



Appeal Decisions

Site visit made on 13 January 2021

by Timothy C King BA (Hons) MRTPI

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

Decision date: 15 March 2021

Appeal Ref: APP/C3620/C/19/3243129 (Appeal A)

Oakdene, Henfold Lane, Beare Green, Dorking, Surrey RH5 4RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Timothy Thurgood against an enforcement notice issued by Mole Valley District Council.
- The enforcement notice was issued on 14 November 2019.
- The breach of planning control as alleged in the notice is:
 - Without planning permission the erection of building 2;
 - Without planning permission the extension between buildings 1 and 3 (shown in yellow on the attached plan);
 - Without planning permission the creation of dormer windows to building 4;
 - Without planning permission the creation of hardstanding (shown in light blue on the attached plan);
 - Without planning permission the creation of a pool (shown in orange on the attached plan);
 - Without planning permission the creation of a patio (shown in pink on the attached plan);
 - Without planning permission the erection of building 5;
- The requirements of the notice are :
 - (1) To remove completely from the Land the detached building labelled 2 on the attached plan and any associated bases, fittings, materials and debris;
 - (2) To remove completely from the Land the roof extension between buildings 1 and 3 (shown in orange on the attached plan);
 - (3) To remove completely from the Land the two roof dormers to building 4 and any associated fittings, materials and debris;
 - (4) Remove from the Land the hardstanding marked in light blue on the attached plan;
 - (5) Remove from the Land any associated bases from the swimming pool and infill the swimming pool with suitable material in order to facilitate the restored agricultural use;
 - (6) Remove from the Land the patio marked pink on the attached plan;
 - (7) To remove completely from the Land the detached building labelled 5 on the attached plan and any associated bases, fittings, materials and debris.
- The period for compliance with the requirements is Nine (9) months after this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) a, b, c, e and f of the Town and Country Planning Act 1990 as amended. An application for planning permission is therefore deemed to have been made under section 177(5) of the Act.

Appeal Ref: APP/C3620/19/3243130 (Appeal B)

Oakdene, Henfold Lane, Beare Green, Dorking, Surrey RH5 4RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

- The appeal is made by Mr Timothy Thurgood against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice was issued on 14 November 2019.
 - The breach of planning control as alleged in the notice is:
 - Without planning permission the material change of use of the Land from agriculture to the storage and distribution of commercial skip bags, Use Class B8 (outlined in blue on the attached plan) and associated operational development, namely Building 5 and hardstanding shown in light blue on the attached plan);
 - Without planning permission the material change of use of the Land from agriculture to residential garden (outline in green on the attached plan).
 - The requirements of the notice are:
 - (1) To cease the use of the Land for the storage and distribution of commercial skip bags (area outlined in light blue on the attached plan); AND
 - (2) Remove from the Land all skip bags, equipment and hardstanding together with building 5 and any associated bases, fittings, materials and debris associated with the use of the land for the storage and distribution of commercial skip bags (area outlined in light blue on the attached plan); AND
 - (3) To cease the use of the Land as residential garden (area outlined in green on the attached plan).
 - The period for compliance with the requirements is Nine (9) months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) c, d, e and f of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/C3620/C/20/3254147 (Appeal C)
Oakdene, Henfold Lane, Beare Green, Dorking, Surrey RH5 4RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Timothy Thurgood against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice, was issued on 1 May 2020.
 - The breach of planning control as alleged in the notice is:
 - Without planning permission the erection of a single storey detached outbuilding (the approximate location of the building is highlighted in blue on the attached plan)
 - The requirements of the notice are:
 - (1) To remove completely from the Land the ancillary outbuilding labelled 4 on the attached plan and any associated bases, fittings materials and debris.
 - The period for compliance with the requirement is Nine (9) months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) a, c and f of the Town and Country Planning Act 1990 as amended. An application for planning permission is therefore deemed to have been made under section 177(5) of the Act.
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Appeal Ref: APP/C3620/W/19/3242917 (Appeal D)
Oakdene, Henfold Lane, Beare Green, Dorking, Surrey RH5 4RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Timothy Thurgood against the decision of Mole Valley District Council.
 - The application Ref MO/2019/0960/PLA, dated 17 May 2019, was refused by notice dated 23 July 2019.
 - The development proposed is described as '*Demolition of existing outbuilding and erection of replacement outbuilding (building 5)*'.
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Summary of Decisions

