Part 4 of the Enforcement Notice.
3. I do not consider that any injustice arises from these corrections as:
 - a) The Appellant is fully aware of the operational development along or near the frontage of the Appeal Site.
 - b) The Appellant is represented by professionally qualified Planning Consultants.
 - c) It is clear from the evidence that the operational development was not immune from enforcement action at the date the Enforcement Notice was issued.
4. The Appeal Site is described in the Enforcement Notice as, "Land at GR267830 & GR328357 (The Land Registry Titles) Agricultural land shown on the attached plan edged red which surrounds to the north, east and west, the residential property known as Oaklands". The description of the land in the heading above accurately reflects the Appeal Site.
5. The Ground (g) appeal was added by the Appellant at the Statement of Case stage. Whilst the Council object to the late reliance on this ground of appeal I do not consider any injustice arises from dealing with it.
6. I have read the Appellant's criticisms regarding the lawfulness of the Enforcement Notice as set out in their Statement of Case. The Enforcement Notice was drafted in a way that specifically tells the Appellant what the breaches of planning control are within the Green Area and the Blue Area and what and where the unauthorised operational development is. It explains what the lawful use of those areas are i.e. agricultural; what uses those areas were being put to prior to the Enforcement Notice being issued and what the Appellant has to do to remedy the breaches of planning control. The allegations of the breaches of planning control within those specific areas have in my judgment been correctly identified. The Appellant has not identified any planning unit which differs from the Appeal Site. The Council have pointed out that prior to the issue of the Enforcement Notice the uses carried out by the Appellant within the Appeal Site did not include any agricultural uses. The Appellant has not suggested that the Council's assessment about there being no agricultural uses was incorrect.
7. The Appeal Site is within the open countryside and the Green Belt.
8. I am advised that:
 - a) The Appeal Site is owned by the Appellant and Pave-Drive Limited.

- b) The Appellant is a Director of Pave-Drive Limited.
 - c) Pave-Drive Limited are a patio and driveway contractor.
9. The Approved Agricultural Building was permitted on the basis that the Appellant required it for agricultural uses namely the farming of 20-breeding ewes, 15 cattle, storage of hay, agricultural machinery and implements.
10. The Internal Access Road is described in the Enforcement Notice as having a compacted gravel surface area. At the time of my site visit the surface of the Internal Road comprised a tarmac surface with brick edgings.
11. The Compound is described in the Enforcement Notice as having an area of 0.225 of a hectare. The Council confirmed that this is incorrect and that the Compound's area is about 0.325 of a hectare. The Appellant did not dispute this. No injustice would arise from me correcting this matter.
12. The requirements of the Enforcement Notice as stated at Part 5 commence as follows:
- a) *"Within 1 month of the effective date of this notice, permanently cease the use of the land for use as a commercial depot and base for 'Pave Drive' Limited and revert the use of land for the purposes of agriculture."*
 - b) The use of the wording, "Within 1 month of the effective date of this notice" is confusing because the compliance period stated at Part 6 of the Enforcement Notice is *"6 months after the notice takes effect"*. I therefore intend to correct the Enforcement Notice by deleting the words, *"Within 1 month of the effective date of this notice"*.
 - c) The wording also refers to *"for 'Pave Drive' Limited"*. It is unnecessary to include these words because it is the use which the Council wish to cease whether it be by Pave-Drive Limited or any other person or body. I will include the words, *"for a building construction company"* as this is what Pave-Drive Limited are and it also reflects other requirements of the Enforcement Notice.
 - d) Further, the wording also refers to *"and revert the use of land for the purposes of agriculture."* The Enforcement Notice can only require, amongst other things, steps to discontinue the breach of planning control. It does not allow the Council to require the lawful use to resume. Clearly, any permanent use of the Appeal Site other than an agricultural use would require planning permission from the Council.
- I therefore intend to correct the first paragraph of Part 5. of the Enforcement Notice so that it reads:
- "Permanently cease the use of the land for use as a commercial depot and base for a building construction company."*
13. The Enforcement Notice requires at paragraph 5. 1. 4. the removal of the Planted Border. The Planted Border does not comprise development as defined in the 1990 Act. I therefore consider that this requirement should be deleted.
14. At Step 7 of Part 5 1. and Step (4) at Part 5 2. of the Enforcement Notice it states in part, *"and replace with post and rail stock proof fencing and gates not to exceed 1.2 metres in height."* In a case such as this the 1990 Act does not

allow the Council to specify within the Enforcement Notice a requirement to erect such fencing although I accept that this requirement was included to assist the Appellant in knowing what form of replacement enclosure would be acceptable to the Council in this location. I will therefore delete this part of the requirements.

