



Appeal Decision

Site visit made on 7 September 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/R0660/C/20/3262324

Land at Willott Nurseries, Wilmslow Road, Prestbury, Cheshire SK10 4LG

- 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 Trevor Beaver against an enforcement notice issued by Cheshire East Council.
 - The enforcement notice, numbered 19/00724E, was issued on 28 September 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of land from a mixed use comprising residential and horticultural to a use as residential and residential garden, together with the creation of areas of hard standing, an ornamental pond, jetty, metal sculpture, erection of a building, stone walls and stonework, and siting of domestic paraphernalia.
 - The requirements of the notice are:
 - a) Cease the use of the land as residential garden
 - b) Remove from the land all hardstanding
 - c) Remove all metal sculptures, stone walls and stonework and the jetty
 - d) Drain the ornamental pond and remove any associated equipment and hardstanding.
 - e) Regrade the land to a level consistent with the rest of the land, cover in topsoil and seed with grass seed.
 - f) Remove from the land all domestic paraphernalia including but not limited to the goal post and climbing frame.
 - g) Demolish the building.
 - h) Following compliance with b,c,d,f and g above remove all resultant materials from the land.
 - The period for compliance with the requirements is:
 - a) 1 week after the notice takes effect.
 - b) 3 months after the notice takes effect
 - c) 3 months after the notice takes effect
 - d) 3 months after the notice takes effect
 - e) 3 months after the notice takes effect
 - f) 3 months after the notice takes effect
 - g) 3 months after the notice takes effect
 - h) 4 months after the notice takes effect
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary matters

1. The breach of planning control alleged in the enforcement notice is, without planning permission, the unauthorised material change of use of land from a

mixed use comprising residential and horticultural to a use as residential and residential garden, together with the creation of areas of hard standing, an ornamental pond, jetty, metal sculpture, erection of a building, stone walls and stonework, and siting of domestic paraphernalia. Because the notice alleges development 'without planning permission', the word 'unauthorised' is superfluous and I will delete it. I am satisfied that no injustice is caused by doing so.

The appeal on ground (c)

2. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
3. In support of this ground of appeal, the appellant relies on the judgment in *Philglow Ltd v SSE & Hillingdon LBC* [1986] 51 P & CR1, in which it was held that the cessation of one element of a composite use is not in itself a material change of use. The Court of Appeal went on to find that there must be evidence that the remaining use has intensified such as to amount to a material change in character over the whole or part of the planning unit.
4. The starting point in this case is therefore to identify the relevant planning unit. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. Applying the principles set out in *Burdle* to this case, there is no dispute that the site had previously been in a mixed residential and horticultural use and that this mixed use extended across the whole of the site. I am therefore satisfied that the planning unit in this case is the whole of the land edged in red on the plan attached to the enforcement notice.
5. The horticultural use ceased as a commercial venture by the late 1980's or the early 1990's. No photographs have been provided dating from the period when the horticultural use was actively taking place. However, photographs of the site taken in 2007 show a dilapidated glasshouse and polytunnel, with the surrounding land being overgrown. Even though the horticultural use had effectively ceased by that date, that part of the site still exhibited a horticultural character.
6. By contrast, at the time of my site visit the land had an overtly residential character. The majority of the land was laid to lawn, with an ornamental pond and other structures associated with a residential use being present. There was, in addition, several items of domestic paraphernalia on the land. No trace of the previous horticultural use remains.
7. Applying the principle established in *Philglow*, in this case the residential element of the use has more than just intensified: it has replaced the horticultural element entirely. It follows that there is no longer a mixed use taking place, only a single use of the whole planning unit. In doing so, the character of the whole planning unit has changed from when the mixed use was taking place such that a material change of use of the land has taken place. The cessation of the horticultural use has therefore resulted in a material change of use of the land taking place.

8. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

9. I conclude that the material change of use that has taken place constitutes development for the purposes of Section 55(1) of the 1990 Act. Section 57(1) of the 1990 Act states that planning permission is required for development. There is no planning permission, express or deemed, in place for the material change in the use of the land alleged in the enforcement notice. I therefore conclude that the matters stated in the notice do constitute a breach of planning control.
10. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

11. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
12. The bungalow now on the site was constructed in the late 1990s, by which time the commercial horticulture use had already ceased. In 2010, the bungalow was purchased by a Mr Henshaw. He undertook extensive renovation and improvement works, with much of the land laid to lawn and with the addition of hard landscaping, ornamental pond and outdoor cooking facilities. The property was then purchased by the current owners, Mr and Mrs Beaver, in November 2015.
13. The appellant has provided two affidavits in support of this ground of appeal, one from Ms Kate Goddard and one from Ms Donna Barber MRTPI. The former is somewhat vague in terms of her personal knowledge of the site, saying she was at the property everyday in her role as housekeeper but not stating the period of time to which that relates. Furthermore, whilst it is confirmed in her first paragraph that Ms Goddard 'knew' that the property was purchased by Mr Henshaw in June 2010, it is not stated outright that to her knowledge Mr Henshaw occupied the property from that date.
14. That much may be inferred from linking the phrase "during that time" in her second paragraph to the date of June 2010 in the preceding sentence, but Ms Goddard's affidavit is not precise in these respects. Moreover, whilst Ms Goddard refers to refurbishments/maintenance to the gardens taking place between June and November, it is not possible to infer from her statement that the garden was used during that period. That is significant because the latest date (28 September 2010) on which continuous use as a garden for period of ten years could have commenced falls between those dates.
15. The affidavit from Ms Barber covers only the period between 2012 and 2015. Whilst her evidence confirms residential use at that time, it is of relatively little assistance in conforming continuous use over a period of ten years.

16. The photographic evidence is also inconclusive. It is clear from aerial photographs that the site was in a mixed horticultural and residential use until at least January 2005. It is also clear from aerial photographs that by June 2013 the site was in wholly residential use. The difficulty lies in the period between those two dates.
17. The Council produces as part of its evidence a photograph taken in October 2010. In this photograph, the ornamental pond is shown at early stage in its construction: the area of the pond has been excavated, but the brick revetments and jetty evident in later photographs and which existed at the time of my site visit are yet to be formed. Much of the remaining area of the site is bare earth, with only limited areas covered in grass.
18. The Council has also provided photographs of the bungalow taken during site visits on 24 February 2010 and 3 June 2010. These photographs afford glimpses of the land to the rear of the bungalow, which has clearly been levelled and cleared of any structures relating to the previous horticultural use. However, on close inspection of the photograph the ground appears to be quite rough and, whilst it appears to be grassed in some places, it does not have the appearance of a domestic lawn.
19. It is evident from the Official copy of register of title that Mr Henshaw purchased the property in June 2010. It is not, however, apparent when he took up occupation of the property. I am advised that Council records indicate that the property was not occupied by Mr Henshaw until October 2010, but no has provided documentary evidence to substantiate that.
20. On the evidence before me, it appears more likely than not the land was used as a residential garden continuously from at least June 2013. But I am not persuaded that the appellant has made out his case for the period prior to that date. This is not a situation where the Council has definitive evidence of its own to contradict that of the appellant or make his version of events less than probable. Nevertheless, I find that the appellant's evidence is not sufficiently precise and unambiguous to counter the limited evidence that has been produced by the Council. I conclude that, on the balance of probability, the use of the land as residential garden has not been shown to have been continuous for a period of ten years beginning with the date of the breach and that the appellant has not discharged the burden that falls upon him.
21. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

22. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appeal site is within the Green Belt. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:
 - whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan, and
 - if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the development plan

23. The breach of planning alleged in the notice has two elements: the material change of use of the land, and operational development (including buildings). It is convenient to consider these separately. In doing so, the Council has cited one development plan policy in the reasons for issuing the enforcement notice, that being Policy PG3 of the Cheshire East Local Plan Strategy 2010 – 2030 (Local Plan Strategy). This policy provides, amongst other things, that within Green Belt planning permission will not be granted for inappropriate development, except in very special circumstances, in accordance with national policy.
24. The appellant has referred me to Saved Policy GC12 of the Macclesfield Borough Local Plan, which still forms part of the development plan for the area. I have not been provided with a copy of this policy, but understand that it relates to extension to buildings in the Green Belt and states that the construction of curtilage outbuildings is an exception to inappropriate development in the Green Belt. However, the breach of planning control alleged in the notice is a material change in the use of the land and various free-standing operational development associated with that. None of that development alleged in the notice can be considered to constitute an extension or alteration to the existing bungalow. I therefore do not consider Saved Policy GC12 to be directly relevant in the circumstances of this particular case.
25. Paragraph 149 of the National Planning Policy Framework (Framework) indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. None of the buildings alleged in the notice fall within the exceptions set out in Paragraph 149 of the Framework.
26. Paragraph 150 of the Framework indicates that certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of Green Belt and do not conflict with the purposes of including land in Green Belt. These include engineering operations and material changes in the use of land. Although paragraph 150 of the Framework sets out some examples of material changes of use that would qualify in that respect, that list is not exhaustive and should not be regarded as a closed list. I see no reason why a material change of use to residential garden should not also qualify under paragraph 150 of the Framework.
27. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. In spatial terms, the material change of use to a residential garden brings with it the domestic paraphernalia associated that use. These include children's play equipment and garden furniture which, whilst not necessarily constituting development for the purposes of the 1990 Act, nonetheless adversely impact the openness of the Green Belt to some extent. This may not constitute a significant adverse impact on openness but the Courts have held any adverse impact, however slight, does not preserve the openness of the Green Belt.