Appeal A

1. Planning permission is granted for Building 5 and, as the link structure referred to in Requirement 2 was apparently removed before the enforcement notice was issued, the Ground B appeal in this regard succeeds. Also, in this connection, the enforcement notice contains an error in that Requirement 2 refers to this particular element being shown in orange on the attached plan. The plan shows it, in fact, as coloured yellow. However, as the appeal succeeds in this regard it is not necessary that I correct this point. Due to the imprecise wording I am also amending Requirement 5 relating to the swimming pool.
2. Otherwise the appeals are dismissed and the enforcement notice, as corrected, is upheld.

Appeal B

3. The enforcement notice is corrected with the second allegation struck out due to a fundamental flaw in the attached plan. Accordingly, Requirement 3 is deleted. In view of my decision on Building 5, and the imprecision of the wording relating to "*all skip bags and equipment*" I shall amend Requirement 1, which currently only stipulates cessation of the commercial use, so as to fully achieve the desired purpose. Requirement 2 is then deleted.
4. Otherwise the appeals are dismissed and the enforcement notice, as corrected, is upheld.

Appeal C

5. The enforcement notice is invalid and will be quashed.

Appeal D

6. In view of the successful deemed planning application on Appeal A, relating to Building 5, it is not necessary for me to determine this appeal.

Procedural Matters

7. For Appeal A the appellant has withdrawn the Ground A appeal lodged in relation to Building 2, although the appeals on Grounds E and B still apply in relation to this particular element.
8. Also, in Appeal A, the appellant says that as the Council, in enforcing only against the dormer windows installed in Building 4 has under-enforced and considers that the Building has effectively become authorised by default. He has therefore withdrawn the Ground A appeal in this regard. In fact, the appellant says that he is not contesting this requirement of the enforcement notice.
9. In the above connection, however, s173(11) says that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed, but does not do so, and all the requirements of the notice have been complied with then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue

of s73A in respect of development consisting of the construction of the building(s). The important point here is that all the requirements of the enforcement notice need to be complied with before an appellant may benefit from this provision. Clearly, in this instance, it cannot apply.

10. Turning now to the construction of the enforcement notices themselves. Should a notice not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended then it will be a nullity and cannot be saved by the curative powers contained in s176(1).
11. The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 under Part 2, 4C also specifies that notices shall show the precise boundaries of the land to which it relates, whether by plan or otherwise. In all these three enforcement notices the red line is truncated due to the size of the site. However, the extent of the site shown is given sub-divisions with land within ringed both blue and green, albeit the green area is incomplete.

Appeal A

The Appeal on Ground E

12. In the current case the appellant indicates that the enforcement notices relating to Appeals A and B were not correctly served. He says that the requirements of the notices, compliance periods, and also the dates that the notices were to take effect were omitted. The appellant also says that the Halifax Bank of Scotland, the mortgagor, was not served.
13. Section 172(3) of the 1990 Act, as amended, requires that the service of the notice shall take place not less than 28 days before the date specified in it as the date on which it is to take effect. The appellant says that the missing pages were served on the appellant's agent on 22 November 2019, and given that the notices were to come into effect on 16 December 2019, this left less than the requisite 28 day threshold.
14. The appeals for A and B were, though, both lodged in full on 13 December, and in light of this I do not accept the appellant's argument that he was prejudiced in this regard. The mortgagor may not have been correctly served – and I acknowledge that no representations have been made from them in support of the appeal – but, realistically, there is little they could have said to complement the appellant's comprehensive submission. However, that is not to say that the construction of the relevant two enforcement notices were as they should have been.
15. Nonetheless, on balance, I am satisfied that the appellant, at least on these two notices was able to understand the nature of the alleged breaches and what he was required to do.
16. Accordingly, the appeal on Ground E fails.

The Appeal on Ground B

17. The Council says in its Statement that the link extension has been removed – the appellant says the Council was advised it would be removed on 26 February 2019 – and it had been removed prior to the service of the enforcement notice.

18. The appellant is not claiming that Ground B applies to the other elements in the notice.
19. The Appeal on Ground B therefore succeeds.

