



Appeal Decisions

Site visit made on 17 December 2019

by Mr A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Appeal A and B refs: APP/C/19/3233548 & 49

Land at 61 Kirkby Road, Ravenshead, Nottinghamshire NG15 9HD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 [the Act].
- The appeals are made by Mr Brian Hedley (Appeal A) and Mrs Diane Hedley (Appeal B) against an enforcement notice issued by Gedling Borough Council.
- The enforcement notice was issued on 20 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of open Green Belt countryside to residential domestic garden use including the construction of an incidental residential building, a domestic style patio and footpaths and the positioning of an air conditioning unit on the land.
- The requirements of the notice are to: (1) Permanently cease the use of the Green Belt countryside land as residential garden (2) Demolish the garage and remove all resulting debris from the land or alternatively reduce the size of the garage so that it does not extend beyond the residential curtilage as approved under the appeal reference APP/N3020/W/16/3153884 (3) Remove the patio at the rear of the garage and the footpath around the dwelling which is outside the residential curtilage as approved under appeal reference APP/N3020/W/16/3153884, and (4) Remove the air conditioning unit positioned close to the eastern elevation of the dwelling.
- The period for compliance with the requirements is 6 calendar months.
- Appeal A and B are proceeding on the grounds set out in section 174(2) (e), (b), (c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals succeed in part on grounds (f) and (g) and the enforcement notice is upheld with a correction and variations as set out in the Formal Decisions below.

Application for costs

1. An application is made by the appellants, Mr and M Hedley, against Gedling Borough Council and vice-versa. These applications are the subject of separate Decisions.

The appeal site and matters concerning the enforcement notice

2. The appeal dwelling, no. 61, sits in a narrow but spacious rectangular-shaped plot accessed from Kirkby Road and to its side there is a detached garage. Both are set back from the highway and are accessed via a long driveway. There are grassed areas located to the west of the dwelling and to its rear, and the plans attached to the notice outline this area in red. For consistency, I will refer to this area as the 'notice land'. This area is where the alleged material change in the use of the land has occurred [for convenient shorthand 'MCU'].
3. The planning history is set out in the written representations and I will refer to the pertinent aspect of that history. The evidence is that all the land in which Mr and Mrs Hedley have an interest was previously used in connection with the

keeping of horses and there was a stable block adjacent Kirkby Road. In about 2012, the stable block was relocated further into the site. Following various attempts to convert that building into a dwelling, planning permission [hereinafter abbreviated as 'PP'] was granted on appeal for the following on 16 November 2016: *residential conversion of existing building: resubmission of 2014/1227* subject to conditions¹ [I will refer to this as the '2016 permission']. A previous appeal against the refusal of PP for the residential conversion of an existing building was dismissed on 16 July 2015². A separate PP was granted for the erection of a detached garage³. On 4 September 2018, PP for the retention of the garage and change of use of land to residential was refused by the Council. On 31 August 2018, PP was refused for a single-storey rear extension and change of use of land to residential. Subsequently, conjoined appeals were dismissed on appeal⁴ [I'll refer to this as the '2018 Decision'].

4. It is apparent to me that the notice addresses the carrying out of development without planning permission. It states the alleged breach of planning controls, the reasons for issuing and the steps required to comply with the notice and the period of compliance. The issue and effective dates are both stated. Contrary to the planning agent's submission, on its face the issued notice satisfies the statutory code⁵.
5. I share some of the concerns about the description of the alleged breach of planning control; I should get it right if I can. At paragraph 3 of the issued notice, the allegation describes the MCU of the notice land to a 'residential domestic garden use'. It also includes the construction of an 'incidental residential building', 'domestic' style patio, footpaths and the positioning of an air conditioning unit.
6. The description of the unauthorised use is inaccurate, and it should be corrected to the use of land for residential purposes. Furthermore, it is superfluous to refer to the countryside designation of the notice land. Additionally, the air-conditioning unit is a heat-source unit and a detached garage and patio have been constructed. It is apparent to me that the alleged operational development facilitated the residential use. The description of the allegation should simply state the breach of planning controls as it appeared to the local planning authority [abbreviated as the 'LPA'] and there is no need for flowery or legalistic terminology.

