



Appeal Decision

Inquiry Held on 8 - 11 June 2021

Site visit made on 18 June 2021

by C Sherratt DipURP MRTPI

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

Decision date: 08 November 2021

Appeal Ref: APP/V4630/C/19/3230153

Land and buildings known as The Stables, rear of 211-212 Norton Road, Pelsall, Walsall

- 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 Carl Powell against an enforcement notice issued by Walsall Metropolitan Borough Council.
- The enforcement notice was issued on 2 May 2019.
- The breach of planning control as alleged in the notice (paragraph 3 of the Notice) is:

3.1 Without planning permission, the carrying out of the following works:

3.1.1 Garage

- (a) Partial re-building and repointing;
- (b) Erection of new roof;
- (c) Installation of generator, stainless steel flue and air bricks;
- (d) Installation of wooden doors and iron gates, and side uPVC window.

3.1.2 Canal and towpath

- (a) Removal of surface of towpath, laying of membrane, tipping of hard-core, and laying of block pavers.

3.1.3 Former Stop building, including Tower

- (a) Erection of new roof and installation of roof lights;
- (b) Installation of uPVC windows and door;
- (c) Installation of Rayburn and stainless steel flue;
- (d) Installation of plastic guttering, drainpipes, flashing and other such items;
- (e) Installation of external lighting, security cameras and stone name plate.

3.1.4 New Building

- (a) Erection of a new building physically attached to the rear of former Stop Building but with no internal access.

3.1.5 New wall along rear and side of former Stop Building and New Building

- (a) Erection of a new wall, with pillar at each end, section of palisade fencing, palisade gates, further section of wall and pillar;
- (b) New wall adjoining Friar Bridge.

3.1.6 Engineering Operations

- (a) Carrying out of earthworks to lower ground levels adjacent to Friar Bridge.

3.1.7 Friar Bridge

(a) Erection of palisade railing to obstruct towpath.

3.2 Without planning permission, the use of the Stop Building and the New Building for domestic residential purposes, having furniture, kitchen area, cooking facilities, SMEG fridge, dog bowl and bedding etc., domestic gymnasium equipment and other domestic paraphernalia and the use of the Garage for domestic purposes to contain a generator as a power source for the Stop Building and the New Building.

- The requirements of the notice (as set out in paragraph 5 of the Notice) are to:

5.1 Garage

- (a) Remove roof;
- (b) Reduce height of wall on rear elevation shown marked A on the Plan to a height not exceeding 1.8m measured from ground level;
- (c) Reduce height of wall on front elevation shown marked B on the Plan to a height not exceeding 1.8m measured from ground level;
- (d) Grub out cement;
- (e) Remove generating equipment;
- (f) Remove stainless steel flue;
- (g) Remove airbricks;
- (h) Remove wooden doors, iron gates and side uPVC window.

5.2 Canal and Towpath

- (a) Remove all block pavers, hardcore and membrane;
- (b) Reinststate surface of towpath to original ground level.

5.3 Former Stop Building including Tower

- (a) Remove roof shown marked C on the Plan;
- (b) Remove roof lights;
- (c) Grub out cement;
- (d) Remove uPVC windows and door;
- (e) Remove Rayburn and stainless steel flue;
- (f) Remove all plastic guttering, drainpipes, flashing and other such items;
- (g) Remove external lighting, security cameras and stone nameplate.

5.4 New Building

- (a) Demolish new building shown marked D on the Plan.

5.5 New wall along rear and side of former Stop Building and New Building

- (a) Remove walls and pillars shown marked in blue and E on the Plan in their entirety or reduce to a height no greater than 2 metres measured from ground level;
- (b) Remove palisade fencing marked F on the plan in their entirety or reduce to a height no greater than 2 metres measured from ground level;
- (c) Remove palisade gates marked G in the plan in their entirety or reduce to a height no greater than 2 metres measured from ground level;
- (d) Remove wall adjacent to Friar Bridge shown marked in green and H on the Plan or reduce to a height no greater than 2m measured from ground level.

5.6 Engineering Operations

- (a) Reinststate ground levels adjacent to Friar Bridge shown marked I on the Plan;
- (b) Reinststate ground levels along the rear of the former Stop Building shown marked J on the Plan;
- (c) Remove black plastic membrane from the areas shown marked I and J on the Plan.

5.7 Friar Bridge

(a) Remove palisade fence obstructing towpath shown marked K on the Plan or reduce to a height of 2m above ground level.

5.8 General

(a) Remove all waste items arising from paragraph 5.1 – 5.7 above to a licensed facility authorised to accept such materials.

5.9 Use

(a) Cease the use of the Stop Building and Garage for domestic residential purposes and remove all furniture, fitted kitchen, cooking facilities, dog bowl and bedding etc., domestic gym equipment and other domestic paraphernalia.

- The period for compliance with the requirements of paragraph 5.9 is 1 month; requirements of 5.1 (e) is 2 months; and the requirements of 5.1 (a)-(d), 5.1 (f)-(h), 5.2, 5.3, 5.4, 5.5, 5.6., 5.7 and 5.8 is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Preliminary Matters

1. It was clarified at the Inquiry that it would be more accurate to refer to the land referred to as 'towpath' in the notice as 'canal-side wharf'. No injustice would be caused if I were to do so. I shall correct the notice accordingly.
2. At the Inquiry the Council also confirmed that it was prepared to under-enforce in relation to the garage (3.1.1) by no longer requiring the removal of the roof, mortar, or wooden doors and the reduction in height of the walls shown marked A and B on the Plan attached to the Notice. In relation to the former Stop Building including Tower (3.1.3), the Council confirmed it was prepared to under-enforce in respect of the roof, re-pointing¹, plastic guttering, drainpipes, flashing and other such items and the stone nameplate since these ensured the building would remain watertight and /or compliance has the potential to cause damage to the building. The Council also conceded during examination that the requirement to remove the security cameras in 5.3(g) could be deleted.
3. These variations to the requirements of the notice can all be made without causing injustice. I shall therefore vary the notice to delete the following from the requirements:

5.1 (a), (b), (c), (d) and the reference to 'wooden doors' in (h); and

5.3 (a), (c), (f) and reference to stone nameplate in (g).

A further consequential correction will be required where the entire sub-section is being deleted from the requirements to also delete any reference to it from the period for compliance.
4. In so far as the notice could have required these works set out above to be removed but will no longer do so if upheld, s173(11) of the Act provides that upon compliance with the remaining requirements of the notice, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of those works. This is

¹ The description of the alleged breach does not refer to re-pointing of the Former Stop Building including tower but given these corrections I need not address this mis-match between the allegation and requirements.

notwithstanding the outcome of ground (a) and the deemed planning application.

Decision

5. It is directed that the enforcement notice be corrected by:

- Delete the words 'canal towpath' throughout the notice and replace with 'canal-side wharf';
- Delete 3.1.1 (a), (b) and (d) and 5.1 (a), (b), (c), and (h);
- Delete the words 'generator,' from 3.1.1 (c) and delete 5.1 (e);
- In paragraph 3.1.3 (b) and 5.3 (d), insert the words "wood-composite" before "door";
- Delete from paragraph 3.1.3 (c) the words "of Rayburn and" and from 5.3 (e) "Rayburn and"; and
- Delete the words 'a new wall, with pillar at each end,' from 3.1.5 (a).