28. The domestic paraphernalia associated the use a residential garden also has an adverse visual impact on the openness of the Green Belt, deriving from the potential proliferation of items such as children's play equipment and garden furniture on the land. In this context, the appeal site extends to some 1.1ha in area and I am not convinced that it would not be possible to restrict the proliferation of domestic paraphernalia across the whole of that area through the imposition of planning conditions. The visual impact on the openness of the Green Belt could potentially be significant in that eventuality.
29. In relation to the engineering operations, in spatial terms the regrading of the land around the ornamental pond and the associated revetments both erode the openness of the Green Belt to some extent. In visual terms, the ornamental pond, the associated revetments and the area of hardstanding adjacent to the bungalow all combine to form a conglomeration of built form in this part of the site. These works, both individually and in combination with the building used as an outdoor cooking facility, have a significant adverse visual impact on the openness of the Green Belt in this location.
30. Having regard to the above, I conclude that the material change of use and the engineering operations alleged in the notice have an adverse impact on the openness of the Green Belt, both in spatial and visual terms. By definition, that openness cannot therefore be preserved in the context of paragraph 150 of the Framework.
31. The other proviso set out in paragraph 150 of the Framework is that the development does not conflict with the purposes of including land in Green Belt Green Belt. The Framework indicates that Green Belt serves five purposes:
- a) to check the unrestricted sprawl of large built-up areas
 - b) to prevent neighbouring towns merging into one another
 - c) to assist in safeguarding the countryside from encroachment
 - d) to preserve the setting and special character of historic towns, and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
32. In my view, neither the material change of use nor the engineering operations alleged in the notice conflict with a), b), d) or e) above. The same cannot be said, however, in relation to c): *to assist* in safeguarding the countryside from encroachment (emphasis added). I recognise that the appeal site is adjoined by residential properties with sizeable gardens and/or paddocks, and that the appeal site may be considered as being constrained in that respect. However, all of these sites are in the countryside and are over-washed by the Green Belt. As such, they are afforded the same protection under the Framework. The protection of the countryside from encroachment as one of the five purposes of Green Belt is therefore a collective undertaking, to which safeguarding the appeal site would contribute and assist. Both the material change of use and the engineering operations alleged in the notice conflict with that purpose.
33. I therefore conclude that the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt in the context of Paragraphs 149 and 150 of the Framework, as well as Policy PG3 of the Local Plan Strategy. Paragraph 147 of the Framework confirms that

inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

34. The reason for issuing the enforcement notice only alleges that the breach of planning control is inappropriate development in the Green Belt. It does not allege any harm to the character and appearance of the area, as distinct from visual harm to the openness of the Green Belt.
35. The former use of the site for horticultural purposes included the use of glass houses and polytunnels on site. These have long-since been removed, but on the photographic evidence available to me I consider that these structures gave the site a rural and horticultural character and appearance. The appellant considers that these structures were visually prominent and intrusive, particularly when viewed in the context of the adjoining residential gardens, such that the removal of these structures from the site has served to improve the overall landscape quality.
36. The use as a residential garden has resulted in the site having an overtly residential character and appearance, with an expanse of closely mown grass, an ornamental pond and various domestic paraphernalia. Although a significant change compared the character and appearance of the previous horticultural use, this change must be viewed in the context of the adjoining residential properties and their extensive gardens. The appeal site is relatively contained and is not viewed outside of the context of the neighbouring residential properties and gardens, with which its character and appearance is compatible. I am therefore satisfied that the breach of planning control has not resulted in any harm to the character and appearance of the area.