For greater clarity, the allegation should state the following:

Without planning permission, the making of a material change in the use of the land to residential use facilitated by the construction of a garage, patio and footpaths and the positioning of a heat-source unit.

7. There are wide-ranging powers to correct or vary the notice subject, of course, to the essential test of injustice. The matters that appear to the Council as constituting a breach of planning controls are generally stated. The notice has been interpreted on the basis that a residential use is alleged, which has been facilitated by operational development. Given the way and manner arguments

¹ Appeal ref: same prefix ending with 3153884 following a previous proposal that had been refused by the Council and dismissed on appeal with ref ending in 3004920.

² Appeal ref: ending in 3004920.

³ Council ref: 2017/0704 – Erection of detached garage at side granted on 27 October 2017.

⁴ Appeal refs: same digits ending with 3212947 and 3212949 dated 6 May 2019.

⁵ See s 173 of the Act and The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

have been advanced by the appeal parties, it is clear the issued notice was correctly interpreted, and it has not caused significant confusion. The recipient could reasonably tell from the four corners of the issued document what had gone wrong and what needed to be put right.

8. Contrary to extensive submissions on behalf of Mr and Mrs Hedley, I find the issued notice is not hopelessly ambiguous. I reject the claim that the appellants have been prejudiced by the wording of the allegation given the way in which the notice has been interpreted. I am satisfied that the identified correction does not cause any injustice to any party and it would not widen the scope of the notice. I shall correct the allegation.⁶
9. A secondary argument is the Council has failed to cite all the land registry title references. The precise boundaries to which the notice relates have been specified; there is no statutory requirement to specify a title reference number in the notice. The issued notice clearly identifies the land to which it relates.
10. A further argument is that the LPA acted beyond its powers when issuing the notice, but this challenge is misconceived. The Inspector's jurisdiction is confined to assessing the scope of the appeal under section (s) 174 of the Act. I do not have jurisdiction to deal with submissions as to whether the LPA acted outside its powers by issuing the notice. The proper course to bring that complaint is by way of judicial review. In the context of these proceedings sufficient evidence is presented to show that, on the balance of probabilities, when the notice was actually issued the Service Manager employed by the LPA had proper authority to exercise the issuing of the document. The appellants submitted a valid appeal under s174 of the Act and I will proceed on that basis.

Ground (e)

11. In this ground of appeal, it needs to be shown that, on the balance of probabilities, copies of the notice were not served as required by s172 of the Act. Mr and Mrs Hedley claim the notice was not properly served, as it was posted at a property which they had left. Additionally, the claim is that an occupying tenant at no. 61 had not been served. The quantum of evidence however shows that the Council made enquiries with Her Majesty's Land Registry to ascertain ownership of the site and a copy of the notice was served at the address provided by the registry. This is proper service. Furthermore, a copy of the notice was displayed at the site. Clearly, all those with an interest in the land have been properly served in accordance with the statutory code. The appellants were aware of the notice because a timely appeal has been made, thus protecting the interest of the owners and occupiers. Therefore, the appeals on ground (e) must fail.

Ground (b) and (c)⁷

12. In pursuing an appeal on these legal grounds, the onus firmly rests with Mr and Mrs Hedley to show, on the balance of probabilities, the matters stated in the corrected notice have not in fact occurred and, if they have, do not constitute a breach of planning controls. Essentially, the argument is a simple one, namely, that the notice land benefits from a PP for a residential use. It is contended that the notice land's use incidental to the enjoyment of the dwelling is

⁶ Applied *Miller-Mead v MHLG* [1963] 1 All ER 456.

⁷ There is significant overlap between arguments advanced on ground (b) and (c). I will combine these two.

permitted by operation of s55 (2) (d) of the Act, because the area falls within the curtilage to no. 61⁸.