The Appeal on Ground C

20. Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (GPDO) allows for *"the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse..."* subject to a series of provisos which, under E.1(c), states that development is not permitted if *"any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse"*.
21. From my site visit observations I am satisfied that the principal elevation of the dwellinghouse itself is the north facing elevation which, due to its width and it containing the front door, is the logical conclusion in this regard. Given that Buildings 4 and 5 and also the structure referred to as the pool (irrespective of whether or not the latter falls within the dwelling's curtilage) are all situated forward of the dwelling's principal elevation these entities cannot be considered as permitted development.
22. Accordingly, planning permission is required for each of these developments.
23. I now turn to what could be considered as residential curtilage. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the GPDO. Its meaning and application is derived, instead, from court judgements.
24. The leading authority on this issue is *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P. & C.R. 195, where it was held that:

"The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way."
25. In terms of what can be reasonably considered as residential curtilage it was held in *Dyer v Dorset CC* [1989] that curtilage constitutes a piece of ground attached to a dwellinghouse and forming one enclosure with it; thereby the area attached to and containing a dwellinghouse and its outbuildings. The case of *McAlpine v Secretary of State for the Environment* [1995] did not depart from the above judgement save for the mention of it being constrained to a small area around a building, whilst the Court of Appeal in *Secretary of State for the Environment, Transport, and the Regions v Skerrits of Nottingham* [2000] decided that the definition of a curtilage in relation to a building must remain a question of fact and degree in each case.
26. The essential point is that the relationship of the dwelling to its curtilage must be functional, and not merely spatial. This was addressed in the judgement of *Methuen-Campbell v Walters* [1979] 1 QB 525 where it was held that for land to fall within the curtilage of a building there should be an intimate association.

27. Curtilage is not fixed for all time and its physical extent is readily capable of changing at any time. From the Court of Appeal's judgement regarding the case of *Sumption v LB Greenwich & Rokos* [2007] EWHC 2776 (Admin) it has become clear that land can very easily be incorporated into curtilage. However, land can only be treated as part of the curtilage of a building if its use, as part of the planning unit comprising the dwelling and the land occupied with it, is lawful. Until such time as its use becomes lawful or immune from planning enforcement action - ie after ten years continuous use - the land cannot be regarded as coming within the curtilage of the house, even if it would otherwise meet both the functional test set out in *Sinclair-Lockhart's Trustees* and the 'single enclosure' test derived from *Dyer v Dorset CC*.
28. The 'planning unit' and curtilage are two separate and entirely different concepts, and one must not be confused with the other. It is important in the planning context not to use the word 'curtilage' loosely to refer to the entirety of the surrounding land forming part of a property. The actual curtilage of a house may cover only part of the land owned or occupied with that building. The terms 'curtilage' and domestic 'garden' are not interchangeable; curtilage defines an area of land in relation to a building, and not a use of land.
29. Weighing all the evidence up I do not find that there is any intimate association between the residential curtilage and the land to the east and south of the green line on the plan attached to the notice. The latter is comparatively untended. At the north east section of the site Building 5 reasonably pinpoints the limit of the curtilage. Beyond this building, eastwards, is where the hardstanding has been laid, whilst the partially completed pool structure and patio area lie to the south of the green line, also outside the property's residential curtilage.
30. The Appeal on Ground C therefore fails.

The Appeal on Ground A (DPA)

31. This appeal concerns Building 5, the hardstanding, the pool and the patio. Contrary to the appellant's comment I am satisfied that the plan attached to the enforcement notice has located the incomplete pool structure. Even if the structure could be considered to partly fall outside the orange shading the description of the breach leaves the recipient in little doubt as to what is being targeted.

Main Issues

32. Given the site's location in the Metropolitan Green Belt the main issues are:
- 1) Whether the various said development is 'inappropriate development' within the Green Belt and, if so, the effect on its openness;
 - 2) any other harm; and
 - 3) if it is inappropriate development, whether the harm by reason of inappropriateness and by reason of any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development and Openness

33. The National Planning Policy Framework (the Framework) says that the construction of new buildings is inappropriate development within the Green Belt which, by definition is harmful thereto, and should not be approved except where very special circumstances can be demonstrated. There are some limited exceptions to this which are set out in paragraph 145 of the document. These include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Here, sited close to the footprint of the garage, Building 5, I have seen photographs of an old timber barn or store, apparently of similar volume but considerably higher than the new building which the appellant says has replaced the timber barn. Now demolished, its charred remains were evident at my site visit.
34. Also evident to me, as the garage was open, was the nature of the items stored within what is a purpose built, functional garage. The Council says that the building is considered to be used in association with the skip bag business. This might be the case, but only partly, as I noted it was predominantly used for general domestic storage and also a motorised buggy. The appellant accepts that when the Council official visited the site there were some skip bags present within, but he says they were put there by a delivery driver. In the event that the commercial use were to cease I see no reason, given the apparent degree of domestic related storage, why the building should not be used in an ancillary capacity to the lawful residential use.
35. The Framework indicates that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent sprawl by keeping land within them permanently open. Openness has both a visual and a spatial aspect. In light of my findings on the garage I am satisfied that Building 5 is not inappropriate development for the purposes of the Framework, and it is not necessary for me to consider the effect of this building on the openness of the Green Belt.
36. As mentioned, immediately beyond the garage building, there is a sense of demarcation and positioned here is the expanse of hardstanding on which the facilitative skip to the commercial use was present. The appellant considers the hardstanding as an engineering operation. This might be the case but paragraph 146 of the Framework says also that such development should preserve the openness of the Green Belt and not conflict with the purposes of including land within it. In this particular instance I find that the hardstanding bears no obvious relationship to the residential use, lies outside the curtilage, and represents physical encroachment into the Green Belt which, by its very nature, impacts adversely upon the Green Belt's openness.
37. The Framework's paragraph 145 indicates an exception might be made for the provision of appropriate facilities in connection with the use of the land, for outdoor recreation. However, as I have found the area of land on which the pool and patio have been earmarked as falling outside residential curtilage the development has no obvious connection with the land's lawful residential use. Again, therefore, I consider that these entities also represent inappropriate development within the Green Belt, similarly affecting its openness.

38. On this particular issue I find that the presence of the development is in conflict with the Framework's objectives.

Any other harm

39. The Council considers that the development, in its entirety, has an adverse impact on the character and appearance of the area and also its visual amenity. Given the context of the development, and the effect on the Green Belt aside, I am not convinced that, save perhaps for the hardstanding laid, there has been any harm caused to the character and appearance of the surrounding area. Accordingly, I see no significant material conflict with the objectives of policies CS1 and CS13 of the Mole Valley Core Strategy and policies ENV22, ENV23 and RUD9 of the Mole Valley Local Plan. Neither is there any particular conflict with the Capel Neighbourhood Plan (2016-2026).

Planning balance

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
41. The Council's Local Plan dates from 2000 whilst its Core Strategy was adopted in 2009. As such, the Framework, which was published in 2019 provides more contemporary advice on Green Belt matters.
42. Building 5 is neither inappropriate development in the Green Belt, nor unacceptable in terms of its form and design. In contrast, the hardstanding, pool structure and the patio are inappropriate development and no very special circumstances exist which outweigh the harm by reason of inappropriateness and the adverse effect on the Green Belt's openness.
43. For the above reasons, and having had regard to all matters raised, the appeal on ground (a) is partly allowed, but only in respect of Building 5, and planning permission is hereby granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended. However, the appeal is dismissed for the hardstanding, pool structure and patio, and planning permission is refused in these respects on the DPA.

The Appeal on Ground F

44. I have already covered the majority of the appellant's points. However, I do agree with the appellant that the requirement to infill the swimming pool with suitable material is ambiguous and open to interpretation. I am therefore correcting the relevant requirement to provide clarity, and the appeal succeeds to that extent.

Appeal B

Preliminary Matter

45. The first limb of this enforcement notice relates to an alleged material change of use of the land to Class B8 purposes, and the plan attached to the notice shows this contained within the area of land edged blue, which is clearly defined. However, the second limb relates to an alleged material change of use

to residential garden which is said to be within the area "*outlined in green on the attached plan*". However, for the most part, this follows the incomplete red line which only partly rings the site. As already mentioned it extends eastwards to points which go beyond the extent of the plan.