Green Belt balancing exercise

37. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. That harm could not be overcome by the imposition of suitably worded conditions.
38. The breach of planning control alleged in the notice has not resulted in any harm to the character and appearance of the area. This is therefore a consideration which is neutral in weighing the overall Green Belt balance.
39. No benefits arising from the development have been advanced.
40. Consequently, the harm by reason of inappropriateness is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.

Could planning permission be granted for part of the matters stated in the notice, or in relation to part of the land to which the notice relates?

41. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. Up until this point, I have considered granting planning permission for all of the matters stated in the notice in relation to all of the land to which the notice relates. Pursuant to section 177(1), I must also consider whether planning permission

- could be granted in relation to part of the matters stated in the notice or any part of the land to which the notice relates.
42. In that respect, I have considered the appellant's suggestion to identify what could reasonably be considered the domestic curtilage of the property with the remaining land being identified as domestic amenity land which would be afforded more control (presumably, but not specified, through the imposition of planning conditions). There is, on its face, some merit in that suggestion: paragraph 150 of the Framework indicates that the material change of use of land is not inappropriate development in the Green Belt where it would not have an adverse impact on the openness of the Green Belt. By taking away the matters stated in the notice that do harm the openness of the Green Belt, the use of land simply as domestic amenity land might in itself potentially be considered not to be inappropriate development in the Green Belt.
43. But the difficulty immediately arises in defining what could reasonably be considered to be the domestic curtilage of the property. Specifically, the difficulty is defining the curtilage with sufficient precision such that it would be enforceable. I am aware that planning permission(s) was granted for the bungalow in the early 1990s, but I have not been provided with the plans that show the residential curtilage (if any) associated with that bungalow. I have been provided with a copy of the plan that accompanied the application submitted in May 2019 seeking the removal of the agricultural occupancy condition imposed upon those permissions (Council Ref: 19/1768M). The 'red line' shown on that plan broadly corresponds with the area shown accepted as being in residential use on Plan B attached to the notice.
44. In the absence of any further information, the foregoing leads me to conclude that the amount of residential curtilage that would remain would be broadly consistent with that associated with the bungalow granted planning permission in the 1990s. The difficulties of precisely defining a larger area preclude pursuing the option of specifying an area other than that shown on this plan.
45. However, even if a domestic curtilage could be identified, I would have to be satisfied that the use as domestic amenity land was not inappropriate development for the purposes of paragraph 150 of the Framework and the development plan. The appellant has not provided any details of the 'controls' that might be imposed on the domestic amenity land and how these would work: for example, whether any conditions that might be imposed would meet the 'tests' set out in the Framework and the Planning Practice Guidance, particularly in terms of precision, reasonableness and enforceability.
46. In the appellant's proposal, the domestic amenity land would be outside the curtilage of the dwelling, such that the provision of any building or enclosure incidental to the enjoyment of the dwellinghouse would not be permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The openness of the Green Belt would be preserved in that regard. Nevertheless, the use as domestic amenity land could potentially bring with it a proliferation of domestic paraphernalia, including items (such as garden furniture and play equipment) that might not themselves constitute development for the purposes of section 55(1) of the 1990 Act. Such a proliferation could not, it seems to me, be controlled through the imposition of conditions and therefore, in the absence of legal undertaking, could not be directly controlled. A proliferation of domestic

paraphernalia associated with use as amenity land could harm the openness of the Green Belt, both in spatial and visual terms. I am therefore not convinced that the appellant's proposal would accord with the Framework and the development plan for the area.

47. For these reasons, I consider that it would not be appropriate to grant planning permission for part of the matters stated in the notice and/or in relation to part of the land to which the notice relates.

Conclusion on the ground (a) appeal and the deemed planning application

48. For the reasons set out above, the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the Framework. There are no very special circumstances to justify the development.
49. The breach of planning control alleged in the notice also contrary Policy PG3 of the Local Plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
50. I conclude that planning permission ought not to be granted for the matters stated in the notice, either in whole or in part.