6. It is directed that the enforcement notice be varied as follows:

- Delete requirements 5.1 (d);
- Delete requirements 5.3 (a), (b), (c), (d) and (f) and reference to 'security cameras and stone nameplate' in 5.3 (g); and
- In section 6 'Time for Compliance':
 - delete paragraph 6.2;
 - in 6.3 delete 5.1 (a)–(d); replace "5.1 (f) - (h)" with "5.1 (f) and (g)"; add "(e) and (g)" after 5.3 and replace '6 months' with '12 months' as the period for compliance with the remaining requirements set out in 5.1-5.8 of the notice.

6. The appeal is allowed insofar as it relates to the following specified parts of the development and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for those parts of the development to be given permission:

3.1.1 Garage

- (a) Repointing;
- (c) Installation of air bricks;

3.1.3 Former Stop building, including Tower

- (a) Erection of new roof and installation of roof lights;
- (d) Installation of plastic guttering, drainpipes, flashing and other such items;
- (e) Installation of security cameras and stone name plate.

3.1.5 New wall along rear and side of former Stop Building and New Building

- (a) Erection of section of palisade fencing, palisade gates, further section of wall and pillar;

(b) New wall adjoining Friar Bridge.

3.1.6 Engineering Operations

(a) Carrying out of earthworks to lower ground levels adjacent to Friar Bridge.

3.1.7 Friar Bridge

(a) Erection of palisade railing.

7. The appeal is dismissed and the enforcement notice is upheld as corrected and varied, insofar as it relates to all other parts of the development alleged, as listed below and planning permission is refused in respect of those remaining parts of the development for which the appeal is being dismissed, on the application deemed to have been made under section 177(5) of the 1990 Act as amended:

3.1.1 Garage

(c) Installation of stainless steel flue.

3.1.2 - Canal and canal-side wharf

(a) Removal of surface of towpath, laying of membrane, tipping of hard-core, and laying of block pavers.

3.1.3 - Former Stop Building including Tower

(b) Installation of uPVC windows and wood-composite door;

(c) Installation of stainless steel flue;

(e) Installation of external lighting.

3.1.4 - New Building

(a) Erection of a new building physically attached to the rear of former Stop Building but with no internal access.

3.2 - Use

The use of the Stop Building and the New Building for domestic residential purposes, having furniture, kitchen area, cooking facilities, SMEG fridge, dog bowl and bedding etc., domestic gymnasium equipment and other domestic paraphernalia and the use of the Garage for domestic purposes to contain a generator as a power source for the Stop Building and the New Building.

Application for costs

8. At the Inquiry applications for costs were made by (A) Mr Powell against Walsall Council and (B) Walsall Council against Mr Powell. These applications are the subject of a separate Decision.

Reasons

Ground (b)

9. The case made on ground (b) is that no pointing with cement mortar has occurred as a matter of fact. The appellant submits, the pointing had been

done with lime mortar by an experienced conservator. A sworn statement was submitted to this effect.

10. Notwithstanding that the agreed variations to the requirements would no longer state 'grub out cement' in 5.1 (d) or 5.3 (c), the description of the alleged breach still includes a reference to 're-pointing' in 3.1.1 (a). Notably, the type of mortar is not specified in the description of the alleged breach. There was no dispute between the parties that the buildings have been re-pointed. Accordingly, the matter described (i.e., 're-pointing') has occurred as a matter of fact and ground (b) fails in this regard.
11. The appellant also states that the door that has been inserted into the former stables (the Stop Building) is a composite wood door rather than a uPVC door. The allegation at 3.1.3 (b) states "Installation of uPVC windows and door". This is then reflected in the requirements. There were differing opinions put to me as to whether the allegation and corresponding requirement is directed at the door irrespective of its materials or only a uPVC door.
12. Reading 3.1.3 (b) in the context of the notice as a whole, I acknowledge that the reader could assume that the door being referred to was a uPVC door like the windows also referred to in the same sentence. Where materials are timber, the Council has, elsewhere in the description of the alleged breach, made that clear². Equally if the materials were unknown but the door was nevertheless considered to be unacceptable then the description is not incorrect.
13. On the balance of probability, the installation of a door has occurred as a matter of fact, albeit a wood-composite door. It is clear that the Council's concern is one of inappropriate materials and design – that remains the case. There could have been no doubt which door was being referred to and having visited the site, the finish of the door does have a plastic appearance. The description is not incorrect, but in my view no injustice would occur if I were to correct the notice to refer to the installation of wood-composite door at 3.1.3 (b) and to make a consequential correction to 5.3 (d). It is simply a matter of clarification – the concerns about materials and design remain and so the appellant's case under ground (a) would not be undermined.
14. Ground (b) succeeds to this limited extent and the notice shall be corrected accordingly.

Ground (c)

15. For the appeal to succeed on ground (c) the onus is upon the appellant to demonstrate, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. The case made for the appellant is that the matters alleged in section 3.1 (the operations) are not development by virtue of s55(2) since those matters alleged are not works which materially affect the external appearance of a building. S55(2)(a) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which (i) affect only the interior or (ii) do not materially affect the external appearance of the building.

² In the description of the alleged breach at 5.1 (h) the Council has distinguished between a wooden door, iron gates and uPVC window.

16. The principal works carried out comprised the re-instatement of some courses of bricks, the roofs and the insertion of doors and windows within the existing apertures. Boundary walls and fencing have been erected and an extension (new building) constructed to the rear, although no internal link has been made through to the main building. The appellant asserts that the works were simply to restore the buildings and are not development because they comprise works that do not materially affect the external appearance of building.
17. It is clear from the photographic records that, prior to these works, the buildings were in a poor state of repair including the lack of a roof and missing courses of brickwork. This appears to have been the case for some time. Whilst the roof that has been constructed on both buildings appear to be of a pitch and materials that reflects that which originally existed, it is nevertheless the case that the appearance of the buildings has materially changed from that which has existed for some considerable time. The works far exceed what could be regarded as maintenance. It is not relevant for the purposes of s55(2) whether the works are an improvement or not.
18. Furthermore, the windows, doors, roof lights, guttering and flues all contribute to a change in the external appearance of the buildings from that which existed either historically or immediately prior to the alleged breach. To conclude, I consider the external works have materially affected the external appearance of the building and accordingly are development.
19. The appellant also argues under ground (c) that the installation of the rayburn and generator within the buildings are not operational development. The Council confirmed in correspondence (prior to the Inquiry) that it regarded these elements as operational development in their own right as they required installation by a specialist. At the Inquiry, the Council's witness categorised them as being 'other operations'. 'Other' operations may include works undertaken without the degree of preplanning and skill constituting engineering operations.
20. The rayburn could, I suggest, be easily fitted or disconnected from a flue and moved, in much the same way as any bulky domestic appliance. I do not therefore consider it could be regarded as 'other operations' as the Council suggest. Furthermore, it only affects the interior of the building such that it would be exempt from the definition of development.
21. The generator is substantial in size and perhaps therefore less contiguous with other bulky domestic appliances. It stands within a frame on the floor around which a concrete floor has been laid. It appeared to be free-standing within this recess although it would nevertheless be held in place by its own weight. It would be connected to the flue but again could easily be disconnected. Whilst it clearly has a degree of permanence, to my mind, this is simply a large piece of machinery or plant required to provide a source of power generation to the building. In my view, it cannot be regarded as an 'other operation' and in any event, like the rayburn only affects the interior of the building such that it would be exempt from the definition of development.
22. The appeal on ground (c) succeeds to this limited extent. I shall correct the notice to delete the generator and rayburn from both the description of the alleged breach and make consequential corrections to the requirements relating to the operational development set out in sub-section 5.1 and the period for compliance in so far as it relates to these matters.

23. It was submitted on behalf of the Council that the rayburn and generator would, if not found to be operational development, be regarded as works facilitating the material change of use anyway, such that they could be required to be removed in response to the alleged material change of use in any event. I acknowledge that a notice directed at a material change of use may require works to be removed that facilitate that use.
24. I have carefully considered the Council's suggestion that the notice could be corrected to specifically require the rayburn and generator to be removed under 5.2 in response to the material change of use. On the one hand, this would not make the overall requirements of the notice more onerous since the specific requirements to remove the rayburn and generator would simply move from sub-section 5.1 to 5.2. However, the appellant would have no opportunity to present a case under ground (f) that this was in any way excessive in respect of the material change of use. This would cause injustice and so I consider is outside my powers of correction sanctioned under s176(1).

Ground (d)

25. The relevant time limits set out in the notice are 4 and 10 years for the operational development and material change of use respectively. Whilst s171B (2) provides that where there has been any breach of planning control consisting in the change of use of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of a period of 4 years, in this case the breach alleged is not described as a change of use to a dwellinghouse. This is correct in my view as the building did not, on the date of issue of the notice (and nor at the time of the Inquiry), possess all the facilities for day-to-day living.
26. The relevant time period relating to operational development is 4 years (s171B(1)). For ground (d) to succeed the onus is upon the appellant to demonstrate, on the balance of probability, that those matters alleged in section 3.1 of the notice were substantially completed four years or more prior to enforcement action being taken.
27. The appellant's case is that the relevant date against which the 4 year period must be assessed is 4 years prior to the date of service of the notice, that service being 6 May 2019. Authority for this, it was submitted, is found in the case of Sage³. The Council's position is that the relevant date is 4 years prior to the date of issue, thus requiring the development to be substantially complete by 2 May 2015. The Council referred me to the meaning of taking enforcement action set out in s171A which refers to the issue of a notice.
28. Furthermore, I note s172 of the Act gives the local planning authority the power to issue an enforcement notice. It is then required to serve a copy of that enforcement notice not more than 28 days after its date of issue. Section 174(2) explains that an appeal may be brought on the various grounds of appeal. Section 174(2)(d) is "that, at the date when the notice was issued, (*my emphasis*) no enforcement action could be taken".
29. I acknowledge that the Sage judgement on which the appellant relies, refers to the date of service of the notice. However, the question the Court was considering in Sage was at what point the works involved could be regarded as

³ Sage v SSETR & Maidstone BC [2003] UKHL 22

having reached a point to be substantially complete – in other words, when would the 4-year period start. In that particular judgement any difference between the date of issue and service of the notice and how that may relate to s171B(1) was simply not a matter the Court needed to grapple with. I consider the wording of the Act, as set out in s174(2)(d) is clear. I therefore agree with the Council that it is the date of issue that governs the relevant time period after which it would be too late to take action for the purposes of ground (d). The relevant date therefore is 2 May 2015; the onus being upon the appellant to demonstrate that the operations listed in 3.1 of the notice were substantially completed by that date.

30. The Council encouraged me to take a holistic approach to the development set out in the notice. However, there is no one overarching description of the development that has occurred; rather it is split into a separated list of operations under 3.1. I consider, for the purposes of ground (d) I must therefore consider at what point the works carried out under each sub-heading, 3.1.1, 3.1.2 etc were substantially complete.
31. Both parties have submitted photographic evidence to support their cases. CD1 Photograph 5 submitted by the Council shows that in November 2014 no work had started on the buildings, only site clearance. This is further supported by the photograph from the appellant dated 12 November 2014⁴. By January 2015 the Council's photographs show that work has been undertaken to the garage building⁵. By 10 February 2015, the garage doors had been hung and the barge boards painted as evidenced by the appellant's photo of that date. Photos submitted by the appellant dated 22 April 2015 show the iron gates hung, the section of wall and pillars erected part way along the western boundary abutting the garage building and a timber fence is also visible (later replaced with the palisade railings, wall, and palisade gate). There is no requirement for the section of wall and pillars erected part way along the western boundary abutting the garage building wall constructed by April 2015 to be removed although for the purposes of ground (d) it was, on the balance of probability too late to take action against it in any event. I therefore intend to correct the notice to this effect. Scaffolding has been erected around the tower section of the Stop Building by now, although it appears no work had commenced on the roof at this stage.
32. Further photos are provided in support of the appellant's case that are only a matter of days later. These show the scaffolding moved to the single storey part of the Stop Building and work being undertaken to construct the roof frame. By April 25 May, the roof to the tower appears to be complete including the painting of the barge boards. Photos provided dated 5 May 2015, by the appellant, show the scaffolding still in place but the roof lights have been inserted and the roof is fully tiled on the canal-side. However, it is difficult to see from the photos if there is some roof tiles missing abutting the tower or whether the lighter appearance is simply mortar as suggested by the appellant.
33. The appellant explained that the building was watertight with the roof completed and windows and doors inserted by 5 May 2019. The appellant and other witnesses recall this date clearly as they were able to sit in the building and enjoy a drink together to celebrate a birthday that day. Whilst there may only be a matter of days between 2 and 5 May, it is nevertheless the case, that

⁴ Appendix 7 of Mrs Powell's appendices.

⁵ Photos 6, 16 and 18

it was only too late for the Council to take action if, on the balance of probability, the alleged development was substantially complete by no later than 2 May 2015 such that it had become immune from action on or before 2 May 2019.

34. The Council has provided contradictory evidence through photos dated June 2015. It is clear from these photographs that the roof tiles on the western roof slope cover only approximately two thirds of the roof. The work does not appear to be as far advanced as shown on the appellant's photos. The appellant explained that following completion of the roof and while the scaffolding was still in place some lead was stolen off the roof and so it was necessary to remove tiles again in order to replace it.
35. Based on the evidence presented to me, I consider that on the balance of probability the works contained in 3.1.1 'garage', (a), (b) and (d) were substantially complete in April 2015 and it was therefore too late for the Council to take action against the garage. The appeal made under ground (d) succeeds in this regard.
36. However, whilst it seems highly probable that the Stop Building including tower was sufficiently watertight to enable the appellant and his friends to enjoy a celebratory drink inside it on 5 May, it is not sufficiently clear to me, on the balance of probability, that the roof was fully tiled, and the work therefore substantially completed on this building by then and thus by 2 May 2015. The appeal made under ground (d) fails in this respect. As the Council is no longer seeking to require the removal of the roof or plastic guttering, drainpipes, flashing and other such items, without prejudice to my consideration of ground (a), my findings on ground (d) in relation to the former Stop Building including tower will only have consequences for those elements set out in 3.1.3 that remain in the description of the alleged breach and are still required to be removed; those being the rooflights, windows and door, flue, external light and air bricks.
37. There is no dispute that it was not too late to take action against the matters described in 3.1.2 (canal and canal side wharf), 3.1.4 (new building), 3.1.5 (the palisade fencing and gates, further section of wall and pillar and (b) new wall adjoining Friar Bridge, 3.1.6 (engineering operations and 3.17 (erection of palisade fencing under Friar Bridge).
38. Some evidence was submitted to suggest that some overnight stays had occurred within the building. As previously explained the correct period in relation to 3.2 (residential use) is 10 years. But, in any event, the evidence before me is not sufficient to show a continuous residential use of the building for 4 years prior to the issue of the notice. At best, occasional 'camping out' in the building has occurred, either during periods when work was taking place on the building or to provide some security or for occasional leisure purposes.
39. Having regard to the evidence before me, I consider that the appellant has demonstrated, on the balance of probability, that it was only too late for the Council to take action in relation to the development alleged in 3.1.1 'garage', (a), (b) and (d) of the notice. The appeal made under ground (d) succeeds only to this limited extent.

