The Planning Inspectorate

Appeal Decision

Inquiry (Virtual) held on 7, 8 and 9 December 2021

Site visit made on 6 December 2021

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/X0415/C/20/3260161
Land at Lee Farm, 123 Botley Road, CHESHAM, Buckinghamshire, HP5 1XN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Hedges against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 9 September 2020.
- The breach of planning control as alleged in the notice is:
  Without planning permission: -
  The erection of a building on the Land. The approximate location of the building as shown hatched on the plan (attached to the enforcement notice), with a thick black line around the perimeter of the Land ("the Unauthorised Development").
- The requirements of the notice are:
  5.1 Demolish or dismantle the Unauthorised Development and remove from the Land all debris and materials arising as a result of compliance with this step, and;
  5.2 Break up the hardstanding, including any hardstanding underneath the building and remove from the Land the hardstanding and all debris and materials arising as a result of compliance with this step and;
  5.3 Remove from the Land all materials, and any other debris arising from compliance with steps 5.1 and 5.2 from the Land associated with the Unauthorised Development.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

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

Procedural Matters and Background

1. At the request of the main parties I undertook an accompanied site visit on the 6 December 2021. For the avoidance of doubt, measurements were taken and some of those measurements were agreed by the parties at the site visit. The measurements agreed were; internal height to the ceiling – 2.76 metres; and external height of highest part of ridge to base of top brick of the plinth – 4 metres. The Inquiry sat for 3 days, and all oral evidence was affirmed at the Inquiry.

2. Prior to the Inquiry the appellant altered his grounds of appeal in that he introduced a ground (b) appeal. The Council has been able to consider and respond to the evidence regarding the ground (b) appeal including within its oral evidence at the Inquiry. I consider that the main parties are not prejudiced by the addition of the appeal on ground (b). The alterations also included the withdrawal of grounds (f) and (g). Consequently, I have given no further consideration to those 2 grounds of appeal.

3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The parties have had the chance to comment on and consider the relevant revisions. I am required to consider the appeal based on the current Framework.

4. The appellant withdrew his application for costs against Buckinghamshire Council at the Inquiry. No further action is therefore required in this regard.

5. Requirement 5.2 of the enforcement notice relates to *'Break up the hardstanding….'* but the description of the alleged breach is *'the erection of a building'*. It is the Council's view that the hardstanding forms part and parcel of the purpose of the alleged building as it exists as a base for that alleged building. I will consider whether the hardstanding is part of the alleged breach of planning control within the grounds of appeal. I consider that this requirement can be treated as providing clarity that the hardstanding is treated as part of the breach of planning control if the grounds of appeal fail.

6. Lee Farm is a detached dwelling dating from around the mid-20th Century that fronts onto Botley Road and the land associated with it is to the side and rear of the adjacent Hen and Chickens Public House site (the public house). Several outbuildings are located around a courtyard to the rear of the dwelling and its domestic garden. To the rear of the courtyard outbuildings are the Olde Dairy and other outbuildings. The Olde Dairy has been rented out as holiday accommodation and used by members of the appellant's family. To the west of the Olde Dairy is a caravan which is the residence of Mr Mason. Adjoining the Olde Dairy and the caravan there is a relatively large mainly grassed area that is referred to, in the evidence before me, as the paddock. I will therefore herein refer to that grassed area as the paddock.

7. In 1992 an enforcement notice was issued on land at O.S. Field 7733, Lee Farm and the alleged breach of planning control related to the change of use of agricultural land to use for the storage of caravans. There is dispute between the parties as to whether this notice relates to part of the appeal site, whether it was served on the appellant by mistake and if he received the notice at all. In any case, as the enforcement notice before me does not relate to the use of land for the storage of caravans the 1992 enforcement notice has no implications to the determination of this appeal.