13. It is reasonable to consider the precise geographical area in determining whether the change in the use of the land constitutes an MCU. I will briefly explain some guiding planning principles. The concept of the planning unit ['PU'] and curtilage are distinct and separate; they should not be confused. In considering whether an MCU has taken place, it is necessary to identify the appropriate PU. First, whenever it is possible to recognise a single main purpose of the occupier's use of his/her land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.
14. Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit⁹. It should be borne in mind that the area covered by a PP is not necessarily determinative of the PU although it is a factor and may be a good starting point.
15. The evidence presented shows that the residential use of no. 61 derives from the terms of the 2016 permission and there is no ambiguity as to the effect, construction or interpretation of the permission. It grants PP for the residential conversion of the existing building. Document 2 of the appellants' bundle of evidence purports to show the carrying out of the change in the use of an existing building pursuant to the 2016 permission. However, the photographs apparently show the total demolition of the pre-existing building, which seems to be at odds with the terms of the 2016 permission.
16. The submission is that the entire land occupied by Mr and Mrs Hedley constitutes a single residential planning unit, which includes the notice land. I disagree with this assessment. This is because condition 2) of the 2016 permission specifies that the development shall be carried out in accordance with the following approved plan ref: 15/142-01, 15/142-02 and 15/142- 05. Drawing no. 15/142-01 shows the application site in red and other land in blue: the former includes the dwelling-house and driveway as well as parking areas, the latter covers the notice land as being beyond the application site. I consider that the 2016 permission is clear on its face and grants PP for the residential use of the area outlined in red on the approved site layout plan. It does not extend the residential use over the notice land. The latter was used in connection with the keeping of horses and has been expressly excluded from the application site to which the 2016 permission relates to. A reasonable reader of the PP would arrive at the same conclusion.

⁸ Section 55(2)(d) of the 1990 Act reads - following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land - the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.

⁹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

17. In my assessment, Mr and Mrs Headley's land is a single unit of occupation but with separate and distinct areas. It is in a mixed-use comprising land used for the keeping of horses or paddock and residential, which are distinct uses substantially different and unrelated to each other. The residential element benefits from express PP, because the 2016 permission specifically relates to use of the building as a dwelling-house and includes a car parking area and a driveway. By the time enforcement action was taken by the LPA, the notice land comprised land that had manicured lawns and domestic paraphernalia including patio and footpaths. As I have already said elsewhere, operational development comprised in the erection of a garage and heat-source unit had in fact been carried out. The area was in use as residential garden during the period leading up to the notice's issue.
18. The introduction of the residential use to the notice land has changed the layout and configuration of the occupied land given the vastness of the area and extent of the residential use. For instance, the area to the rear appears as a domestic garden used in connection with the dwelling-house given the spread of domestic paraphernalia, which has a visual impact. The nature and scale of the residential activities resulted in a change to the physical appearance of the notice land. In addition, the introduction of the residential use was likely to generate significant off-site impacts. The reasons for issuing the notice refer to land-use planning consequences.
19. Whichever way one scrutinises the presented evidence I consider that, in all intent and purposes, the scale of the residential operation is markedly and significantly different in land-use terms compared to the former use of the notice land for the keeping of horses. The former being significantly different in activity and character to the latter. As a matter of fact and degree, I find that the alleged matters, as corrected, results in a dramatic change in the definable character of the notice land the nature of which effected a MCU, which falls within the meaning of s55(1) for planning purposes.
20. There is a secondary argument which I should address for completeness. Mr and Mrs Hedley rely upon the operation of s 55(2)(d) of the Act. It excludes from the meaning of 'development' the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such¹⁰. Before I turn to the main arguments, I will explain some planning principles.
21. What is 'curtilage'? The term *curtilage* is relevant to this statutory provision and sections of the Town and Country Planning (General Planning Development) Order 2015 as amended [the 'GPDO'] where the term has been defined in certain Classes.¹¹ It defines an area of land in relation to a building and not a use of land. Frequently the residential curtilage will also equate with the residential PU, for example, the house and garden plot on a housing estate. It is also not uncommon for land to be beyond the curtilage even though it is in the same unit of occupation, not physically separate, in use for residential purposes incidental to the dwelling-house use and within the same residential PU.

¹⁰ Section 55(2)(d) of the 1990 Act.