46. I have accepted the plan to be valid in respect of the operational development the subject of Appeal A and also the contained use of the land described in the first alleged breach, the subject of Appeal B, as it shows the specific areas of the land involved. Nonetheless, due to the said plan being incomplete and the imprecision arising therefrom I am not satisfied that the alleged material change of use to residential garden has been properly addressed by this notice as the accompanying plan has clear limitations.
47. The notice's Requirement 3 requires the appellant to "*cease the use of the land as residential garden (area outlined in green on the attached plan)*". It would seem unlikely that the eastern edge of the plan represents the extent of the actual piece of land which the notice attacks but there are no annotations to indicate otherwise. Whilst the red line would, if projected, presumably ring the whole area of land under the appellant's ownership/control there is no indication from the notice as to where the green line would extend to.
48. In the circumstances, in view of the enforcement notice's wording in the above regard, I shall correct the enforcement notice and strike out all reference to the material change of use to residential garden.

The Appeal on Ground E

49. The same here applies as my assessment on the Ground E appeal relating to Appeal A, and this appeal fails.

The Appeal on Ground C

50. Section 55(2)(d) provides that 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 is not to be taken for the purposes of the Act to involve development of the land.
51. The appellant, having answered the questions set out in the Planning Contravention Notice (PCN) and sent the completed document back to the Council, has confirmed that the site has connections with 'Surrey Skip Bag Services', which is owned by the landowner; the appellant being a director.
52. It is said that the business provides skip bags for small scale rubbish removal where a full skip is not required. Surrey Skip Bag Services' bags are kept at the site, with the bags posted out to customers, and collected when filled, and then collected by a commercial waste company. The waste is typically small scale, inert domestic rubbish.
53. The appellant has said that there are two vehicles stored at the site in connection with the business; a VW Crafter pick-up truck for collecting the bags and a relay truck which is used as a spare. On a typical day it is said that there would be two movements from and to the site in connection with the business. There is also a skip which is removed every 10-14 days, which I witnessed at my site visit, placed on the hardstanding recently laid.

54. The appellant has provided an e-mail exchange with the Council regarding whether the stationing of a skip on private land is permissible. In an e-mail dated 1 August 2019 the Council official states:

"The placing of skips on private land for loading of waste is not considered development as they are only in situ for a short period of time, and therefore permission is not required."

55. It would seem likely that the Council official was here referring to instances where skips are required as a result of works relating to domestic alterations, rather than being necessitated by a commercial operation, such as is the case here. Indeed, the original question posed to the Council did not give details in this regard. In this particular instance the skip present on the land would apparently be removed every 10-14 days and would then be replaced by an empty one, thereby facilitating, from the manner in which it has been described, a continuous operation.
56. A home-based business is essentially passive and desk-based and does not therefore affect the character of the residential use. However, from the information supplied 'Surrey Skip Bag Services' is a commercial use in its own right and, even though it is said that no customers call at the site, it changes the character of the primary residential use. Moreover, being unregulated in planning terms – as it does not enjoy the benefit of planning permission it is not subject to any restrictive conditions – it has the potential, given the space available at the site, to intensify from that currently described and would fly in the face of the Framework's advice on development within the Green Belt.
57. I thereby find that, contrary to the appellant's representations in his Statement of Case, the use goes significantly beyond what could be termed as incidental to the enjoyment of the dwellinghouse. Instead, it is a commercial operation completely unrelated to the primary residential use of the land. Accordingly, planning permission is required for its lawful continuation.
58. The appeals relating to this enforcement notice, however, do not include any Ground A submission. As such, there is no DPA that falls to be determined.

The Appeal on Ground D

59. This relates to the appellant's claims regarding the extent of residential curtilage at the site. Given my findings that the enforcement notice is flawed in this regard, in both the allegation and the related requirement, it is not necessary for me to consider this point further.

The Appeal on Ground F

60. Although I am upholding the enforcement notice insofar as I have found that there has been a material change of use of part of the land to one of storage and distribution I have concerns at the imprecision of its Requirement 2 which stipulates the removal of "all skip bags, equipment..." It is not clear what is specifically being targeted here, and this would have implications for the lawful residential use and incidental storage connected with this. The removal of the hardstanding is already covered by the main enforcement notice concerning the operational development at the site, and the appeal in this connection is unsuccessful. Accordingly, as I am making corrections to and consolidating the notice's requirements in this regard, the appeal succeeds to that extent.