Reasons - Ground (b) - that the breach of control alleged has not occurred as a matter of fact.

The Blue Area

15. The Appellant stated within the Appeal Form that:

- a) The storage of materials and equipment was temporary.
- b) The Appeal Site is not used as an operating centre for his business i.e. Pave-Drive Limited.
- c) The Appeal Site was used for the construction of Oaklands and other external works.

16. Prior to the Enforcement Notice being issued the Council had noted that the Blue Area was being used for the storage of a significant quantity of building materials and had informed the Appellant that this amounted to a material change of use requiring planning permission. The Council had also noted that vehicles and plant used in association with the storage of materials were also kept within the Blue Area.

17. It is clear from the photographic evidence submitted that the Blue Area continued to be used for storage of building materials long after the majority of the building works for Oaklands, the Compound Building and the Compound had been completed.

18. Further, the Appellant had been informed that the Compound Building had not been built in accordance with the permission for the Approved Agricultural Building.

19. As at the date of my site visit:

- a) The use of the Blue Area for the storage of building materials, paraphernalia, plant and machinery had ceased and these items had been removed.
- b) The access track used in connection with the Blue Area had been removed.

Notwithstanding this, it is clear from the evidence before me that the breach of planning control had occurred within the Blue Area prior to the issue of the Enforcement Notice. No evidence was adduced by the Appellant that the storage uses within the Blue Area did not amount to a material change of use requiring planning permission.

20. I therefore find, as a matter of fact and degree, that the Blue Area has, on the balance of probabilities, been used for the use specified in the Enforcement Notice. The appeal on Ground (b) therefore fails.

The Green Area

21. Prior to the issue of the Enforcement Notice the Council had not seen any of the agricultural uses for which the Approved Agricultural Building had been granted planning permission being carried out at the Appeal Site.
22. Photographic evidence provided by the Council showed that prior to the Enforcement Notice being issued:
 - a) The Compound was largely unused other than a very small area was used for the storage of building materials and aggregates.
 - a) The Compound was not being used for the storage of agricultural vehicles used at the Appeal Site.
 - b) A number of non-agricultural vehicles were parked in a line within the Compound.
 - c) The interior space within the Compound Building, was relatively empty. There were within the Compound Building:
 - (i) Two diggers.
 - (ii) A trailer (containing, amongst other things, children's bikes).
 - (iii) A sit-on mower.
 - (iv) A LPG bottle.
 - (v) A workbench.
 - (vi) A few hand tools.
 - (vii) A child's quadbike.
23. The onus of proving that the alleged breach of planning control has not occurred as a matter of fact rests with the Appellant. He has to prove this on the balance of probabilities.
24. The Appellant has not:
 - a) Produced any evidence of any livestock or hay storage being kept at the Appeal Site prior to the issue of the Enforcement Notice.
 - b) Explained why the items within the Compound or the Compound Building were required in connection with agricultural uses at the Appeal Site.
25. I am of the view that the Compound, the Compound Building, the means of enclosure around the Compound and the Internal Access road leading to the Compound have the character and appearance of a commercial depot/base rather than agricultural use.
26. The Appellant stated that the Compound Building is an agricultural building but there is no rational explanation as to why:
 - a) The Compound Building is of a non-agricultural design.
 - b) The design of the Compound Building is materially different from the Approved Agricultural Building.
 - c) The Compound is of such a large area given the relatively small area of agricultural land within the Appeal Site.

- d) The Internal Access Road has been built to an engineering standard which is far greater than is necessary for the level of use that would be generated by an agricultural use at the Appeal Site.
27. The Appellant explains that he has premises out of which Pave-Drive Limited operate at Longford Stables and Unit 4, The Old Bakery. However, that does not mean that the alleged breach of planning control at the Appeal Site did not occur as a matter of fact. The fact that the alleged breach of planning control was not actively being carried out as at the date of my site visit does not mean that it did not occur prior to the service of the Enforcement Notice. The Appellant asserts that it makes no commercial or other sense to operate Pave-Drive Limited's business from the Appeal Site. No real explanation for that assertion is provided. The Council have explained that there is no planning permission to use the Longford Stables site for the use to which it is put by Pave-Drive Limited and this has not been disputed by the Appellant.
28. I note that there are no facilities such as a telephone or office furniture within the Compound Building that you might expect within a commercial depot. However, those facilities could be provided elsewhere, and the depot/base use operate from part of the Appeal Site.
29. The Appellant also states that vehicles used by Pave-Drive Limited were at the Appeal Site during the construction of the Compound Building and Oaklands and for other land maintenance purposes. However, the photographs of Pave-Drive Limited's vehicles parked within the Compound give the visual impression of being kept there in connection with a depot type use i.e. they are parked neatly in a row rather than parked randomly. Further still, at the time the photographs were taken (January 2019) the Compound, the Compound Building, Oaklands, the walls and fences at Oaklands and the Appeal Site had been completed. The Appellant did not identify what specific works were being carried out by Pave-Drive Limited's employees or the dates when those works took place. Further still, there were no statements from any of the employees who were allegedly carrying out the works at the Appeal Site.
30. I therefore find, as a matter of fact and degree, that the Green Area has, on the balance of probabilities, been used for the use specified in the Enforcement Notice. The appeal on Ground (b) therefore fails.

Reasons - Ground (c) - that there has not been a breach of planning control.

31. The Appellant stated within the Appeal Form that:
- a) The close boarded fence, gated access, brick piers are a means of enclosure that fall within permitted development limits.
 - b) The Compound Building is the same building as the Approved Agricultural Building and was used for agriculture prior to its temporary use during the construction of Oaklands.
 - c) The C-D Boundary is not adjacent to the highway and does not exceed 2m in height and therefore benefits from permitted development rights.
32. In his Statement of Case the Appellant suggests that the A-B Boundary falls within permitted development limits.

33. The onus of proving that the matters alleged in the Enforcement Notice are not breaches of planning control rest with the Appellant. He has to prove this on the balance of probabilities.

Piers, gates and fencing around the Compound

34. The piers and gates at the entrance to the Compound ("the Compound Entrance") exceed 2m in height. Accordingly, they do not fall within permitted development limits. The fencing along the east side of the Compound is the subject of a separate Enforcement Notice appeal¹.
35. The fencing along the south, west and north sides of the Compound were erected as part of the same development that includes the Compound Entrance. Accordingly, as part of the development requires planning permission the whole of the aforementioned fencing also requires planning permission.

The Compound Building

16. The Compound Building is not the same building as the Approved Agricultural Building. There was no evidence that the Compound Building was used for agricultural uses prior to its claimed temporary use during the construction of Oaklands.

The C-D Boundary

17. The C-D Boundary has been erected along the frontage of agricultural land owned by the Appellant.
18. The C-D Boundary includes timber fencing ("the C-D Fencing"). The C-D Fencing exceeds 1m in height.
19. In addition, there are brick walls, brick piers and double gates providing vehicular access to the Blue Area and the agricultural land in front of the Blue Area ("the Blue Land Entrance"). The Blue Land Entrance exceeds 2m in height. Accordingly, the Blue Land Entrance cannot be permitted development.
20. The Council have submitted a plan from the Highway Authority which indicates the extent of the public highway along this part of Gloucester Road ("the Highway Authority Plan"). Having regard to the Highway Authority Plan and my experience of dealing with these matters I conclude that the C-D Fencing is adjacent to Gloucester Road and therefore should not exceed 1m in height if it were to fall within permitted development limits.
21. For the reasons explained above the C-D Boundary cannot be permitted development and therefore the Ground (c) appeal fails.

The A-B Boundary

22. Part of the A-B Boundary is also the curtilage boundary of Oaklands. This boundary was subject to another Enforcement Notice (see footnote 1). I therefore consider that the A-B Boundary should be redefined by deleting "A" from its current position on the Plan and inserting "A" as shown on the plan annexed to this Appeal Decision. A consequence of this is that the sub-heading

¹ Appeal Decision – Planning Inspectorate Reference APP/G1630/C/19/3224764 & 765

between (c) and (d) in Part 3.1. of the Enforcement Notice needs to be amended. This does not result in any injustice to the Appellant.

23. Part of the A-B Boundary (as amended) has been erected along the frontage of agricultural land owned by the Appellant and adjacent to Gloucester Road.
24. The A-B Boundary primarily includes brick walls with brick piers and a gated entrance providing a vehicular access to the Internal Access Road and the agricultural land in front of the Compound. All of the A-B Boundary exceeds 1m in height and in places exceeds 2m in height.
25. Having regard to the Highway Authority Plan and my experience of dealing with these matters I conclude that the majority of the A-B Boundary is adjacent to Gloucester Road and exceeds one metre in height. Accordingly, that part of the A-B Boundary cannot be permitted development. Even if a small part of the A-B Boundary was not adjacent to Gloucester Road that part of the A-B Boundary would not be permitted development because elements of the A-B Boundary exceeds permitted development limits.
26. For the reasons explained above the A-B Boundary cannot be permitted development and therefore the Ground (c) appeal fails.

Overall Conclusion on the Ground (c) Appeal

27. For the reasons explained above none of the breaches of planning control identified by the Appellant benefits from permitted development rights. Accordingly, the Ground (c) appeal fails.

Reasons - Ground (a) and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice.

Policy

28. The Development Plan for the area includes:

- a) The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (adopted in December 2017) (“the Joint Core Strategy”). I have been referred to Strategic Objective 4, and Policies SD5 and SD6 of the Joint Core Strategy.
- b) Saved Policy AGR5 of the Tewkesbury Borough Local Plan to 2011 (“the Local Plan”).

29. I have also been referred to:

- a) The letter from the Department for Communities and Local Government dated 31 August 2015 (“the DCLG Letter”).
- b) Paragraphs 11, 15, 58, 130, 133, 134, 143, 144, 145, 146 and 170 of the National Planning Policy Framework (“the NPPF”).

30. The Joint Core Strategy explains, amongst other things, that:

- a) Planning decisions should conserve and enhance the area’s unique natural environment.
- b) The Green Belt will be protected from harmful development.

- c) Development will be limited to those types of development which are deemed appropriate by the NPPF unless very special circumstances can be demonstrated.
 - d) Development will:
 - i) Seek to protect landscape character for its own intrinsic beauty.
 - ii) Have regard to local distinctiveness.
 - iii) Demonstrate how it will protect or enhance landscape character and avoid detrimental effects on types, patterns and features which make a significant contribution to the character of the area.
31. The Local Plan explains, amongst other things, that the erection of agricultural buildings will be permitted provided that specified criteria are met.
32. The relevant parts of the NPPF explain that:
- a) Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.
 - b) The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
 - c) The purposes of the Green Belt are set out at paragraph 133.
 - d) Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
 - e) When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
 - f) The construction of new buildings is inappropriate in the Green Belt. Paragraph 145 specifies exceptions to this.
 - g) Certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include engineering operations.
 - h) Planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital.
33. The relevant parts of the DCLG Letter explains that:
- a) Intentional unauthorised development is a material consideration.
 - b) The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning

permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action.

- c) The Government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.

My Comments – The Blue Area

- 34. The Appellant specifically confirmed that he was not seeking planning permission for the breach of planning control that has occurred within the Blue Area.

My Comments – The Green Area

- 35. A Ground (a) appeal in a case such as this only allows me to grant planning permission for the breach of planning control i.e. the use of the Green Area as a commercial depot and base and the ancillary operational development namely, the Compound, the Compound Building, the Internal Road and the fencing around the Compound.
- 36. It is clear from the Appellant's representations that he does not seek planning permission to use the Green Area as a commercial depot and base for a building construction company. No planning arguments are advanced by or on behalf of the Appellant in support of the grant of planning permission to use the Green Area for the use enforced against. It is the Appellant's position that the breach of planning control has not occurred as a matter of fact. I have explained above that the Appellant considers that the Green Area is used for agricultural purposes.
- 37. Even if the Appellant had sought planning permission to use the Green Area as a commercial depot and base for a building construction company and to retain the Compound, the fencing around the Compound and the Compound Building in connection with that use it is clear that such development would be inappropriate development in the Green Belt. There are no other matters that outweigh the substantial harm caused by this inappropriate development.

The A-B and C-D Boundaries

- 38. The Appellant is of the view that the A-B and C-D Boundaries:

- a) Replaced previous boundary treatments.
- b) Have no materially greater impact than that which was replaced, or which could be erected under permitted development rights.

Whether the A-B and C-D Boundaries are inappropriate development in the Green Belt having regard to the NPPF and the Joint Core Strategy.

- 39. There is no definition of the term "building" in the NPPF. A "building" is defined at Section 336 of the 1990 Act and includes any structure or erection, and any part of a building, as so defined. Having regard to the statutory definition and my own experience I am of the view that the A-B and C-D Boundaries should be regarded as 'buildings' for the purposes of the NPPF.

40. As explained above the construction of new buildings is inappropriate in the Green Belt. As the A-B and C-D Boundaries are new buildings, they are inappropriate development in the Green Belt and are also contrary to the relevant parts of the Joint Core Strategy.

What is the effect of the A-B and C-D Boundaries on the openness of the Green Belt?

41. The A-B and C-D Boundaries along the frontage of the Appeal Site are highly visible from Gloucester Road. Further, the A-B boundary would also be highly visible from the Public Footpath².
42. In my planning judgement the A-B and C-D Boundaries have a significant impact on the openness of the Green Belt primarily due to their height. I know that the majority of agricultural land in the open countryside which is adjacent to vehicular highways require physical boundaries so as to:
- a) Stop animals escaping from agricultural land on to the highway, or
 - b) Defining the boundary between highway land and agricultural land.
43. However, the A-B and C-D Boundaries are of a substantial height and in places are about 2.2m above ground level. Further, the A-B and C-D Boundaries do not serve the purposes of the Green Belt as specified in paragraph 134(a) and (c) of the NPPF.
44. I am of the view that the A-B and C-D Boundaries cause substantial harm to the openness of the Green Belt.

The effect of the A-B and C-D Boundaries on the character and appearance of the area.

45. I am aware that there is significant built development to the south of Gloucester Road including opposite the Appeal Site. The Appeal Site is located on part of the land on the north side of Gloucester Road between the roundabout junction of Gloucester Road with the B4634 and the bridge carrying the motorway over Gloucester Road. I will refer to this stretch of Gloucester Road as "the north side of Gloucester Road". The north side of Gloucester Road is relatively rural in its character and appearance. I am aware that there are about two other accesses leading to residential type properties along the north side of Gloucester Road.
46. The frontage boundaries along the north side of Gloucester Road comprise mainly hedges with trees interspersed. Some of the hedgerows are low in height thus allowing clear views to the open countryside behind. The A-B and C-D Boundaries along the north side of Gloucester Road has introduced high brick walling and entry gates to the Internal Road and the agricultural land in front of the Blue Area and long stretches of high close boarded fencing which are wholly out of character with the open countryside location and this materially harms the rural character and appearance of the north side of Gloucester Road.

² The Public Footpath was physically obstructed as at the date the Enforcement Notice was issued and remained so at the date of the site visit.

47. I was not referred to any similar boundary treatment in the surrounding area which is comparable to the A-B and C-D Boundaries.
48. I therefore conclude that the A-B and C-D Boundaries materially harm the character and appearance of the area contrary to the Joint Core Strategy and the NPPF.

Is the harm by reason of inappropriateness, and any other harm, clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the retention of the A-B and C-D Boundaries?

49. The Appellants have referred me to the boundary treatment which existed prior to the A-B and C-D Boundaries being erected.
50. I have had regard to photographs of the previous frontage boundary treatment along the Appeal Site ("the Former Boundary"). In general terms, the Former Boundary comprised:
- a) A lower wall than now exists (albeit with piers) but between the piers were railings through which domestic type landscaping could be seen in front of the former dwelling-house at the Appeal Site.
 - b) Timber fencing between concrete posts which appear from the photographs to be lower than the current fencing along the C-D Boundary.
51. I do not consider that the harm arising from the Former Boundary caused the same levels of significant harm which are currently caused by the A-B and C-D Boundaries along the frontage of the Appeal Site.
52. The Former Boundary has been demolished/dismantled and another boundary of similar design could, if it exceeded 1m in height, only be built with the permission of the Council. I do not have sufficient details to require a replica of the Former Boundary to be built as a lesser step to that required by the Enforcement Notice.
53. I therefore conclude that the A-B and C-D Boundaries causes significant harm to the Green Belt. Its retention would be contrary to the Joint Core Strategy and the NPPF. The Ground (a) appeal is therefore dismissed.

Reasons - Ground (f) - that the steps required to comply with the requirements of the Enforcement Notice are excessive and lesser steps would overcome the objections.

54. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the removal of the unauthorised operational development and the cessation of the unauthorised change of use ("the Enforcement Notice's Objectives").
55. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. An appeal on Ground (f), in a case such as this, is limited to an argument that the steps specified in the Enforcement Notice exceed, as a matter of fact, what is necessary to achieve the Enforcement Notice's Objectives.

56. In my view the requirements of the Enforcement Notice are entirely appropriate to achieve the Enforcement Notice's Objectives and there are, in my assessment, no lesser steps that could be taken to achieve those objectives.
57. I conclude that no good reason is advanced by the Appellant as to why the requirements of the Enforcement Notice exceed what is necessary to achieve the Enforcement Notice's Objectives and, for the reasons explained above, this is the limited scope of a Ground (f) appeal in a case such as this. This ground of appeal must therefore fail.

58. The Appellant stated within the Appeal Form that:

a) Within the Green Area:

- (i) He should not be required to remove what is permitted development.

Comment: I have explained above that none of the unauthorised development within the Green Area is permitted development.

- (ii) It is unreasonable to require the removal of the Compound Building in the light of the planning permission for the Approved Agricultural Building. That the cessation of the business use achieves the Council's objectives.

Comment: The planning permission for the Approved Agricultural Building has expired. In these circumstances I consider that the most appropriate way to proceed if the Appellant considers that he can adapt the Compound Building to an appropriate agricultural building to meet the reasonable needs for the agricultural use of the Appeal Site is to apply for planning permission from the Council.

I do not consider that merely requiring the business use to cease would be appropriate as this would leave the Compound Building (which looks like a commercial building) in place and I have not been provided with any information as to how the Compound Building in its present form could be reasonably used in connection with the agricultural use of the Appeal Site.

- (iii) A smaller compound could be retained to serve the Compound Building (if it were to be used for agricultural uses)

Comment: There is no agricultural justification for the retention of the Compound (which is very large) given the overall size of the Appeal Site. In any event the Appellant has not suggested what size the Compound should be reduced to if it were to merely serve an ancillary agricultural building.

- (iv) The Internal Access Road is necessary in any event.

Comment: The Internal Access Road has been finished with a tarmac surface and brick edgings. It does not have the appearance of a track that would serve an agricultural holding.

- b) Within the Blue Area the Appellant is of the view that the requirements do not match the allegation.

Comment: I consider that the Enforcement Notice's requirements (as modified by this Appeal Decision) accurately reflects the breach of planning control relating to the Blue Area.

59. At the Statement of Case stage, the Appellant also argued:

- a) That there is a fallback position i.e. the Approved Agricultural Building. The Compound Building could be altered in order to reflect the Approved Agricultural Building.

Comment: I have explained that the permission for the Approved Agricultural Building has expired.

- b) That the Council have approved an agricultural building and that the other developments are necessary for an agricultural building to function.

Comment: As the permission for the Approved Agricultural Building has expired and that there was no permission for a compound or internal roadway to serve the Approved Agricultural Building then permission for these should be secured from the Council by way of a further application if that is the Appellant's wish.

- c) That the unauthorised developments do not cause material harm to the character and appearance of the area.

Comment: I have explained above that I consider that that significant harm is caused to the Green Belt and other material harm is caused to the visual amenity of the area.

60. For the sake of clarity, I consider that:

- a) After Step (6) in Part 5. 1. of the Enforcement Notice a sub-heading should be inserted stating, "At the south boundary adjacent to, or near, the B4063" as the A-B Boundary (as amended) is not within the Green Area.
- b) After Step (3) in Part 5. 2. of the Enforcement Notice a sub-heading should be inserted stating, "At the south boundary of the land to the east of Oaklands" as the C-D Boundary is not within the Blue Area.

61. These corrections do not cause any injustice to the Appellant.

Reasons - Ground (g) - that the time given to comply with the Enforcement Notice is too short.

62. The Appellant did not appeal on Ground (g) at the time the Enforcement Notice was appealed.

63. In his Statement of Case the Appellant simply states that the time to comply with the requirements should be extended to 365 days due to vagaries of the weather.

64. I do not agree with that assessment. The Appellant has a period of six months in which to comply with the Enforcement Notice. There is no evidence before me that the Enforcement Notice could not be complied with in that time period.

65. I am aware that the current coronavirus crisis could possibly cause some delays, but I have no doubt that if the delay was due in any part to the current crisis the Council would exercise their powers under Section 173A of the 1990 Act to extend any compliance period.

66. I am also aware that the Appellant may wish to seek planning permission to alter the Compound Building and/or reduce the size of the Compound so that they were compatible with the agricultural use of the Appeal Site. However, I have no doubt that the Council would take that into account and again they would (if necessary) exercise their powers under Section 173A of the 1990 Act to extend any compliance period.

67. Accordingly, the appeal on Ground (g) fails.

Overall Conclusions

68. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decision

69. It is directed that the Enforcement Notice be corrected or varied by:

- a) the insertion of the words "AND OPERATIONAL DEVELOPMENT" after the words "MATERIAL CHANGE OF USE" in line 5 of the heading on side 1
- b) The deletion of "0.225" and the insertion of the figure "0.325" in line 1 of paragraph 1.(a) of Part 3.
- c) The deletion of the sub-heading between (c) and (d) in Part 3.1 and the substitution of the words, "**At the south boundary adjacent or near the B4063**".
- d) The insertion of the figure and punctuation mark "4/" before the figure "10" in line 2 of Part 4.
- e) The deletion of the words, "Within 1 month of the effective date of this notice, permanently cease the use of the land for use as a commercial depot and base for 'Pave Drive' Limited and revert the use of land for the purposes of agriculture." and the substitution of the words, "Permanently cease the use of the land for use as a commercial depot and base for a building construction company." in Part 5.
- f) The deletion of Step (4) in Part 5.
- g) The renumbering of Step (5) as Step (4) in Part 5.1.
- h) The renumbering of Step (6) as Step (5) in Part 5.1.
- i) The renumbering of Step (7) as Step (6) in Part 5.1.
- j) Between renumbered Steps (5) and (6) in Part 5.1. the insertion of a sub-heading, "**At the south boundary adjacent or near to the B4063**"
- k) The deletion of the words "and replace with post and rail stock proof fencing and gates not to exceed 1.2 metres in height" in renumbered Step 6 in Part 5.
- l) The renumbering of Step (8) as Step (7) in Part 5.1. and the deletion of the figure "7" at the end of renumbered Step 7 and the substitution of the Figure "6".

- m) Between Steps (3) and (4) in Part 5.2. the insertion of a sub-heading, **"At the south boundary of the land to the east of Oaklands"**
- n) The deletion of the words "and replace with post and rail stock proof fencing and gates not to exceed 1.2 metres in height." in Step (4) of Part 5.2.
- o) By the substitution of the Plan annexed to this Appeal Decision for the plan attached to the Enforcement Notice.

Subject to these corrections and variations the appeal is dismissed, and the Enforcement Notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Tim Belcher

Inspector



Plan

This is the plan referred to in my decision dated: **Please insert Appeal Decision date**

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

Land adjacent to Oaklands, Gloucester Road, Staverton, Cheltenham,

GL51 0TF

Reference: APP/G1630/C/19/3224766

Do not Scale