¹¹ For instance, certain development permitted under Part 3 of Schedule 2. The word is undefined for purposes of Part 1 Class E and F development. I shall apply relevant definition and principles established by relevant legal authorities on the topic.

22. The Oxford English Dictionary describes the term 'curtilage' as a small court, yard, garth, or piece of ground attached to a dwelling-house and forming one enclosure with it and the area attached to and containing a dwelling-house and its outbuildings. However, there is legal authority to indicate that it is not always small. Case-law establishes that curtilage can be characterised as an area about a building, intimate association with the land which is undoubtedly within the curtilage is necessary to make the area under consideration part and parcel of that undoubted curtilage land. It can be described as piece of land, whether enclosed or unenclosed, immediately beside or around the building. It must serve the purpose of a building in some necessary, beneficial or useful manner. Factors like physical layout of the land, past and present ownership and use or function are relevant. Whether something falls within a curtilage is a question of fact and degree and thus primarily a matter for the decision-maker. The mere fact that the notice land adjoins areas around and about the dwelling-house and is in the same ownership does not necessarily or automatically mean that it is part of the residential curtilage to no. 61.
23. As I have already said elsewhere, no. 61 is a detached dwelling-house situated in a spacious rectangular plot. The property is accessed via a gated driveway. Together with parking and circulation areas, all these spaces are outlined in red on drawing no. 15/142-01, which shows the layout of the residential plot. The dwelling and driveway appear to form physical features between those areas in residential use and the notice land. The residential areas appear private and possess a close association with the dwelling-house. Because of the arrangement of the dwelling-house and driveway and the display of domestic paraphernalia, the area immediately around and about the dwelling is connected to the house; this area possess a sense of domesticity. Contrary to the LPA's assessment, in comparison to the size of the property, the area outlined in red on the approved site layout plan is modest and serves a reasonably useful function as curtilage to the building.
24. In contrast, the notice land appears to be mainly undeveloped and set apart and disconnect from the dwelling-house, because of the area's vastness and positioning relative to undoubtedly curtilage land. Whilst the notice land has merged with the residential curtilage, historically it was part of a paddock and used for the keeping of horses. The texture and type of grass combined with the layout of the area is different to the land outlined in red on drawing no. 15/142-01. While the area to the rear of the building is close to the dwelling, the entirety of the notice land does not appear to have a close association with the dwelling. It does not have an intimate relationship with the land that is undoubtedly within the curtilage, because it is physically separated by the driveway and dwelling. As a matter of fact and degree, and on the circumstances of this particular case, I find that the notice land cannot reasonably be regarded as residential curtilage to no. 61. The residential use of the notice land is not exempted by the operation of law as the area is not within the curtilage to the dwelling-house.
25. As for the ancillary or incidental link to the residential use, apart from the residential living at no. 61, the use of the notice land for the keeping of horses was, and is, physically and functionally distinct. In contrast the nature and scale of the residential operation amounts to a primary use given its distinctive characteristics and qualities. The current use, as stated in the corrected notice, cannot reasonably be described as ancillary or incidental to the residential use of no. 61 due to the physical and functional distinctiveness. Even if an

- alternative view prevails and the notice land falls within the curtilage to no. 61, the evidence presented does not show that the unauthorised use is ancillary or incidental to the use of no. 61 as a single dwelling-house.
26. For planning purposes, development also includes the carrying out of building operations, and s336(1) of the Act defines the word 'building' as any structure or erection. The evidence is that building operations falling within the meaning of s 55(1) and (1A) had in fact been carried out. The nature of the work resulted in the construction of a new garage, patio and footpaths and heat-source unit. Despite the claim that an area of hardstanding existed, the patio and footpaths and heat-source unit were installed to facilitate the residential use. The scale of the operations indicates to me that the building operations are part-and-parcel of the change in the use of the notice land.
27. There are permitted development ['PD'] rights set out in Schedule 2, Part 1 and 14 to the GPDO. However, the deemed PP granted by article (3) is for development within the curtilage of the dwelling-house. In the final comments, it is argued that part of the footpath falls within area outlined in red on drawing no. 15/142-01. Nevertheless, the patio, footpath and heat-source unit are situated beyond the curtilage to no. 61 given their siting and they do not benefit from PD rights.
28. As I have said elsewhere, PP had been granted for the erection of a detached garage at the side of the appeal dwelling, but the Council assert it projects by about 2 metres on land that is not part of the curtilage to no. 61. Mr and Mrs Hedley acknowledge the position of the garage is different and, given its size and siting, I find that that the garage, as built, differs substantially from the scheme previously approved by the Council in 2017 and its location and siting is materially different. This aspect of the development alleged does not benefit from PP and requires express PP.
29. Drawing all the above threads together, the evidence presented shows that, on the balance of probabilities, the matters alleged in the corrected notice in fact occurred at the date of the notice. Express PP is required for the matters alleged in the corrected allegation and it has not been obtained. The matters constitute a breach of planning controls. The combined appeals on ground (b) and (c) must therefore fail.