Appeal C (Building 4)

61. In the judgement of *Miller Mead v MHLG* [1963] 2 WLR 225 the importance of clarity was highlighted as that case concerned an enforcement notice whose construction was so ambiguous and uncertain to the point that the owner or occupier could potentially not tell in what respect the land had been developed without planning permission or further, that they might interpretate, with reasonable certainty, what steps had to be taken to remedy the alleged breach.
62. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation would not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
63. When examining the enforcement notice at my site visit, and in particular the attached plan, it was hardly apparent which building on the land was being referred to. The small blue ring indicates a building within of a very narrow footprint, one I could not identify on the ground; the only building reference point being the Oakdene dwelling itself. Moreover, the plan is outdated, and is in contrast to the plan attached to the other two enforcement notices which has annotated updates, show the approximate position of 'Building 5', and give a significantly better representation of the footprint of the development here targeted.
64. In turning to the alleged breach the notice describes it as a "*single storey detached outbuilding*". However, Requirement (1) asks for the removal of "*the ancillary outbuilding labelled 4 on the attached plan*". In fact, when referring to the attached plan there is no such label, only an inaccurate representation of the building. This is all plainly confusing. Admittedly, when cross referring to the plan attached to the other two notices, a much better idea of what is being targeted can be gleaned, but this enforcement notice has to remain an entity in its own right, and must be looked at in isolation.
65. The Council indicates that the main notice addressing the unauthorised operational development at the site did not require for the removal 'Building 4' as a whole because the Council was satisfied at that time that the building was immune from planning enforcement action due to the passage of time. However, subsequently information came to light which suggested that the building had not been substantially completed by August 2015, as originally thought. Instead, the Council now believed that substantial completion did not take place until May 2016.
66. In the circumstances it would appear that the Council rushed out a third enforcement notice, issued on 1 May 2020, to capture Building 4 in its entirety. However, its errors compound to strongly suggest its invalidity. I, therefore, doubt whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success. The absence of an adequately detailed plan attachment is a particular failing given the circumstances surrounding the alleged breach.

67. I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary. In other words I find that this notice, as issued, is incapable of correction.
68. For the reasons given above I must conclude that the stated requirement and the attached plan do not cogently relate to each other. In such circumstances it is not open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so.
69. The enforcement notice is therefore invalid and will be quashed.

Appeal D

70. Given the successful DPA authorising the retention of Building 5 it is not necessary for me to consider this appeal further.

Overall Conclusions

71. Save for the authorisation of Building 5 Appeals A and B are largely unsuccessful, Appeal D does not fall to be determined and, in view of the invalidity of the enforcement notice relating to Building 4, Appeal C cannot be considered.
72. Section 180 of the 1990 Act says that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as is inconsistent with that permission. That is the case here with the erection of Building 5.
73. Building 4 is left in situ without any authorisation and, given that its dormer windows were targeted by the main enforcement notice, the requirement for their removal must remain. Indeed, this will remain the case unless, and until, the planning position is regularised, formally, for the building in its entirety.

Formal Decisions

APPEAL A

74. Planning permission is granted for Building 5, and as the structure referred to in Requirement 2 was apparently removed before the enforcement notice was issued, the Ground B appeal in this regard succeeds.
75. Requirement 5 is corrected as follows:
76. "Remove from the Land the swimming pool and level the excavated land to reflect its original form and appearance prior to the breach taking place."
77. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

APPEAL B

78. The enforcement notice is corrected with Requirement 1 amended and, with the consolidated wording, Requirement 2 is deleted. The second allegation is struck out due to imprecision and, accordingly, Requirement 3 is deleted.

79. Requirement 1 is amended with the addition of the following wording:

“...; AND the removal of all skip bags used for commercial purposes in connection with the storage and distribution use hereby enforced against.”

80. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

APPEAL C

81. The enforcement notice is invalid and will be quashed.

APPEAL D

82. In view of the successful deemed planning application (DPA) on Appeal A, relating to Building 5, it is not necessary for me to determine this appeal.

Timothy C King

INSPECTOR