Ground (a)

40. The appeal site is known as 'Pelsall Stop' and comprises land to the rear of, and on the opposite side of the canal to, 211 and 212 Norton Road. It also incorporates land of the Canal and Riverside Trust in the south west corner and the western half of the appeal site falls within Pelsall Common.
41. The appeal site is situated within the West Midlands Green Belt, is a Site of Importance for Nature Conservation (SINC) and is part of Pelsall Common Local Nature Reserve (LNR). The canal, directly adjacent to the site, is both a Site of Special Scientific Interest (SSSI) and a Special Area for Conservation (SAC). The canal itself is also a habitat of principal importance under Section 41 of the NERC Act (2006) and a Local Birmingham and Black Country Biodiversity Action Plan (BBC BAP) Priority Habitat.
42. The former Stop Building including tower is understood to be a former stable and hay store associated with the use of the canal and is locally listed. Friar Bridge, adjacent and south of the appeal site, is also locally listed and forms part of an adopted footpath. The small group of buildings including Friar Bridge, the stop lock, the toll collector cottages, and the former stables and workshop building are all related to the historic use of the canal. Pedestrian access to the appeal site is over Friar Bridge.
43. The deemed planning application is derived from the description of the alleged breach, incorporating those corrections I have already found necessary. Planning permission may be granted for all or part of the matters alleged. As previously explained, there is no one single description to encompass all of the works. Rather the notice is constructed in such a way as to list the various operations alleged separately under separate sub-headings relating to buildings or areas contained in the site. Each operation therefore forms part of the matters alleged under 3.1 of the notice. The use is described separately in sub-section 3.2.
44. In respect of the former Stop Building including tower, given the variations to be made to the requirements of the Notice as set out in my preliminary matters above, the roof can remain together with the mortar, plastic guttering, drainpipes, flashing and 'other such items' and security cameras.
45. I am mindful that s173(11) of the Act provides that upon compliance with the remaining requirements of the notice, planning permission shall be treated as having been granted by virtue of s73A in respect of these operations or works that are subject to under-enforcement. So, even if the notice is upheld, provided that the remaining requirements are complied with, planning permission would be granted for those parts of the matters alleged that I refer to above. This is a material consideration of substantial weight in the determination of this appeal.
46. The development plan includes the Black Country Core Strategy (adopted Feb 2011) (BCCS), saved policies of the Walsall Unitary Development Plan (2005) (UDP) and Walsall Site Allocation Document (Jan 2019) (SAD). Relevant policies or sections of those policies of particular relevance are highlighted below.
47. Walsall's UDP Policy GP2 expects all developments to make a positive contribution to the quality of the environment and the principles of sustainable

- development and will not permit development which will have an unacceptable adverse impact on the environment.
48. UDP Policies ENV23 and ENV24 set out policy requirements for developments which may cause harm to nature conservation features. Policy ENV40 is specific to the conservation, protection and use of water resources including criteria to protect the environment of canals.
 49. ENV28 of the UDP clarifies that the Council will not grant planning permission for a development scheme which proposes the demolition or adverse alteration of a 'local list' building.
 50. In accordance with BCCS Policy ENV1, development in the Black Country will safeguard nature conservation ensuring that development is not permitted where it would harm internationally (SACs), nationally (SSSIs and NNRs) or regionally (LNR and SINCs) designated nature conservation sites. Locally designated nature conservation sites (SLINCs), important habitats and geological features are protected from development proposals which could negatively impact upon them. Species which are legally protected, in decline, are rare within the Black Country or which are covered by national, regional or local BAPs will not be harmed by development.
 51. Adequate information must be submitted with planning applications for proposals which may affect any designated site or any important habitat, species, or geological feature to ensure that the likely impacts of the proposal can be fully assessed. Without this there will be a presumption against granting planning permission. Where exceptionally the strategic benefits of a development clearly outweigh the importance of a local nature conservation site, species, habitat or geological feature, damage must be minimised. Any remaining impacts including reduction in area, must be fully mitigated.
 52. BCCS Policy ENV2 requires that all development should aim to protect and promote the special qualities, historic character and local distinctiveness of the Black Country in order to help maintain its cultural identity and strong sense of place. Development proposals will be required to preserve and, where appropriate, enhance local character and those aspects of the historic environment together with their settings which are recognised as being of special historic, archaeological, architectural, landscape or townscape quality. It provides a list of the locally distinctive elements of the Black Country of which proposals should aim to sustain and reinforce special character and conserve historic aspects. This includes the canal network and its associated infrastructure, surviving canal side pre-1939 buildings and structures.
 53. SAD Policy GB1 confirms that inappropriate development, as defined in the NPPF, will not be supported in the Green Belt in Walsall unless 'very special circumstances' exist which clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm.
 54. SAD Policy EN1 states that the Council will protect, manage and enhance nature conservation sites, habitats and assets. Policy EN4 is specific to canals. The Council will expect all development alongside and near the canal network to, amongst other considerations, positively relate to the opportunity presented by the waterway, achieve high standards of design, and to be sensitively integrated with the canal heritage assets and associated features; protect or enhance the water quality, visual amenity, ecological and built environmental

value of the canal network; and where appropriate, retain and incorporate surviving canalside buildings, structures and features of heritage value.

55. SAD Policy LC5 was also referred to at the Inquiry. It confirms what the priorities are to create, enhance and safeguard the Greenway networks. This includes the Canal network.

Main Issues

56. The unauthorised works lie in Pelsall North Common. It was agreed by the parties that any separate consent that may be required from the Secretary of State for the Environment, Food and Rural Affairs for any development that would prevent or impede access or involve building works or re-surfacing would not be an impediment to my determination of this appeal.

57. The main issues are:

- (a) Whether the operations and material change of use constitute inappropriate development in the Green Belt;
- (b) The effect of the operations and material change of use on protected habitats and species having regard to the Nature Conservation designations within and adjacent to the site;
- (c) The effect of the operations and residential use on the significance of the former Stop Building including tower and the Garage and adjacent Friars Bridge which are locally listed buildings;
- (d) Whether the residential use of the building for residential purposes is acceptable in principle; and
- (e) If inappropriate development, whether other considerations would clearly outweigh the harm to the GB and any other harm, such that VSC may exist.

Whether inappropriate development

Operational development (3.1)

58. The Framework clarifies that limited infilling or re-development on previously developed land is not to be regarded as inappropriate development if the new building would not have a greater impact on the openness of the Green Belt than the existing development. There are no other buildings immediately surrounding the appeal site that would suggest the development could be regarded as infilling. I consider the term infilling relates to the juxtaposition of the site to other development rather than infilling within the boundaries of a site. In any event, the wall that now encloses the site to the rear is part of the new development.

59. It is nevertheless accepted that the appeal site is previously developed land and the development that has occurred is a partial re-development of that site. However, as stated previously, the alterations to the buildings on the site significantly add to the built form and bulk of the structures that previously remained. The site was also open rather than enclosed on three sides as it is now. The erection of the substantial brick wall and palisade fence adds to the overall built form on the site (3.1.5). The development as a whole has, in my view, a greater impact on the openness of the Green Belt and its enclosure

results in some encroachment into the countryside, contrary to one of the purposes of including land in the Green Belt.

60. A further exception to inappropriate development is the extension or alteration of a building provided it does not result in disproportionate additions over and above the original size. The operational development includes a new building (3.1.4); a single storey addition with a mono pitch roof to the rear of the main stable and tower building. The appellant argues that this single storey addition is not a disproportionate addition when assessed against the completed former Stop Building including tower. However, I am mindful that the alterations to the Stop Building including tower were themselves unauthorised and development requiring planning permission, so it seems to me that both those alterations and the new building fall to be considered together against the partial building that remained prior to the breach.
61. Nevertheless, even taking the same approach as the appellant, the former Stop Building including tower is still only of a modest size even after the other alterations carried out. In my view, the new building (extension), irrespective of whether any internal link is provided, substantially increases the footprint and overall mass of the former Stop Building including tower. It extends the full width of both the single storey part of the host building and the tower. Indeed, it is larger than a proposed extension already found to be disproportionate by an Inspector in 2010⁶. I consider it is a disproportionate addition and thus inappropriate development.
62. The notice does not identify the breaches contained in 3.1.2, 3.1.6 or 3.1.7 those being the works to the canal and canal side wharf, the engineering operations or palisade railing under Friar Bridge as inappropriate development. I agree that these are operations that are not, if considered in isolation, inappropriate development.

Residential use (3.2)

63. Turning to the residential use, the re-use of buildings is not inappropriate development provided the building is of permanent and substantial construction. UDP Policy ENV2 (b) sets out the circumstances when the re-use of existing buildings within the Green Belt will be acceptable. These include when it would not have a materially greater impact than the present use on the openness and purposes of the Green Belt and that the buildings are of permanent and substantial construction and are capable of conversion without major or complete re-construction. I consider Policy ENV2 is consistent with the Framework.
64. The original buildings were of a brick and slate roof construction prior to falling into disrepair. Extensive works have been carried out in order to reinstate the buildings. To my mind, irrespective of any submissions on whether this comprises a visual improvement or restores the building to its original form, the structure that remained could not be regarded as being a building of 'substantial construction'. It required significant work to make it water-tight and thus suitable to accommodate any use. I do not therefore consider the residential use of the buildings that had fell into such a poor state of repair falls within the exceptions set out in the Framework in this respect or accords with UDP Policy ENV2.

⁶ I acknowledge that government policy was found in PPG2 when the 2010 appeal was determined.

65. To conclude on the first issue, I consider, with the exception of the operations set out in 3.1.2, 3.1.6 and 3.1.7 of the notice, that the development alleged is inappropriate development in the Green Belt as set out in the Framework. I find conflict with Policy GB1 of the Walsall SAD and UDP Policy ENV2.

Ecology / Nature Conservation Matters

66. The appeal site is immediately adjacent to the Cannock Extension Canal SAC, designated under the Habitats Directive in 2005 due to its European importance for Floating Water-plantain. It is recognised as endangered in Europe and is a protected floral species (under the Conservation of Habitats and Species Regulations 2017, as amended). Threats to the integrity of this designation include water and air pollution. The Framework confirms that SACs are given the same protection as habitats sites. The presumption in favour of sustainable development does not apply to projects which are likely to have a significant effect on a habitats site unless an appropriate assessment (AA) has concluded that the project will not adversely affect the integrity of the habitats site. The Habitats Regulations describe a sequence of steps to be taken by the competent authority⁷ in respect of a European site when deciding whether to authorise a project.
67. The SSSI is also notified for the nationally scarce important population of the Floating Water-plantain. This large population is the best known colony in both Staffordshire and the West Midlands being found throughout the length of the Cannock Extension. Other rare or uncommon aquatic plants are found here. It has a diverse aquatic flora and rich dragonfly fauna. The high water quality, uneven canal bottom and the low volume of boat traffic have allowed this diverse aquatic flora to develop without any extensive reed swamp incursion.
68. SSSIs are protected under the Wildlife and Countryside Act 1981 from damaging operations, including development proposals. The Framework gives a high level of protection to SSSIs. As part of the designation of an SSSI, Natural England provides a list of operations likely to cause damage to the SSSI none of which may be carried out without prior consent due to the likely harm they may cause to the SSSI. The Framework states that development on land within or outside a SSSI and which is likely to have an adverse effect on it (either individually or in combination with other development) should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.
69. Pelsall Common North LNR is an area of wet lowland heath supporting lots of wildlife. It is described as being one of only 4 sites in Walsall with a thriving population of great crested newts and one of only 2 sites where you can see lizards. Species protected under the Habitats Regulations are subject to a high level of legal protection. Within Birmingham and the Black Country, a strong relationship between canals and Water Vole has been identified.
70. The area was designated as a SINC due to its substantive local nature conservation and geological value. The SINC comprises of mosaics of dry heathy grassland, dominated by areas of heather and other grassland with a

⁷ Now myself on behalf of the Secretary of State.

large central area of ruderal flora. The silted pools and the two canals that bisect the area, add to its diversity.

71. The water quality of the Cannock Extension Canal is exceptionally high, so any contamination is likely to have a significant effect. The particular concerns of the Council in respect of the SAC and SSSI is the potential for water pollution to the canal as a result of the residential use of the site which could cause adverse harm to the Floating Water-plantain. The Council explain that the unauthorised works carried out to the canal side wharf of the Cannock Extension Canal (those being the removal of the surface, laying of membrane, tipping of hard-core, and laying of block pavers) and some clearance that has taken place in the canal are already likely to have had an effect upon the flora and fauna within the SAC and SSSI and in particular the protected Floating Water-plantain.
72. I agree with the Council's assessment that any use of the site for residential purposes is likely to give rise to various risks that could lead to water pollution and thus have a significant effect on a European site. It is therefore necessary to carry out an appropriate assessment (AA) in respect of the continued use of the site for residential purposes. Sufficient information is to be provided by the appellant for such an AA to be done. Whilst the operational development may have also had a significant effect, these works have already been carried out. As agreed at the Inquiry, any AA at this stage should relate to the continuation of a residential use.
73. Two reports have been carried out in the past. A report by Greenspace Environmental Limited was produced in November 2015 and based on a survey in November 2014. This report did not identify the Cannock Extension Canal as a SAC. It notes that it is an SSSI and refers to the correct legislation but fails to consider the legal requirements for the SAC. It is also now very dated which greatly diminishes the weight I can attribute it.
74. A subsequent report was submitted in August 2020 that was produced by Tamworth Property Services (TPS) containing details of a Preliminary Bat Roost Assessment, Ecological Walkover and Bird Survey. This report fails to identify the canal as a SAC designation, incorrectly identifying the nature reserve around the site as a SAC.
75. Natural England notes that both reports were carried out after works had been carried out on the site by the appellant and therefore are of the opinion that the findings within both reports should be considered void / inadmissible. Furthermore, the Greenspace report was carried out in Winter, which is an inappropriate time for such surveys, including the potential for Water Voles to be assessed which are a priority species for conservation. There is, Natural England advises, a lack of awareness about how works along the wharf would be carried out and that a substantial amount of vegetation had already illegally been cleared by the appellant to facilitate this work. Critically, the TPS report incorrectly infers information from the earlier Greenspace report about where the Floating Water-plantain grows.
76. Natural England consider that no proper assessment of the impacts of the works already carried out or the future works required to complete the re-development and facilitate the permanent residential use has been carried out. Accordingly, the implications of the operations and a residential use for the integrity of the SAC or SSSI in the long term, has not been satisfactorily

assessed. The Council's Ecology Witness has also addressed the reports in detail within her proof of evidence, concluding they are inadequate.

77. Whilst the appellant considered the only matter at issue was means of foul and surface water due to that being cited in a previous reason for refusal, it is necessary for me to consider all potential impacts. The previous appeal decision also related to a different use of the site to residential. In terms of the residential use, there is no connection to a mains sewer or electricity and no substantive evidence before me that either is feasible. It would therefore be necessary to carry fuel to the site in jerry cans to operate the generator and in the absence of any other suggestion, have any foul waste contained on the site and emptied regularly. Both these undertakings pose a risk to water quality from risks of spillage, exacerbated further as any vehicles will need to park on the opposite side of the canal. Whether the appropriate rights of access exist to achieve this was in some doubt at the Inquiry.
78. A septic tank that has been installed does not satisfy building regulations⁸. The appellant had, by the time of my visit blocked up any discharge outlet from it so that it could only operate as a sealed cess pool in the future. However, it appears likely that it may still require re-location to satisfy building regulations although this would not mitigate any risk from spillages. It is not clear if a satisfactory solution could be achieved. Surface water run-off would also need to be satisfactorily addressed to ensure no risk would be posed to the water quality. Based on the evidence before me, it is not clear what environmental impacts may arise from any emissions from the generator. Other residential activities, such as rubbish disposal, may have adverse consequences.
79. The appellant compared the emptying of the cesspit or a 'camping toilet' or disposal of rubbish as being of no greater risks than already posed from people occupying the canal barges or reflecting what already happens at the cottages opposite. However, the appeal development remains an additional risk and threat to the integrity of the canal habitat, over and above that which may occur at present.
80. There is, the appellant explains the opportunity to provide improved bat habitat. That may be so but having carefully considered the opinions of the ecology witnesses appearing for the main parties, including the written proof of evidence of Natural England, I am not assured that that there will be no adverse impact on some protected habitats or species or that appropriate mitigation can be offered. I agree that the available reports do not adequately comply with legislation or policy.
81. To conclude, there is insufficient information before me to conclude that a residential use would not adversely impact on the integrity of the European site or SSSI and whether effective and robust measures to mitigate any such impacts could be secured, as required by the Framework and relevant policies. In the absence of adequate information to show the use would not have an adverse impact, there will be a presumption against planning permission. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.

⁸ It does not form part of the development alleged in the notice.

82. The development alleged in 3.2 of the notice is contrary to relevant national and local policies including UDP Policy GP2, Policy EN1 and EN4 of Walsall SAD (SAD) Policy GP2, ENV1, ENV23 and ENV24 of the BCCS. I shall consider separately if any benefits would clearly outweigh the likely impact on the important features of the site.

Effect on locally listed buildings

83. The local list describes the building as:

"c1900. Purpose-built canal stables. Brick, gabled slate roof. End two-storey section with slated gabled roof at right angles. Openings with segmental heads facing the canal. First floor was hayloft. Originally had three stalls, with tack room under the hayloft. Nationally rare surviving example of stabling for tow horses."

Friar Bridge remarks state:

"brick bridge carrying farm track over canal. Probably 1858. Elliptical arch, stringcourse above arch, four piers with stone caps. Original cast-iron bridge nameplates.

84. Whilst the local listing of buildings does not impose any additional planning controls, the fact that a building or site is on a local list means that it has an established value and its conservation is consequently a material consideration, as defined in the Framework. This states that *"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*
85. Although not statutorily listed, the former Stop Building including tower is clearly of significance both locally and due to it being considered a rare example of surviving stables nationally. Its context within the grouping of buildings including Friar Bridge and the two cottages opposite is, in my view, also indicative of its relationship to the role of the canal. The value and interest of the buildings locally and to the canal heritage is therefore high. Both national and local policy supports, in principle, a sympathetic restoration of the non-heritage asset. The Council has conceded that some elements are acceptable when considered in isolation and may therefore remain.
86. In respect of the former Stop Building including tower (3.1.3), the new slate roof respects the original appearance of the roof it seeks to replicate. Three roof lights have been incorporated in the rear roof slope. These are uncharacteristic of the original use as stables. Although situated on the rear facing roof slope, I note that they are still visible from views outside the site since the building generally sits at a lower level than some of the surrounding land. In particular, they are viewed from the footpath over Friars Bridge. However, I consider that they do not detract from the overall local historic character of the building or its setting when considered as part of the roof as a whole given their location on the rear roof slope. Notwithstanding they are visible from the bridge, I do not consider the roof lights detract from its significance or the setting of it.

87. Similarly, whilst the rainwater goods are plastic, they do not detract from the overall understanding of the building's origins. Again, like the roof, these can remain in any event. I find no conflict with policy in respect of these matters.
88. The design and materials of the windows and door are wholly domestic in appearance. No regard has been had to the former use or reasons why the buildings are locally listed. They fail to have regard to the historic significance or former use of the building as stables associated with the use of the canal and therefore detract from the character and appearance of the original building and its significance in terms of its historic context. Similarly, the introduction of the stainless steel flue and ornate external light over the entrance detract and thus fail to preserve the character of the building. Under ground (f) the appellant argues that the flues can be painted or treated to make them more recessive. Whilst this would be an improvement over and above what currently exists, the flues are nevertheless an uncharacteristic addition and prominent when viewed from along the canal. Accordingly, I do not consider painting would overcome the harm that arises from the introduction of the flues.
89. Whilst the stone name plate is somewhat misleading, its removal could cause damage. I agree with the Council that its impact is minimal in terms of its appearance. The security cameras also have little consequential impact. These can remain in any event. Other than in respect of the security cameras and stone name plate, I find conflict with UDP Policy ENV28, BCCS Policy ENV2 and SAD EN4 in respect of the other parts.
90. The new building (rear extension) (3.1.4) extends the full length of both the former Stables and Tower, being flush with each gable end. The original simple form of a stable and the attached hay tower is significantly eroded and unbalanced by this full length addition – the vertical emphasis of the tower is greatly diminished. It effectively ties both buildings together, not aligning itself with one or the other, and appears as a discordant addition. The roof pitch is at odds with the roof of the host building and additional roof lights have also been incorporated into this roof slope which, in addition to those on the roof of the host building, gives an unduly cluttered appearance. Whilst, with the exception of the roof lights, the materials are sympathetic, in my view the extension, by reason of its overall length, roof pitch, mass and incorporation of domestic roof lights fails to respect the simple form and functional relationship of the original building. I find conflict with UDP Policy ENV28, BCCS Policy ENV2 or SAD Policy EN4.
91. Whilst the building referred to as the garage (3.1.1) is not itself locally listed, it is clearly viewed in the context of the former stables and forms part of its setting. Only the installation of the stainless steel flue and air bricks remains to be considered under ground (a) following my previous findings. As stated previously, the flues are an uncharacteristic addition and prominent when viewed from along the canal. I do not consider painting would overcome the harm that arises from the introduction of the flues. The air bricks, although not characteristic of the former use, are not particularly noticeable, situated low down on the rear elevation they do not harm the overall qualities of the building. I find no conflict with policy in respect of these.
92. The walls (3.1.5) that have been constructed to form a means of enclosure respect the materials of the original buildings on the site. I established on site

that a reduction in height to 2m will not substantially reduce the overall impact of and presence of the wall and fence in the context of the building or its setting. It does not enclose the site from the canal or tow path on the opposite side. This open aspect to the canal side is in my judgement the important vista in terms of appreciating the relationship of the building to the historic use of the canal. Accordingly, I find no conflict with UDP Policy ENV28, BCCS Policy ENV2 or SAD Policy EN4 in relation to this part of the development alleged.

93. Iron railings have been erected under Friar Bridge (3.1.7) to mark the boundary of the site and prevent trespass. In my view, the iron railings do not detract from an understanding of the historic purpose of the building and bridge or have a negative impact on its setting. By their nature, views remain through the railings and they do not appear prominent when approaching the site. I find no conflict with SAD EN4, BCCS policy ENV2 and UDP ENV28 in relation this matter alleged.
94. In respect of the canal and canal-side wharf (3.1.2), block pavements have been laid around the building that are a different size and laid in a different pattern to those on the towpath opposite. They are of a modern and domestic appearance and I agree with the Council that as a result, the surfacing materials used appear wholly discordant and fail to preserve the setting of the locally listed building. Although the alternative, once removed is likely to leave concrete, this would not appear wholly out of keeping with the former stable building. I therefore find conflict with SAD EN4, BCCS Policy ENV2 and UDP ENV28.
95. A residential use will introduce some residential paraphernalia. However, provided the alterations to the buildings respect the original use of the building I do not consider the domestic paraphernalia associated with a residential use would undermine an understanding of the significance of the group of buildings. I find no conflict with SAD EN4, BCCS Policy ENV2 or UDP Policy ENV28 in this regard.

Location / Suitability for residential

96. The site is within open countryside. No agreements had been reached to connect to mains electricity, water or to ensure parking would be available in perpetuity⁹. Occupation would be reliant on use of a cess pool or some kind of portable toilet. Occupiers are, subject to appropriate rights to use the access track, likely to be largely dependent on the use of a car given the lack of shops and services within a reasonable walking distance. The need for a generator and cess pool is indicative of the appeal site being in a relatively isolated and unsustainable location away from services and facilities
97. I saw that the main building provides an open plan sitting room and kitchen area at ground floor. A spiral staircase provides access to a mezzanine floor of a size suitable to act as a bedroom. It appears that the extension is required to provide room for bathroom and any additional bedroom facilities. Without the extension, no bathroom facilities are proposed, and it is not therefore clear if adequate living conditions could be provided without an extension, based on the information before me.

⁹ Parking arrangements with the current occupier of 212 are informal only.

98. I recognise that there are two properties on the opposite side of the canal. These are likely to have been associated with the historic use of the canal. Their presence would not justify the creation of additional residential development in an unsustainable countryside location.

Other considerations

99. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. 'Very Special Circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations.
100. The appellant points to a number of benefits arising from the development, in particular the public benefit derived from the repair of the historic buildings and associated visual improvement to the overall canal heritage asset, the site and its surroundings. This also results, the appellant submits, in an improvement to the amenity of no's 211 and 212 Norton Road opposite, who agree that the works constitute an overall visual appearance.
101. Clearly there is public benefit arising from the repair to a locally listed building provided it is carried out sympathetically to ensure its significance is maintained. Regrettably, the development when considered as a whole does not preserve the character and appearance of the building. In particular, given the former use of the building, the use of inappropriate windows and doors and the introduction of the flues are particularly detracting features. The extension is of a poor design and the use of modern pavers detracts from the setting of the building. So, whilst the current development may have some public benefit when assessed against the ruin that previously existed, as it was described in sales particulars, the overall public benefits are nevertheless limited since the historic character and understanding has been so significantly diminished. I therefore afford the public benefits only limited weight.
102. As stated previously, the individual components of the development are listed separately in the notice. With this in mind, those parts of the development alleged, that do not need to be removed, do, when considered individually, enhance the overall appearance of the building, such as the reinstatement of the roof. The weight that can be afforded to the public benefits of these aspects, when considered individually, thus increases and can be considered significant.
103. In addition, the roof lights on the roof of the former Stop Building and security cameras, air bricks to the garage (3.1.1), the matters contained in 3.1.5 (a) and (b), the engineering operations described in 3.1.6 and the erection of palisade railing to footpath under Friar Bridge all, in my view, do not detract from, but preserve the historic character and appearance of the building such that some public benefit arises, albeit limited. I give these aspects limited weight.
104. Conversely, those aspects considered to fail to preserve the character and appearance of the building, would convey no public benefit and thus no weight in favour of the grant of planning permission is attributed to them individually.

105. I accept that the use of the building would be likely to provide greater site security and prevention of trespass and unsociable behaviour, all of which have occurred in the past resulting in damage to the building. I give this modest weight in favour of the residential use of the site.
106. I give no weight to the case advanced by the appellant pertaining to personal circumstances in respect of the amount of money spent on the unauthorised works. The Council's position has been made clear since 2014 and so the appellant continued entirely at his own risk.

Balancing Exercise & Conclusions

Operational development (3.1)

107. Considered as a whole the operational development constitutes inappropriate development in the Green Belt a consideration that carries substantial weight. Added to this is the harm caused to openness and the purposes of including land in the Green Belt by reason of the additional built form and encroachment as a result of the greater enclosure of the site. I afford this some considerable weight. Further harm arises as the development fails overall to preserve the character and appearance of a locally listed building and its setting in addition to that of Friar Bridge. I give this considerable weight. Any public benefits in favour of the development overall carry limited weight as do the improvement to outlook from properties opposite. To conclude, the harm by reason of inappropriateness and other harms is not clearly outweighed by other considerations such that very special circumstances could exist. The development overall conflicts with the development plan.
108. I go on to set out my conclusions in respect of those parts of the matters alleged and to which I could grant planning permission separately, below:

3.1.1 Garage

109. The harm arising from the stainless steel flue is caused by the failure to preserve the character of the locally listed building or reflect its significance within the canal network, contrary to the development plan. I afford this great weight. No other considerations advanced outweigh the harm I have identified to justify the grant of planning permission. Ground (a) fails in respect of this part of the matters alleged.
110. The airbricks preserve the character of the building and individually cause no harm to the openness of the Green Belt. I find no conflict with policies of the development plan. Ground (a) therefore succeeds in this respect.

3.1.2 Canal and canal-side wharf

111. Although not inappropriate development in the Green Belt, the harm to the setting of the locally listed buildings by reason of the modern materials and layout of the pavers is a consideration of significant weight against the development set out in 3.1.2. Insufficient information is before me to assess whether there would be any adverse impact on Water Voles, a protected species and if so, whether any appropriate mitigation can be achieved. There are no other considerations that would weigh in favour of this part of the development alleged. I therefore conclude that the appeal made under ground (a), in so far as it relates to this part of the matters alleged, should fail and planning permission should not be granted.

3.1.3 Former Stop Building, including Tower

112. The operational development carried out to the Former Stop Building including tower is inappropriate development in the Green Belt to which I must afford substantial weight. Added to this is the harm to the character and appearance of the locally listed building, as a result of the installation uPVC windows and wood-composite door and installation of steel flue and external lighting all of which fails to preserve the historic character of the building and its historical significance within the canal network. I afford this harm considerable weight.
113. However, some aspects of the development described in 3.1.3 can remain. I give this fall-back position in relation to 3.1.3 (a) the erection of new roof, (d) installation of plastic guttering, drainpipes, flashing and other such items; and (e) installation of security cameras and stone name plate considerable weight substantial weight since the harm by reason of inappropriate development in the Green Belt and harm to openness will be unchanged notwithstanding the outcome of the ground (a) appeal, in so far as it relates to these matters set out in 3.1.3. In addition, no harm is caused to the openness of the Green Belt as a result of the erection of roof lights.
114. In terms of the character and appearance of the building and its significance, the erection of the roof is an overall enhancement, being sympathetic to the original appearance of the building. The addition of the roof lights to the rear roof slope do not, in my view, detract from its historic significance. Furthermore, the erection of security cameras preserves the character and appearance of the building overall.
115. Public benefits from the overall repair to the building are limited as are benefits arising to outlook from the properties opposite but the weight that can be afforded to these considerations in favour of the development is greater when considered in relation to those aspects that preserve or enhance the building, as set out above.
116. These considerations in respect of 3.1.3 (a), (d), and the security cameras and stone name plate referred to in 3.1.3 (e) clearly outweigh the harm to Green Belt by reason of inappropriateness and any other harm such that very special circumstances exist.
117. However, these other considerations do not carry the same weight in respect of 3.1.3 (c) installation of stainless steel flue or the external lighting which causes significant harm to the character and appearance of the building and its significance such that no other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.
118. Ground (a) therefore succeeds in part only.

3.1.4 New Building

119. The new building described in sub-section 3.1.4 is inappropriate development in the Green Belt. The additional harm to openness and encroachment into the countryside is modest. This attracts additional weight. Added to this is the failure to preserve the character and historic significance of the locally listed building to which I afford significant weight. I do not accept an extension of this size would be required to provide bathroom accommodation. No other considerations relate to this part of the development

alleged and so no very special circumstances exist to justify the grant of planning permission. The appeal made under ground (a) fails in this respect.

3.1.5 New wall along rear and side of former Stop Building and New Building

137. Although inappropriate development, I consider the retention of the walls and palisade fence and gate as constructed (3.1.5) would have no materially greater harm on the openness of the Green Belt or the purposes of including land within it than a reduction in height, as required by the notice. Indeed, the fact that the boundary treatment could remain up to 2 metres in height in any event, is a fallback position that I give substantial weight in favour of the development.

138. The historic character and appearance of the original building and its setting are preserved such that some limited public benefits arise to which I afford limited weight. Added to this are the benefits derived from securing the site from trespass and unsociable behaviour and the general improvements on the outlook from the properties opposite. I consider these other considerations clearly outweigh the harm to Green Belt such that planning permission should be granted for this part of the matters alleged. The appeal on ground (a) succeeds in this respect.

3.1.6 Engineering operations

139. The carrying out of earthworks to lower ground levels adjacent to Friar Bridge is not inappropriate development in the Green Belt. The works do not detract from the setting of the locally listed buildings. I find no conflict with development plan policies. The appeal on ground (a) succeeds in this respect.

3.1.7 Friar Bridge

140. I consider that the erection of palisade railings below the bridge is not inappropriate development in the Green Belt. I find that it preserves the historic character of the area and accords with the development plan. The appeal on ground (a) succeeds in this respect.

Residential Use (3.2)

141. Turning to the residential use, the harm by reason of inappropriateness carries substantial weight. Furthermore, the building is not situated within a sustainable location, a consideration I give some modest weight in the context of this development. Added to this, is the risk and threat to the integrity of the canal habitat, an SSSI and SAC given the lack of adequate information to assess the likely impacts from the development and ensure robust measures are available to mitigate any such impacts. The potential harm arising from the residential use is significant. Both national and local policy requires proposals that significantly harm biodiversity and that cannot be avoided, adequately mitigated, or compensated, be refused planning permission. This is a consideration of considerable weight.

142. In favour of granting planning permission is the likelihood that a future and long term use will help to ensure the preservation of the building well into the future rather than it potentially falling into a poor state of repair again, a clear public benefit. I acknowledge that alternative uses for the site, that do not raise similar issues and concerns as a residential use, will be limited. This is a

consideration of modest weight. In addition, the living conditions of the occupiers of the cottage's opposite would be enhanced both through an improved outlook and because the repair of the buildings and their use is likely to be a disincentive for unsociable behaviour. I give this some limited weight.

143. However, the benefits of the development do not clearly outweigh its likely impact on the features of the site that make it of special scientific interest. To conclude in respect on the continued use of the site for residential purposes, other considerations do not clearly outweigh the harm by reason of inappropriateness and the other harms identified, such that very special circumstances exist. The appeal made under ground (a) fails in this respect.

Ground (f)

144. Under ground (f)¹⁰, proposals are advanced to mitigate the harm such as painting the flues. However, such suggestions involve a consideration of whether any concerns can reasonably be overcome. This is a matter I have already considered under ground (a).
145. No other lesser requirements are suggested that could remedy the harm to amenity that would arise as a result of the matters alleged and to which no under-enforcement is directed.
146. In general, requirements should not conflict with or be dependent on consents under other legislation, although these will not necessarily be fatal to the notice¹¹. In this case, some of the works required to comply with the notice could in themselves cause adverse harm to protected habitats and thus require an AA.
147. In the case of *McKay v SSE & Cornwall CC & Penwith DC [1994] JPL 806*, it was held that an EN that required works for which scheduled ancient monument consent was needed but not obtained was a nullity, since the recipient would have to carry out a criminal offence. However, the Court of Appeal took a different approach in *South Hams DC v Halsey [1996] JPL 761* holding that an EN that required works for which listed building consent would be needed was not null, since such findings should be confined to where there is a patent defect on the face of the EN.
148. There are no technical defects with the notice, but I shall consider if the period for compliance would be sufficient to ensure the necessary AA can be carried out to establish what mitigation, if any, may be required to ensure compliance with the notice without causing adverse harm to protected habitat.

Ground (g)

149. The appellant considers that compliance with the notice in respect of those requirements for which 6 months is stipulated is too short. A period of 12 months is considered necessary. The Council agreed that 12 months would be a reasonable period to remove the remaining operational development. I agree, particularly as an AA may need to be carried out to establish any mitigation that will be required to ensure there is no unacceptable impact of protected habitats as result of compliance with the notice. I shall therefore vary the notice in this respect.

¹⁰ Incorrectly referred to as ground (e) in grounds of appeal

¹¹ *South Hams DC v Halsey [1996] JPL 761*

150. However, any continuation of the residential use could potentially cause adverse harm. Accordingly, it is imperative that the use ceases at the earliest opportunity. It is not someone's permanent home and does not have all the facilities for day-to-day living. A period of 1 month is therefore a proportionate response.

151. The appeal on ground (g) succeeds to this limited extent only.

Overall Conclusions

152. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matters the subject of the enforcement notice. I will nevertheless uphold the notice with corrections and variations and refuse to grant planning permission on the other parts. The requirements of the upheld notice will cease to have effect in so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

C Sherratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Anderton	Instructed by JVH Town Planning Consultants Ltd
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Carl Powell	Appellant
S. Christopher Smith	Of Tamworth Property Services (Ecology matters)
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Jonathan Charles	For appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Clay of Counsel	Instructed by Alison Sargent of Walsall Council
He called	
Edward Holland	Director of Holland Heritage
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Michael Paul Brereton	Group Manager Planning for Walsall Metropolitan Borough Council
MASp, ADvDip, Dip	
Martina Girvan PhD MSc, BSc (Hons), CEcol MCIEEM	Technical Director at Arcadis Consultancy (UK) (Ecology Matters)

INTERESTED PERSONS:

A Whitehouse	Interested person & neighbour
Philip G Sharpe	Planning Officer for Inland Waterways Association

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Opening Statement for Council
- 2 Opening Statement for the appellant
- 3 Signed Statement of Common Ground
- 4 Rebuttal Proof of Evidence of Carl Powell
- 5 Copy of Walsall SAD Policy LC5: Greenways
- 6 Land Registry Title Document
- 7 Suggested Conditions
- 8 Photographs submitted by appellant
- 9 Closing Submissions for the Council
- 10 Closing Submissions for the Appellant
- 11 Costs Application made by the Council
- 12 Response to Costs application from the Appellant
- 13 Costs Application made by the appellant