Ground (a)

30. The terms of the deemed application are circumscribed by the matters alleged in the corrected allegation. PP is therefore sought for the making of an MCU of the notice land to residential use facilitated by the construction of a garage, patio and footpaths and the positioning of a heat-source unit.
31. There is residential development to the east of no. 61, which mainly comprises detached dwellings set in spacious plots situated to the south of Kirkby Road. There is an access drive which leads to housing located to the rear, but this is screened by extensive woodland and there is an intervening footpath. To the west of no. 61 there are paddocks and to the north and opposite there are open fields with extensive woodland. No. 61 including the notice land is located within the designated Green Belt.
32. Against all of that background, the **main issues** are as follows: (1) whether the development is inappropriate development in the Green Belt having regard

to the National Planning Policy Framework [the 'NPPF'] and development plan policies; (2) If the development is inappropriate development in the Green Belt, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations; and if so, whether very special circumstances exist to justify the development.

Inappropriate development

33. 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. NPPF146 states that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Policy 3 of the Greater Nottingham Aligned Core Strategies 2014 (ACS), which seeks to retain the principle of the Nottingham Derby Green Belt, is broadly consistent with that approach.
34. A proposal for change of use of land into residential use can fall within the scope of NPPF146 sub-para e). My approach to this aspect of policy is broadly consistent with an Inspector's finding in a decision at Hindip Worcestershire. This recent appeal decision has been raised in support of the appellants case¹². However, it does not automatically follow that the development before me is not inappropriate development inside the Green Belt as every proposal needs to be assessed upon its individual merits. I must point out to the appeal parties that, whilst the findings of an Inspector may well be relevant and there is a need for consistency in the planning process, an appeal decision is not caselaw. I am not bound to reach the same conclusions provided there are sound planning reasons for departing from their approach.
35. The residential curtilage to no. 61 is tightly defined and runs along the plot's eastern boundary terminating at Kirkby Road. It covers the land outlined in red on drawing no. 15/142-01 approved by the 2016 permission. The dwelling and driveway form a physical barrier with the notice land which was, and is, relatively open and undeveloped grassland. The residential use has been facilitated by operational development and the appropriation of this land into curtilage has a potential urbanising effect thereby seriously undermining the site's open and spacious aspect. The residential use is likely to result in the spread of domestic furniture on undeveloped land and loss of openness in this part of the Green Belt. This is due to the nature and extent of residential activity. In my view, the spread of items such as play equipment, washing lines or outdoor furniture has the potential to greatly diminish openness of the Green Belt.
36. Additionally, the notice land is noticeable from various public vantages when seen from Kirkby Road. I observed the site is probably visible from a footpath to the rear of the dwelling. When the location and siting of the garage, heat-source unit, patio and footpath are considered in combination with the potential spread of domesticity, I consider that the development represents encroachment into the countryside and fails to preserve openness of the Green Belt.

¹² APP/H1840/W/19/3235302 land adjacent to Harvest Barn, Smite Lane, Hindlip, Worcs WR3 8SZ, for the change of use of the land to form part of the residential curtilage allowed on 22 November 2019.

37. The argument is that PP should be granted for the patio, footpath and heat-source unit as these are limited in scale, but, due to their permanence and size, these structures require express PP. NPPF145 indicates that the construction of new buildings is inappropriate in the Green Belt unless certain exceptions are met. The evidence presented does not show that these structures fall within any exception category listed in NPPF145. They are inappropriate and their presence erodes openness.
38. Drawing all the above points together, the patio, footpath and heat-source unit amount to inappropriate development. I find that the development constitutes inappropriate development inside the Green Belt. The residential use and facilitating development conflicts with the aims and objectives of ACS Policy 3 and the NPPF.

Other considerations

39. The following arguments are advanced in support of the development.
40. NPPF145 states the construction of new buildings is inappropriate in the Green Belt. Nonetheless, Mr and Mrs Hedley suggest that the 2018 Decision raises no concerns about the patio, footpath and heat-source unit. The claim is that these elements have little visual effect on openness. In addition, the heat-source unit is required for energy efficiency although the evidence presented does not clearly show that the unit must be located in this position. In any event, these elements are part-and-parcel of the notice land's residential use. When considered individually or in combination, the development has a visually urbanising effect upon this part of the countryside.
41. There is an extant PP for the erection of the detached garage to the side of the dwelling, which is a reasonable fall-back. The 2018 Decision also notes that the garage is limited in scale. However, the garage, as built, is differently located as it extends on land that is not within the residential curtilage. It is visually prominent when seen from the rear elevation. In comparison to the scheme approved, the garage should have been virtually in-line with the existing dwelling's frontage and set in from the rear elevation.
42. The appellants contemplate a potential split-decision for the heat-source unit, patio or footpath, but these structures constitute inappropriate development and harm openness. In addition, the nature and scale of these buildings suggest to me they are integral to the MCU of the notice land to residential use.
43. A condition imposed on the 2016 permission removes PD rights for curtilage buildings. The GPDO fall-back does not exist in this case.
44. There is reference to personal circumstances in the appellants' final comments, but no specific information has been provided. The patio and footpaths are beneficial in terms of amenity and circulation. In addition, the concern is that the taking of enforcement action is not in the public interest given the lack of impact on amenity. However, expediency is a matter for the LPA. Clearly, the development conflicts with local and national planning policy.

Planning balance

45. The development constitutes inappropriate development and causes harm to openness of the Green Belt. This is a matter to which substantial weight is

given. The development represents encroachment conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection. As cited above, there is conflict with local and national planning policy.

46. On the other side of the scales, I attach significant weight to the potential fall-back in that a detached garage to the side of the dwelling could be built, moderately some weight to the argument that the heat-source unit is required, but minimal weight to the argument that the patio, heat-source unit and footpaths are limited in scale. Limited weight to the personal circumstances as no specific evidence has been provided, and very limited, if any, to the public interest arguments. The advanced considerations in support do not, individually or cumulatively, on balance, clearly outweigh the substantial weight to Green Belt harm. There are no very special circumstances to justify the development.
47. On the particular facts and circumstances of this case, I am not persuaded that a split planning permission should be granted as elements of operational development are not severable from the residential use of the notice land.

Conclusion on ground (a)

48. For the reasons given above I conclude that the appeals on ground (a) should not succeed and I refuse to grant planning permission on the deemed applications.

Ground (f)

49. It is necessary to consider if the steps required by the notice exceed what is necessary to remedy the breach of the making of an MCU to residential use facilitated by the construction of a garage, patio and footpaths and the positioning of a heat-source unit. The wording of the steps required to comply with the notice seek to remedy the breach of planning control by restoring the land to its condition before the breach occurred or comply with the terms of a planning permission. That purpose firmly falls within the scope of s173(4)(a).
50. Mr and Mrs Hedley argue the requirements are imprecise, but step (1) simply requires the cessation of the notice land's residential use. Such a requirement is necessary to remedy the breach of planning control. No cogent reasoning has been advanced to show what lesser step, if any, could be taken which would remedy the breach of MCU of the notice land. While the phraseology should be varied so that it flows directly from the corrected allegation, to my mind, there is nothing short of ceasing the notice land's residential use that would achieve the purpose behind the requirement.
51. Step (2) requires the recipient to demolish the garage or alternatively reduce its size so it does not extend beyond the residential curtilage as approved under the appeal reference ...3153884. The submission is that the requirement to demolish the garage is excessive, but there is an alternative remedy. The requirement refers to appeal reference ending in 3153884, but this does not grant express PP for the erection of the detached garage. The error is somewhat surprising as the LPA granted PP for the garage by decision notice 2017/0704. It is probably a typographical error, but this error causes no confusion. This is because, ultimately, compliance with step (2) would have made the garage accord with the scheme approved by PP 2017/0704. For greater precision, step (2) should require demolition of the garage, or make