The appeal on ground (f)

51. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to cease the use of the land as residential garden, to remove from the land all hardstanding, to demolish the building and to regrade the land to a level consistent with the rest of the land, cover in topsoil and seed with grass seed. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
52. The essence of the appellant's appeal on this ground is that, as currently drafted, the notice would effectively leave him with no domestic curtilage and no outdoor amenity space, for what is a substantial property located in the open countryside. The appellant points out that the curtilage would only provide a small amount of hardstanding for parking, a small access strip surrounding the dwelling for servicing, and no outdoor amenity space for sitting out, dining or carrying out basic domestic outdoor activities. This would, he contends, result in unacceptable living conditions. It would also, he contends, result in a large area of land with no "use" and which serves no planning purpose, but would still need to be maintained in some way.
53. I do not accept that the complying with the notice would leave a large area of the land with no use. There is no dispute that the lawful use of the land before the breach of planning control took place was mixed use comprising residential and horticultural uses. The requirements to comply with the notice specifically

exclude the residential use of the bungalow and the access to it. Ceasing the use as residential garden would leave horticulture as the lawful use of the remainder of the land. I recognise that this may not be the use of the land preferred by the appellant, and that it would have implications for the residential use. But it is a lawful use to which the land could be put, and the appellant has provided no evidence to substantiate the claim that a horticultural use would not be a viable commercial venture.

54. I recognise that complying with the notice would leave the appellant with no domestic curtilage and no outdoor amenity space for what is a substantial property. However, ceasing the use of the land as a residential garden is necessary to achieve the purpose of the notice.
55. Section 173(4)(a) of the 1990 Act provides that an enforcement notice may require that the breach is remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. Section 173(5) of that Act gives power to require the alteration or removal of buildings or works, or the carrying out of any building or other operations.
56. Removing the pond, removing the hardstanding, demolishing the building and regrading the land would all be necessary to restore the land to its condition before the breach took place. Simply removing the sculptures surrounding the pond, and allowing the pond and wider surrounding area to naturally regenerate, would not achieve the purpose of the notice.
57. The appellant contends that draining and infilling of the pond may have unforeseen ecological consequences for protected species, but has provided no evidence as to what protected species (if any) use the pond and surrounds as habitat or for foraging. I am also mindful that any protected species that may be present could potentially be relocated, a consideration that might have formed the basis for a successful appeal under ground (g) if the evidence to support that had been available.
58. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me.
59. I conclude that the lesser steps proposed by the appellant would fail to remedy the breach of planning control that has taken place and would therefore not achieve the purpose of the notice. For that reason, the steps required by the notice are not excessive and the appeal on ground (f) must fail.

The appeal on ground (g)

60. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice varies for different requirements between one week and four months.
61. The appellant points out that the pond has been located on site for a period of 10 years and is now long established, and therefore has the potential to have significant ecological value. The appellant maintains that prior to the draining and infilling of the pond, it is a legal obligation that its ecological value needs to be assessed and properly considered to ensure that harm is not caused to any protected species. The infilling of the pond will require a significant amount of material to be sourced which will need to be confirmed as suitable and

transported to site. In addition, the appellant also points out that the notice requires the demolition of a number of structures on site, and the removal of areas of hardstanding. Given the complexity of the works required in these respects, the appellant considers that 3 months is insufficient time for compliance and seeks a blanket period of 12 months as being more appropriate.

62. I take the appellant's point about the importance attached to safeguarding any protected species that may be present in the pond or its surrounds. However, I come back to the point made above that the appellant has not provided any evidence to show that protected species are actually present. In the absence of that evidence, there is no justification for extending the period(s) of compliance to the 12 months sought by the appellant. I am, however, mindful of the extent of the work required to infill the pond and the quantum of material that will need to be transported to the site to achieve that. I therefore consider that a period of six months would be a proportionate and reasonable response to the breach of planning control that has occurred, not only in relation to infilling of the pond but also in relation to removing the hardstanding.
63. As a consequence of the above, the time period for removing all materials resulting from the steps required would need to be extended from the 4 months stated in the notice to 8 months.
64. I must, however, provide a caveat to my conclusions above. In the event that protected species are discovered to be present in the pond or its surrounds, and evidence is adduced to that effect, there is provision under section 173A(1)(b) of the 1990 Act for the Council to further extend the period of compliance should that be necessary. The exercise of the powers in that respect is entirely at the Council's discretion but could be exercised to comply with any legal obligations to safeguard any protected species that might otherwise be harmed by the works to comply with the requirements of the notice (for example, to relocate those species).
65. The appeal on ground (g) succeeds to the extent stated above, and I will vary the notice accordingly.

Conclusion

66. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

67. It is directed that the enforcement notice is corrected by:
- In paragraph 3 of the notice, delete the word 'unauthorised'
68. It is directed that the enforcement notice is varied by:
- In paragraph 5(b) of the notice, delete '3 months' and substitute there '6 months'
 - In paragraph 5(d) of the notice, delete '3 months' and substitute there '6 months'

- In paragraph 5(h) of the notice, delete '4 months' and substitute there '8 months'

69. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR