



Appeal Decision

Inquiry Held on 26 and 27 April 2021

Site visit made on 29 April 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Appeal Ref: APP/G2435/C/20/3247734

Land off Main Street, Swepstone LE67 2SG

- 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 Stephen Ball against an enforcement notice issued by North West Leicestershire District Council.
 - The enforcement notice was issued on 28 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the Site from agriculture to residential use incorporating garden land and vehicular parking in connection with the residential occupation of The Stables, Charnells Court, Main Street, Swepstone including the erection of a hipped roofed open fronted timber garage and timber lean-to wood store, brick walls, brick pillars and timber gates, mono pitched timber car port, hard standing, fencing and timber summer house.
 - The requirements of the notice are to:
 1. Cease the use of the Site for residential use incorporating garden land and vehicular parking in connection with the residential occupation of The Stables, Charnells Court, Main Street, Swepstone.
 2. Remove the hipped roofed open fronted timber garage and timber lean-to wood store, brick walls, brick pillars and timber gates, mono pitched timber car port, hard standing, fencing and timber summer house located on the Site.
 - The period for compliance with the requirements is one month in respect of requirement 1 and six months for requirement 2.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - All oral evidence at the inquiry was given under oath.
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Decision

1. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice and varied by deletion of the word 'fencing' from the second requirement. Subject to this correction and variation the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

Submission of 'late evidence'

2. In advance of the Inquiry, but after the deadline for the submission of documents, the appellant submitted an 'authorities bundle and additional materials' document. This included appeal decisions relating to sites at Francis Lane, Newton Burgoland (Appeal Ref: APP/G2435/C/09/2100303 & APP/G2435/C/09/2100304 and APP/G2435/C/09/2106755 & 2106758) (the Francis Lane decisions) and a planning decision at Ravenstone Lane, Heather (Council Ref. 20-01207-FUL) (the Ravenstone Lane decision). The Council objected to the submission of the Ravenstone Lane decision. On the basis that the appellant considered the relevant part of the decision to be a planning condition which was included in it and that condition had been replicated in the Statement of Common Ground (SoCG), the appellant decided not to submit the Ravenstone Lane decision as late evidence.
3. The Council had intended to call Richard Scott as a witness and Mr Scott had prepared a Proof of Evidence. However, shortly before the Inquiry opened, and for reasons which were unavoidable, the Council had to substitute Dean Flower as its witness. The appellant had no objection to this, and Mr Flower adopted Mr Scott's evidence in full under oath. However, Mr Flower also introduced a 'second bite' argument when he submitted a further Proof of Evidence in his own name. This was on the grounds that the Council had sought to take enforcement action in February 2018.
4. The appellant objected to the submission of the copies of the enforcement notices which were submitted with Mr Flower's evidence and to the 'second bite' argument. He considered that this was 'late evidence' and that he would be prejudiced if it was submitted because it affected the arguments which he had made in support of his appeal, specifically in relation to the time limit provided under section 171B(3) of the Town and Country Planning Act 1990 (the Act). In the light of the arguments made by the appellant and to avoid any delay in the appeal process, whilst not entirely accepting the appellant's arguments regarding prejudice, the Council subsequently agreed not to submit the copies of the enforcement notices and withdrew the 'second bite' argument.

The grounds of appeal

5. The appellant clarified that his ground (d) appeal relates only to part of the appeal site. Both parties describe this land as 'the Boynett land' and it forms the northern part of the site. The parties describe the southern part of the site as 'the Spalton land'. I have adopted these descriptions in my decision.

The site plan

6. The Council requested during the Inquiry that a parcel of land be removed from the site plan which identifies the land to which the notice relates, because it was satisfied that this land could be used for the parking of vehicles in association with The Stables. The land falls wholly within the Boynett land. The appellant has no objection to this change and an updated site plan has been submitted. No prejudice would arise to either party if I were to substitute the corrected the plan as requested by the Council.

Ground (d)

7. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
8. This ground of appeal accepts that at some stage there has been a breach of planning control, but that it is immune from enforcement action, having subsisted for a ten-year period in the case of a material change of use to residential use.

Main issue

9. In the light of the Council's decision to withdraw its 'second bite' argument, there is no dispute between the parties that in order to succeed on ground (d) the appellant must show that the material change of use to residential use occurred on the Boynett land before 28 January 2010 in order to be outside the time limit provided under section 171B(3) of the Act (the relevant date). Also it must be shown that the use has continued without significant interruption for a period of 10 years to become lawful. However, there is a dispute in relation to the relevant time limit which should be applied in respect of the buildings and structures which have been erected on the land.
10. The Council's view, which it argues is supported by case law, is that the construction of all of the buildings and structures which are listed on the notice was carried out to facilitate the change of use. On that basis the Council considers section 173(5) of the Act gives the power to require the removal of those buildings or works.
11. The appellant does not agree with the Council and I have addressed this issue below.
12. Nevertheless, the restriction of his appeal under ground (d) to the Boynett land means that not all of the buildings and structures fall to be considered under this ground. In the light of the correction to the site plan and on the basis of my site visit the timber garage and lean-to wood store, the brick walls, brick pillars and timber gates, the summer house, and part of the fencing are on the Boynett land. If the appeal under ground (d) is successful it would only apply to these buildings and structures and not to the car port and hardstanding on the Spalton land.

Reasons

Change of use of the land

13. During the Inquiry I heard evidence under oath from the owner of the land at the time when planning permission was granted for the change of use of barns to from two dwellings, including The Stables, in 2002 and a neighbour who has lived in an adjacent house since 2002. The previous owner/occupier said that the land had been in residential use since 2007 and the neighbour said that residential use took place before 2010, but he deferred to the appellant as to the timescale. The owner/occupier said that he and a subsequent owner/occupier had mowed the land and that children played on it.

14. The appellant became the owner/occupier of the land in February 2010 but he says that he has personal knowledge of the site since 2007 and that he was aware of the previous owner/occupier using the land as garden and part of it for parking and access to a brick-built double garage which is attached to The Stables.
15. The hardstanding on the Boynett land has been excluded from the site notice, therefore its use for parking and accessing the double garage is no longer a matter for this appeal. In terms of establishing the use of the remaining part of the Boynett land, this turns on how the grassed area and the area upon which part of the timber garage has been erected has been used.
16. There is no dispute between the parties that the grassed area was levelled, tilled, and seeded in 2006 and that since that time it has been regularly mowed. Whilst the appellant and his witnesses refer to the land being used as a garden and the fact that it has the appearance of a lawn, save for these statements, some of which were made under oath, there is very little evidence of, for example, children playing on the grassed area or garden furniture being taken onto the land.
17. There is a photograph of a pergola on the land dated June 2010, but the appellant says that this was only in place for 2-3 weeks. The reference to the erection of a pergola accords with the recollection of one of the witnesses that the Boynett land was used for a wedding party in June 2010. But there is no evidence to substantiate that this function was part of a longstanding use of the land as a garden or of continuous use for the full ten year period to the extent that the Council could have taken enforcement action at any time.
18. The appellant argues that if the land has not been used for agricultural purposes since 2006, which the Council accepted under oath, then the only coherent conclusion is that it was being used for domestic residential purposes. He also says that there was no reason for the grassed area to be maintained if it was not used as a garden. However, the appellant is required to demonstrate that the relevant part of the appeal site has been used as a garden over a continuous ten year period after the date of the breach, not that it is no longer being used for its original purpose.
19. Furthermore, I do not find that mowing grass and thereby maintaining the land to be a persuasive argument. The grassed area forms part of the outlook from the dwellings and their surroundings and it could reasonably be expected that regular mowing is necessary to maintain a tidy appearance when viewed from The Stables and other dwellings.
20. The appellant refers to the Francis Lane decisions as demonstrating that other Inspectors have taken the view that mown grass is a feature of a private domestic garden. The developments to which those decisions relate are not directly comparable with the appeal scheme in that their site context was different being on the edge of a settlement. However, there was in part a consideration by the Inspectors in those cases as to what features may be characteristic of a domestic garden. Nevertheless, the mown grass element was only part of their assessment which in one case also noted a hen coop and vegetable beds. As such I do not consider that the Francis Lane decisions significantly undermine my conclusion that the existence of mown grass is not in itself a determining factor in concluding that land is in residential use.

21. The photographs taken in June 2010 show the grassed area extending across the space which is currently occupied by part of the timber garage. There is no evidence to show that this area was used in a different way to the rest of the grassed area before the garage was constructed.

The Planning Contravention Notice

22. The Council relies on the response to its Planning Contravention Notice (PCN), which the appellant completed in October 2010, to support its argument that the land was not in use as garden land at that time, which is clearly after the relevant date. The PCN was issued following a site visit by a council officer.
23. The area upon which vehicles were parked, as shown on the photographs dated September 2010, and where it is reasonable to assume vehicles were parked at the time of the Council's site visit, has now been removed from the site plan for the notice. Therefore, notwithstanding how the appellant or the Council regarded the use of this land in 2010/2011 it does not form part of the allegation now. For this reason, I do not need to take into account anything which the appellant, his witnesses or the PCN response says about this land in the context of this appeal.
24. The PCN describes the breach as change of use to 'domestic garden curtilage'. Taken as read the responses such as 'it is not used as domestic garden' appear to confirm that the land was not in use as a garden at that time. However, despite agreeing that he was clear about the extent of the land the subject of the PCN and what the allegation was, the appellant said under cross examination that the fenced off grass area was mown and used as a garden.
25. The appellant expressed the view that during the visit the officer pointed out where a trailer was parked and the Spalton land to the south. He indicated that his responses on the PCN were in respect to the land identified during the site visit. This is inconsistent with his response that he understood the plan which accompanied the PCN as this does not include the Spalton Land.
26. The PCN plan includes the dwelling, The Stables, its walled garden and the access track running north to south in addition to the Boynett land. The questions in the PCN refer to 'land purchased from adjoining land owner', 'agricultural land now used as domestic garden and parking' and 'fenced off grassed area'. The wording of these questions clarifies which part of the area identified in the PCN the Council is concerned about and the appellant's responses seem to relate to these particular areas notwithstanding his current view about which land was involved.
27. In response to the completed PCN and following another visit by a different council officer the Council wrote to the appellant in March 2011. The letter says that as stated in the PCN the land shall only be used for the parking of agricultural vehicles and not used as a domestic garden. There is also a warning that if the Council becomes aware that the land is being used as garden the appellant may be contacted again. The appellant was advised that the investigation file would be closed.
28. The appellant opines that on the basis of data contained on the Council's information system that the case may have been closed because it was not expedient to pursue it rather than because there was no breach. He also argues that when the visit was made by officers in 2011 the weather may not

- have been conducive to use of the land as garden space and that was why the officer assumed that the land was not being used in that way.
29. The officer who wrote the letter is no longer employed by the Council but the officer who carried out the site visit in March 2011 is. The appellant notes that this person was not called to give evidence. Furthermore, Mr Flower advised that he was not employed by the Council when the 2010/2011 investigation was carried out. On this basis the appellant argues that the Council has no first-hand evidence of the use of the land over the relevant period.
30. Drawing all of these strands together, the Council's position is clear in March 2011 that in view of the PCN replies and the site visits the land was not being used as garden land. It was not necessary for Mr Flower to have been party to the enforcement investigation at the time or for the Council to call any other officers for me to reach this conclusion. Furthermore, the appellant had the opportunity at the time to query the Council's position and its advice that the land cannot be used for garden activities, as noted in the case notes, but there is no evidence that he did.
31. Whilst the case notes use the term 'not expedient to pursue the matter' and make reference to the Francis Lane decisions, the Council relied on what it had been told by the appellant regarding his use of the land in the PCN and it was entitled to do so. Contrary to the view of the appellant there is nothing to suggest that the Council accepted that a change of use had occurred in March 2011.
32. The onus is on the appellant to demonstrate that the change of use occurred on or before 28 January 2010. The witnesses say that the land was used as garden but there is no supporting evidence to demonstrate this. Also, the neighbour deferred to the appellant in terms of when the change took place and the appellant's position on this is confused in the light of his response to questions regarding his answers on the PCN.
33. In order to succeed on ground (d) the appellant's evidence must pass the test of the balance of probabilities and the lack of evidence to contradict their version of events is an important component of that consideration. However, the evidence provided by the appellant must itself be precise and unambiguous.
34. In this case the appellant relies primarily on statements provided by himself and others relating to the use of the land and criticises the Council for its lack of first-hand evidence. However, there is an inconsistency between the appellant's responses to the PCN and his statement which was clear during the inquiry. This outcome renders his evidence less than precise and ambiguous, notwithstanding the lack of contradictory evidence provided by the Council.
35. On the basis of the evidence and the balance of probabilities I conclude that the appellant has not shown that the change of use to residential use incorporating garden land of that part of the site falling within the Boynett land did occur on or before 28 January 2010.

Structures and buildings

36. It was clear from my site visit that the amendment of the site plan removes the hardstanding on the Boynett land from the scope of the notice. The hardstanding on the Spalton land remains in scope but the appellant has not

- pursued his appeal under ground (d) in respect of this land. There is no additional hardstanding for me to consider under ground (d).
37. The appellant says that in addition to boundary fencing, which I have addressed under ground (f), internal fencing was erected in 2010 and subsequently replaced by a brick wall in 2014. He also says that at the same time walls and pillars were constructed and new gates were installed, that in 2013 a summer house was erected and that the timber garage and lean-to wood store was erected in 2012. The substantial completion of all of these structures and buildings took place after the relevant date of 28 January 2010 but they were also present on the site four years before the notice was served. It is on this basis that the appellant argues that these structures and buildings are immune from enforcement action under the time limit established by section 171B(1) of the Act.
38. The Council disagrees with the appellant on this point and has issued the notice on the basis that the structures and buildings are part and parcel of the change of use and that the 10 year time limit is applicable to them. If the Council is correct in its assessment that the change of use occurred in 2016, the wall, pillars, gates, timber garage and summer house were all in situ before the change of use commenced.
39. There is no disagreement between the parties that the site has been developed incrementally in much the same way as occurred in the Kestrel Hydro case (Kestrel Hydro v SSCLG & Spelthorne BC [2016] EWCA Civ 784). The issue between them is the implications of the structures and buildings being constructed before the change of use occurred. As the Council notes this was not the circumstance in Kestrel Hydro case where the various structures were erected after the change of use had occurred.
40. The Council's argument that structures erected before a change of use takes place fall more readily in the ambit of facilitating the use is persuasive. In this case the wall, pillars and gates which were erected separate that part of the site laid to lawn and the parking and garaging spaces. In a domestic context this would provide a safe space for play or sitting outside and a degree of separation in terms of noise and disturbance from activities in the garage.
41. The garage itself, whilst having the parking function associated with the hardstanding on which it is partially constructed, has the appearance of a domestic garage and accommodates vehicles of a type and scale generally associated with personal as opposed to business or agricultural use. Furthermore, attached to the garage is a wood store, again of domestic size and scale and in the absence of any evidence of outside stoves or braziers its use is associated with The Stables which has a chimney.
42. The appellant agreed under cross-examination that none of the structures and buildings were necessary for agriculture which was the previous lawful use of the land. I am of the view that even though the buildings and structures may have been erected before the change of use occurred, they all facilitate the use of the land for residential use incorporating garden land and vehicular parking and are not of a nature or scale which exceeds development which is truly integral to that material change of use. For this reason, the relevant time limit for the other structures and buildings is 10 years and there is no evidence to demonstrate that they have been in situ for that time period.

43. With regard to the summer house only the appellant also argues that this building does not require planning permission. In answer to a question he said that this is because the summer house is not attached to the ground. Even if the summer house does not amount to development, it was held in the *Somak Travel* case (*Somak Travel v SSE & Brent LBC* [1987] JPL 630) that works which do not amount to development at all but had facilitated an unauthorised change of use, could be required to be removed. This ruling applies in this case as the summer house facilitates the use of the grassed area as garden land and it too falls to be assessed in the context of the time limit of 10 years.

Conclusion ground (d)

44. On the basis of the evidence, and concluding that the structures and buildings on the site facilitated the change of use, the appellant has not demonstrated on the balance of probabilities that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
45. For the reasons set out above the appeal on ground (d) fails.

Ground (a) and the Deemed Planning Application (DPA)

46. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted. The appeal under ground (a) relates to the whole site (as amended), therefore the use of both the Boynett land and the Spalton land and all of the structures and buildings which have been erected fall to be considered as part of the DPA.

Main Issues

47. On the basis of the Council's reasons for issuing the notice the main issue is the effect of the development on the character and appearance of the site and the surrounding area.
48. During the preparation for the Inquiry it became evident that the site is within the River Mease Special Area of Conservation (SAC). The SAC falls within the definition of a European site which raised the potential for me to need to carry out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017. I have dealt with this matter as a second main issue.

Reasons

Character and appearance

49. There is no dispute between the parties that the relevant policy is Policy S3 of the North West Leicestershire Local Plan (2017) (the Local Plan). There was a discussion about whether or not Policy S3 is in full conformity with the National Planning Policy Framework (the Framework). It was accepted between the parties that there was a balance to be struck between countryside interests and developer interests and that there were different ways to protect the countryside. No particular lack of conformity with the Framework was identified and I find Policy S3 to be broadly in conformity with its recognition of the intrinsic character and beauty of the countryside.
50. Policy S3 sets out that outside the limits of development land is identified as countryside and that in the countryside a number of uses will be supported

subject to a set of criteria which include the impact on the appearance and character of the landscape. Whilst the change of use to residential use incorporating garden land and vehicular parking is not specifically listed in the uses listed in Policy S3, the Council's witness agreed that the Council applies the policy flexibly. He said that the Council would grant exceptions to the listed development where the visual impact would not be unduly prominent.

51. The appeal site lies close to a cluster of buildings which include The Stables and other former agricultural barns converted to dwellings and Upperfields Farmhouse. Access to Main Street, which, together with Church Street, is a primary route through Swebstone, is via a metalled road which continues beyond The Stables and provides access to the complex of buildings. The countryside surrounding the site is formed of open fields and there is very little visual connection with the buildings in Swebstone.
52. The access forms part of a network of footpaths and bridleways in the area. There is also a footpath running approximately east to west across the field to the east of the site which loops back to join Swebstone Road at some distance beyond the access road. In some views, particularly from the footpath to the north, the site is screened by groups of trees on the field boundaries, the undulating nature of the land and other buildings. However, it is very prominent in the view from the footpath crossing the field to the east and from the access road when approaching from Main Street.
53. It is clear from the evidence and was evident during my site visit that the appeal site is not the only land which has been fenced off from the neighbouring fields. These fences and those which are on the appeal site, have a very limited impact on the surrounding area. Similarly, the mown grass state of the enclosed spaces on the opposite side of the access road to the converted barns, whilst of a more manicured appearance than the fields laid to crops, are open and compatible in visual terms with the surrounding area.
54. Prior to any development on the land which has been fenced off from the fields, the access road would have been a visual stop between the buildings and structures around the dwellings and the openness of the land to the east. The parking of vehicles on the hardstanding on the Boynett land which following the amended site plan now falls outside the appeal site undermines the effect of the access road as a visual stop. However, this hardstanding lies adjacent to only a very short part of the access road, therefore the visual intrusion caused by vehicles parked on this hardstanding would have been very limited.
55. The hardstanding on the Spalton Land did not form part of the appeal under ground (d) but falls to be considered under ground (a) because it has not been excluded from the site plan. The hardstanding in this area allows the parking of vehicles and associated activities such as maintenance and car washing to be carried out over a wider area than that restricted to the hardstanding on the Boynett land. The area forms the southern part of the site and is visible from the access track on the approach to the dwellings and from the footpath across the field to the east. Whilst fencing/hedging screens the hardstanding to some degree the introduction of domestic activities into this area is at odds with the character of the surrounding countryside and contributes to the visual impact of the development as a whole.
56. Given the conclusions which I have reached in respect of the appeal under ground (d), the baseline for the consideration of the effect of the development

on the character and appearance of the site and the surrounding area is the appearance of the fenced off Boynett land and the hardstanding only. The existing buildings and structures do not form part of the baseline situation as I have not found them to be immune to enforcement action.

57. In addition to the other fenced areas associated with adjacent dwellings there are structures and buildings on those spaces. I do not know the planning status of those structures/buildings. The buildings are in a different position relative to the converted barns, so whilst they are part of the site context they do not necessarily establish a precedent for the buildings on the appeal site.
58. The timber garage in particular is a dominant form in the views of the site from the access road and across the field to the west from the footpath. The car port is partially screened by trees from the access road, but together with the lean-to wood store, the summer house and the walls and gates, it contributes to the consolidation of built form on this part of the site. This is at odds with the openness of the surrounding fields and the adjacent enclosed grassed areas.
59. When viewed from the footpath to the east, the buildings sit forward of the side elevation of Upperfields Farmhouse and the elevations of The Stables and the neighbouring dwelling, the Cart Hovel which define the western edge of the access road. This intrusion into the setting of the group of buildings also appears alien to the open fields and spaces on the east side of the access road.
60. The appellant argues that additional hedge planting which could be secured by planning condition along the eastern boundary of the site would successfully screen the buildings. There is already some hedging along the southern boundary of the site, and it is reasonable to assume that additional planting would have a similar effect. However the height of the timber garage is such that it would be unlikely to be completely screened by a hedge and its presence and that of the summer house and car port would be felt in close views which would be possible from the footpath.
61. The appellant also refers to other development which the Council has approved in the close vicinity of the site, in particular a detached garden room at Upperfields Farmhouse (Council Ref. 13/00364/FUL) (the garden room) and use of land for the grazing of horses (Council Ref. 13/00431/FUL) (the stables).
62. The Council's report on the garden room concludes that it would not impact on the open character of the countryside and it is in the established garden area of Upperfields Farmhouse. This decision reflects the flexible approach which the Council says it takes to its application of Policy S3. The Council considered the stables to be in accordance with Policy S3 as a recreation use. In any event both these buildings and others which have been approved by the Council are on the opposite side of the access road to the site and are read as part of the cluster of buildings associated with the former barns and farmhouse. The presence of these buildings does not establish a precedent for the continued use of the appeal site for residential use or the retention of the buildings and structures.
63. The status of the buildings on the fenced off areas associated with the adjacent dwellings is unclear. However, even if they are lawful in planning terms, they do not have the same impact on openness as the appeal scheme. In particular the buildings on the appeal site are very visible on the approach to the dwellings from Main Street. It follows that, notwithstanding their status, these

adjacent buildings, and their impact on the landscape, do not provide justification for the appeal scheme.

64. Drawing all of these strands together, I conclude that the development has a harmful effect on the character and appearance of the site and the surrounding area. Consequently, it is contrary to Policy S3 of the Local Plan and to the Framework which recognises the intrinsic character and beauty of the countryside.

River Mease SAC

65. Policy EN2 of the Local Plan states that development will only be allowed where it can be demonstrated that it will not have an adverse impact on the River Mease SAC. Furthermore, as the River Mease SAC falls within the definition of a 'European site', I must give consideration to the need to carry out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017.
66. It is clear from Policy EN2 that the Council's concerns with regard to the potential for harm to the River Mease SAC arises from the capacity of the Wastewater Treatment Works. The parties also agreed during the Inquiry that the issue of the level of phosphates and nitrates in the River Mease was key to the Council's concerns. Furthermore, the parties agreed that taking land out of agriculture would lead to a reduction in phosphates and nitrates and that the development has not resulted in any additional foul water discharge or drainage.
67. In this context, the proposal is not likely to have a significant effect on the internationally important features of the River Mease SAC, alone or in combination with other plans or projects, therefore it is unnecessary to carry out an appropriate assessment. The development accords with Policy EN2 of the Local Plan.

Other matters

68. The conclusion which I have reached on the appeal on ground (d) is that the use of the Boynett land for residential use and the construction of structures and buildings on it is not immune from enforcement action. Consequently, there is no fallback position in regard to authorised use or building operations on that land. The Spalton land did not form part of the appeal under ground (d), therefore there is no fallback position in relation to the use of this land or the hardstanding and the car port which have been constructed on it.
69. The appellant has not referred to any particular benefit to him arising from the use of the site with the exception of facilitating access to his double garage. In any event any personal benefit arising from the residential use of the site would not outweigh the harm which I have found in terms of the effect of the development on the character and appearance of the appeal site and the surrounding area.
70. I have considered whether the harm which I have found could be overcome by the imposition of planning conditions on an approval of the DPA. However, as I have concluded that the buildings which are already on the site are harmful a condition to limit the erection of further buildings as permitted development would not overcome that harm. Also, it will be seen from my comments above

that I am unconvinced that additional planting would satisfactorily screen the buildings and it follows that a landscaping condition would not provide an appropriate level of mitigation of the harmful effect of the development. In this context, planning conditions would not overcome the harm which I have found.

Conclusion in respect of ground (a) and the DPA

71. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Notwithstanding the lack of harm which I have found in regard to the impact of the development on the River Mease SAC, the harm which I have identified to the character and appearance of the appeal site and the surrounding area is sufficient to warrant refusal of the DPA because it is contrary to the development plan specifically to Policy S3. There are no material considerations in this case which lead me otherwise than to conclude against the development plan.
72. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

73. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
74. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use to cease and structures/buildings to be removed, I consider the purpose is to remedy the breach of planning control.
75. The appellant submits that the timber garage, the summerhouse and the brick walls and timber gates do not require planning permission and that on this basis it is unreasonable for them to be required to be removed. On the basis of his arguments under ground (d), the appellant considers that these structures and buildings do not require planning permission because they are immune from enforcement action. However, I have considered these structures under ground (d) and concluded that they are not immune from enforcement action. In the absence of any other argument to demonstrate that these structures and buildings do not require planning permission, the requirement for their removal has not been shown to be excessive.
76. The appellant also submits that the car port does not require planning permission. This structure falls in the Spalton land and does not form part of his appeal under ground (d), therefore the argument made by the appellant on the basis of immunity from enforcement action does not apply to the car port and he has offered no further argument to explain why the car port does not require planning permission. Therefore, the requirement to remove the car port has not been shown to be excessive.
77. With regard to the hardstanding, which is on the Boynett land, this has been removed from the site plan and on that basis, it is not required to be removed. This addresses the appellant's argument that a requirement to remove this part

of the hardstanding is excessive. However, this does not constitute success under ground (f) because, as corrected, the site plan no longer includes this land and the enforcement notice does not apply to it.

78. The Council agreed during cross examination that the boundary fences were not part and parcel of the change of use of the land, were immune from enforcement action and that the removal of them would serve no planning purpose. On that basis, the requirement to remove the fences is excessive and the appeal on ground (f) succeeds in so far as it relates to fencing. I shall vary the notice to delete the requirement to remove fencing.

Conclusion

79. For the reasons given above, the appeal is dismissed, and the enforcement notice is upheld with a correction and variation as set out in the Decision.

Sarah Dyer

Inspector

APPEARANCES

FOR THE APPELLANT:

Andrew Tabachnik QC	Instructed by Mr Shelcott of M&S Solicitors
Stephen Ball	Appellant/Witness
Martin Ladd	Witness
Mark Kerridge	Witness

FOR THE COUNCIL:

Josef Cannon, Barrister	Instructed by the Solicitor for the Council
Dean Flower	Senior Planning Enforcement Officer
	North West Leicestershire District Council

DOCUMENTS SUBMITTED TO THE INQUIRY

Policy EN2 – River Mease Special Area of Conservation

Recommended Planning Conditions

Revised Enforcement Notice Site Plan

Opening and Closing Submissions by the Council

Closing Submissions by the Appellant



Plan

This is the plan referred to in my decision dated: 10 June 2021

by Sarah Dyer BA BTP MRTPI MCMI

Appeal Ref: APP/G2435/C/20/3247734

Land off Main Street, Swepestone LE67 2SG

Scale: NTS