the development comply with the terms and conditions of extant PP ref: 2017/0704.

52. Step (3) requires the removal of the patio at the rear of the garage and the footpath around the dwelling but it is unnecessary to specify the following words: '*...which is outside the residential curtilage as approved under appeal reference...3153884...*'. Step (4) simply requires the removal of the 'air conditioning unit' but this should read heat-source unit. These are facilitating development and steps (3) and (4) fall within the scope of the notice. I have already considered the planning merits of retaining these elements but found them to be harmful to the Green Belt. I do not consider it appropriate to vary the scope of the requirements by deleting step (3) and (4) thus retaining these strictures. The under-enforcement advanced would not remedy the breach.
53. The steps required do not exceed what is necessary to remedy the breach of planning controls. Nonetheless, the phraseology used is unclear and the requirements need to mirror the corrected allegation. The envisaged modifications to paragraph 5 of the notice would result in requirements that are precise and no more onerous than first issued. The varied requirements do not exceed what is necessary to remedy the breach of planning controls. As I am varying the requirements, the appeals on ground (f) succeed to that extent.

Ground (g)

54. The challenge is that the period specified in the notice falls short of what should reasonably be allowed. The steps required by the notice as corrected require the cessation of the residential use and the removal of facilitating development. As I have already said elsewhere, the corrected notice either requires the demolition of the detached garage or modification so that it complies with a PP granted by the Council. All of these will require some planning and building work.
55. The appeal parties made additional comment given the current public emergency and the response by the Government including travel restrictions. I am grateful for all these comments. However, I disagree with the agent that a compliance period of 2.5 years is reasonable given the nature of work required as well as the Government's response in controlling the outbreak.
56. Having regard to the nature of the work required by the corrected notice and the current circumstances, I agree a period of 12 months from the date of my decision is a reasonable compromise. The Act permits the Council to waive or relax any requirement of a notice and may extend any period specified in accordance with s173(9). These powers are discretionary and purely within the Council's gift.
57. For all the above reasons, I find that a reasonable period of compliance is 12 months and I shall vary the notice. The appeals on ground (g) succeed.

Formal Decisions – Appeals A and B

58. It is directed that the enforcement notice be corrected and varied by the following:
- 1) The deletion of all text at paragraph 3, the matters which appear to constitute the breach of planning control, and the substitution therefor by the following text:

Without planning permission, the making of a material change in the use of the land to residential use facilitated by the construction of a garage, patio and footpaths and the positioning of a heat-source unit.

2) The deletion of all text at paragraph 5, what you are required to do, and the substitution therefor by the following requirements:

- (i) Cease the use of the land for residential purposes;
- (ii) Demolish the garage and remove all resulting debris from the land, or, alternatively, reduce the size of the garage so that it complies with the terms including conditions and limitations imposed on planning permission ref: 2017/0704 granted by Gedling Borough Council on 27 October 2017;
- (iii) Remove the patio at the rear of the garage and the footpaths around the dwelling so that the development complies with terms including conditions and limitations imposed on planning permission granted by appeal reference APP/N3020/W/16/3153884, granted on 16 November 2016, and
- (iv) Remove the heat-source unit to the eastern elevation of the dwelling.

3) The deletion of text at paragraph 6, time for compliance, and the substitution therefor by the following period of compliance: *12 months*.

59. Subject to the above correction and variations, the appeals are dismissed and planning permission refused on the applications deemed to have been made under s177(5) of the 1990 Act as amended.

A U Ghafoor

INSPECTOR