8. In 2020 the Council granted certificates of lawfulness[1] for '*the building known as The Olde Dairy shown cross hatched on the attached plan has been used as a single family dwellinghouse for four or more years'* and for *'the caravan known as Mobile Home at …. shown cross hatched on the attached plan has been used as residential accommodation for ten or more years'.* (the latter is herein cited as the caravan 2020 LDC)

The ground (b) appeal

9. Under this ground of appeal the onus of proof is on the appellant to show that the alleged breach of planning control has not occurred as a matter of fact. Section 174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. The notice alleges the erection of a building. The appellant argues that the alleged unauthorised development has not occurred because a single unit caravan has been placed on the land and this is a use of the land. He also

[1] Application Nos: PL19/1342/EU & PL19/1343/EU

states that it does not amount to the construction of a building even if it is found not to be a caravan.

10. Pursuant to section 55 of the 1990 Act "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land. "Building operations" includes operations normally undertaken by a person carrying on business as a builder. A "building" is defined within section 336(1) of the 1990 Act to include any structure or erection.

11. A caravan is defined at section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA) as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. It excludes (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.

12. Section 13(1) of the Caravan Sites Act 1968 (CSA) defines twin-unit caravans and the 2 prerequisites in that section are usually referred to as *'the construction test'* and 'the *mobility test'*. However, the appellant is not claiming that the structure is a twin-unit caravan and therefore they are not relevant to this case.

13. Section 13(2) of the CSA confirms that, for the purposes of the CSCDA, the expression 'caravan' shall not include a structure designed or adapted for human habitation, where its dimensions, when assembled, exceed any of the following limits: 20 metres in length; 6.8 metres in width; a maximum internal floor to ceiling height in relation to the living accommodation of 3.05 metres. This is usually cited as the *'size test'* and there is no dispute that this test is met in this case.

14. For there to be a caravan or a building there would need to be a 'structure' and there is no dispute that a structure is on the land. Therefore, I shall utilise this word to describe the alleged building within this ground of appeal as it is a neutral term for both a building and a caravan.

15. The structure erected on the site is timber framed with timber clad walls and tiles covering a pitched roof. The structure has windows, a glazed door and double timber doors in one of the long walls. Beneath the structure is a brick plinth and concrete hardstanding.

16. The appellant confirmed at the Inquiry that the brick plinth and concrete hardstanding were constructed for the structure to be stationed on and that Prime Oak supplied and erected the oak timber frame. It appears that timber cladding was applied to three of the walls at that stage. However, the timber frame was not fixed to the brick plinth as stated within the quotations from Prime Oak. The appellant adapted the design of the structure supplied by inserting windows, doors and timber cladding within one of the long walls and commencing the insertion and erection of internal stud walls, a ceiling and a timber suspended floor.

17. I acknowledge that the appellant researched the provision of a replacement caravan/mobile home from a number of suppliers including Habitat Mobile Homes. In addition, there is no dispute that it is an intention of the appellant for Mr Mason to live in it. Nonetheless, the structure was purchased from Prime Oak and even though it has a similar visual appearance to that of one of

Habitat Mobile Homes products it was supplied as a garage. Consequently, Prime Oak did not design the structure for human habitation.

18. I note that the appellant states that he intends to fit a kitchen, bathroom and boiler with the appropriate utilities. Yet, no layout drawings for the intended design of how the facilities are to be fitted have been submitted. Moreover, Mr Hedges has also stated that the structure has been used for storage purposes, for carrying out ironing associated with the use of the Olde Dairy and that he could utilise it as a garage elsewhere on the site as its design is so versatile. As such, it is reasonable to consider, on the balance of probabilities, that the structure was not designed for human habitation prior to the enforcement notice being issued.

19. Nevertheless, the appellant has adapted the Prime Oak structure by inserting windows and doors. However, the structure currently has no kitchen and bathroom fixtures and fittings, electricity is supplied by an extension lead and there are no other utilities to the structure. Therefore, it is also reasonable to consider, on the balance of probabilities, that the structure was not adapted for human habitation prior to the enforcement notice being issued.

20. For the sake of completeness I will now consider whether the structure is capable of being moved from one place to another. In *Carter v SSE* [1994] 1 WLR 1212 (*Carter)* the Court of Appeal clarified that, to be a caravan for the purpose of section 29(1) of the CSCDA, the structure must be capable of being moved as a single unit. In *Brightlingsea Haven Limited v Morris* [2009] 2 P&CR 11 (*Brightlingsea*) the judge stated that the structure *'must either be physically capable of being towed on a road, or of being carried on a road, not momentarily but enough to say that it is taken from one place to another. It is irrelevant to the test where the structure actually is, and whether it may have difficulty in reaching a road.'*

21. The structure is not on wheels and it could not be towed. In their reports Mr Wallbank and Mr Stanwix both conclude that the structure is physically capable of being lifted and moved on a vehicle. Nevertheless, in oral evidence Mr Wallbank confirmed that the existing suspended floor part of the structure would need adapting, in relation to the joist positions, to allow the floor to be lifted and moved with the remainder of it. Furthermore, Mr Stanwix stated that the sole plate was complete around the perimeter of the building when he inspected it. However, the appellant confirmed that the parts of the sole plate on the front elevation were currently softwood and not oak and had been added as part of the adaptions he carried out. He also stated that an oak sole plate is available to be fitted.

22. I acknowledge that internal parts of the structure are not yet complete. The oral evidence of Mr Wallbank and Mr Stanwix is that they both considered that the structure can be adapted and would be capable of being lifted and moved when it was completed. Nevertheless, as stated above section 174(2)(b) of the 1990 Act is worded in the past tense. Therefore, for the purposes of this ground of appeal the test is whether the structure was capable of being moved as a single unit prior to the enforcement notice being issued.

23. The evidence before me indicates that to be lifted and moved a steel frame/cradle would need to be designed and inserted through the structure adjacent to the trusses/tie beams and below the wall plate. Holes or hatches would need to be created to insert the steel beams through the structure. Moreover, without a sole plate around the whole perimeter of the structure, Mr

Stanwix confirmed that bracing of the vertical framing beams would be required to enable the structure to be lifted and moved.

24. A haulage contractor, Kent Solutions, have also stated in an email that for it to move the structure the lower legs would need suitable bracing and the roof tiles would need to be removed. The appellant stated at the Inquiry that Kent Solutions had also suggested that the structure could be 'shrink wrapped' to enable the tiles to remain on the roof. However, this option was not economical for him. In addition, the email from Kent Solutions does not state how they would lift the structure, other than it would be with a crane.

25. In *Brightlingsea* the judge considered that '*It is but common sense that there will be small pieces that are required to be added to the assembled sections to complete the structure as a home. They are not ''sections'' and do not prevent the structure falling within the definition givenby s.13.1.'* This related to the 'construction test' and did not relate to whether the lodges in that case were capable of being moved. In any case, the roof tiles on this structure comprise the majority of its roof covering. As a result, even though each tile is a small piece individually the tiles when considered collectively form an integral part of the structure in my judgement. However, Mr Wallbank stated at the Inquiry that due to the position of the steel cradle/frame the tiles would not be damaged during lifting and moving.

26. Prime Oak have stated that in its opinion the structure is movable. However, even though Prime Oak designed part of the structure the appellant has made adaptations to it and there is no indication that Prime Oak have been provided with the technical specifications of those adaptions. The structure is also similar in visual terms to those supplied by Habitat Mobile Homes. Yet it is unclear, whether the bespoke design of the structure erected on this site is technically similar in design to that utilised by that company in relation to their own mobile homes as no technical details of their homes are before me.

27. Mr Wallbank's and Mr Stanwix's evidence indicates that in their expert opinions the structure can be treated as being lightweight and that a steel cradle/frame and bracing would enable the existing structure to be lifted and moved. I acknowledge that in the appeal decisions[2] cited by the Council no engineer or expert appeared at the event and no technical evidence had been submitted. As such, that case is not directly comparable to the case before me.

28. Nevertheless, given the bespoke nature of this structure there is little technical detail, such as structural calculations to indicate the form and design of a steel frame/cradle and bracing that would be required to lift and move the existing structure. Furthermore, a steel frame/cradle and bracing are clearly not part of the structure itself but would be utilised to distribute loads and provide structural support during lifting and moving. The need for the structure to be modified to allow the insertion of the steel beams through it and for elements of the timber frame to be braced suggests to me that the existing structure is not, in fact, capable of being moved without significant risk of damage or collapse.

29. Consequently, having carefully considered all that I have read and heard, it has not been demonstrated that the existing structure, on the balance of probabilities, was capable of being moved from one place to another prior to the enforcement notice being issued. I have already concluded that it is also

[2] Ref Nos: APP/D1590/C/12/2168481 & 82

reasonable to consider, on the balance of probabilities, that the structure was not designed or adapted for human habitation prior to the enforcement notice being issued. As a result, as a matter of fact and degree, it has not been demonstrated that the existing structure complies with the definition of a caravan that is at section 29(1) of the CSCDA.

30. The appellant also contends that the issuing of the enforcement notice stopped the structure being made up as a caravan or that its nature, degree of permanence and level of physical attachment mean that the existing structure is not a building. As stated above, the structure is not complete internally and the appellant has stated that further works/adaptions are intended to it. However, as cited previously this ground of appeal relates to whether the alleged breach of control has occurred as a matter of fact. Therefore, the question is whether an act of development involving the erection of a building has occurred.

31. In this case the parts of the structure that were purchased from Prime Oak, which had been designed and cut to size elsewhere, were brought to the site. The oak frame was pegged together using traditional techniques on top of the brick plinth. The roof tiles were fitted later. The infill panels framing the walls, the external cladding and windows and doors were also fitted. Works to form an internal ceiling and part of a suspended floor were carried out later. The type of works involved in the formation and erection of the structure can reasonably be treated as operations normally undertaken by a person carrying on business as a builder and the nature and scale of those operations were significant.

32. Consequently, there was an act of development which took place on the appeal site of building the structure and anyone looking at what was taking place on site would have concluded that the structure was being built on site. Given the extent of works undertaken on site, I fail to see any significant difference to that which would have been involved in the construction of a conventional timber frame building.

33. In *Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Co Ltd* [1949] 1KB 385, Barvis v SSE [1971] 22 P&CR 710 and endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] EWCA Civ 5569; [2000] JPL 1025 (*Skerritts of Nottingham*) three primary factors were identified as decisive of what was a building – size; permanence; and physical attachment.

34. The structure is of a relatively significant size being around 12 metres in length and 5 metres in width. As stated above, its size meets the size test within section 13 of the CSA. As such the size of the structure is not, by itself, a decisive factor. Nonetheless, even though it is of a size that can be regarded as a caravan it is also larger than some structures, such as garages and outbuildings, that can be regarded as buildings.

35. Permanence is to be considered in terms of its significance in the planning context. It does not necessarily mean that the structure has been designed to last forever or indefinitely. The existing structure is mainly of wooden construction, as are many buildings. Its external visual appearance is similar to that of the Olde Dairy. Its sturdy construction is clearly intended to be capable of lasting some considerable time. The appellant has stated that he intended the structure to become a new home for Mr Mason. Mr Mason has resided in a caravan, that is sited adjacent to the existing structure, for more than 20

years. The indication is that the structure would remain in place whilst Mr Mason continues to reside on the site.

36. Nevertheless, the appellant has also stated that he would utilise the structure for other uses if Mr Mason does not live in it. The appellant has also stated that he could move the structure nearer to his dwelling in order to retain it. Yet I have found above that there is insufficient evidence to indicate that the structure would be capable of being moved as a single unit without structural damage. Furthermore, there is no evidence to indicate that the structure has been moved within the site since its erection. Thus, it has a significant degree of permanence. As with any structure it may be removed/dismantled if circumstances change, but that does not make it impermanent.

37. Mr Wallbank and Mr Stanwix both stated that the structure can be treated as being lightweight for the purposes of assessing whether it can be moved. However, there is nothing that makes me consider that the actual weight of this oak framed with tiled roof structure is not considerable. The structure is not physically attached to the brick plinth, but it is held in place through its own weight. It rests on the brick plinth which supports it and holds it off the ground. The fact that caravans are also held in place by their weight alone does not mean that a structure must be anchored by some additional means for it to be a building. The structure is substantial enough to be fixed in place by its own weight, as many buildings are.

38. The structure was constructed utilising building operations on site and the nature and scale of those building operations were significant. Moreover, even though no one factor is decisive, due to its size, permanence and physical fixation, as a matter of fact and degree, a reasonable conclusion to reach would be that the structure, on the balance of probability, is a building. In addition, even though the structure is not physically attached to the brick plinth or the hardstanding, the evidence before me, is that those works were carried out for the sole reason to station the structure on. They can also reasonably be treated as operations normally undertaken by a person carrying on business as a builder. Consequently, as a matter of fact and degree, in my judgement, they are an integral part of the act of development associated with the erection of the building.

39. I appreciate that the inter-relationship between the definitions of a caravan and a building within the respective acts may result in what could seem to be an anomalous situation whereby a structure falling within the definition of a caravan may not be considered as a building, and therefore not require planning permission, whereas a similar sized or even smaller structure intended for the same purpose may be construed as a building for which planning permission is required. However, that is the way in which the statutory definitions are set out and have been interpreted according to established case law. It is necessary to assess a structure on the information presented and that is how I have approached the matter in this instance.

Conclusion – the ground (b) appeal

40. For the reasons given above I conclude, on the balance of probability, that a building has been erected on the land. Consequently, those matters as alleged have occurred. The ground (b) appeal fails.

The ground (c) appeal

41. This ground of appeal is that those matters, if they occurred, do not constitute a breach of planning control. The appellant's case is that if the structure is deemed to constitute a building, then it benefits from permitted development rights by virtue of Article 3 and Schedule 2, Part 1, Class E (Class E) to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Class E relates to development within the curtilage of a dwellinghouse. The Council argues that the paddock, where the building is erected, does not form part of the curtilage of the main dwellinghouse, Lee Farm.

42. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage and it is not defined within the GPDO. The Technical Guidance[3] states that the term "curtilage" is usually understood as follows – *'is land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area'.*

43. In the absence of any statutory or authoritative definition, it was held in *Dyer*[4] that the term bears its restricted and established meaning connoting *'A small court, yard or piece of ground attached to a dwelling house and forming one enclosure with it'*.

44. More recently the matter was considered in the context of listed building enforcement in *Skerritts*[5] (a separate case to that cited within the ground (b) appeal). While regarding the decision in *Dyer* as correct, it was felt that the Court in that case had gone further than necessary in expressing the view that the curtilage of a building must always be small, or the notion of smallness is inherent in the expression.

45. In the *Lowe*[6] case it was confirmed that the expression "curtilage" is a question of fact and degree. It connotes a building or piece of land attached to a dwelling house and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house.

46. The recent cases of *Challenge Fencing*[7] and *Burford*[8] reaffirm the criteria laid down in *Sutcliffe*[9] for identifying curtilage as being - a) physical layout; b) ownership past and present; c) use or function past or present. Within the *Burford* case it was noted that the Inspector was entitled to conclude that the use of land as incidental to the enjoyment of a dwelling house did not denote that the land was within the curtilage or part of the garden of the dwelling.

[3] Permitted development rights for householders Technical Guidance – MHCLG - 2019
[4] *Dyer v Dorset CC* [1988] 3 WLR 213.
[5] *Skerritts of Nottingham Ltd v SSETR* (No. 1) [2000] EWCA Civ 60; [2000] JPL 789.
[6] *Lowe v First Secretary of State* [2003] EWHC 537 Admin
[7] *Challenge Fencing Ltd v SSHCLG & Elmbridge BC* [2019] EWHC 553 (Admin)
[8] *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin).
[9] *Sutcliffe v Calderdale BC* [1983] JPL 310.

47. At paragraph 18 of the *Challenge Fencing* case the judgment sets out six propositions drawn from the authorities on curtilage. These include those cited above and can be summarised as:

    - The extent of the curtilage of a building is a question of fact and degree, and a matter for the decision-maker.
    - The three 'Stephenson factors' (taken from *Sutcliffe*) must be considered.
    - A curtilage does not have to be small, but that does not mean that the relative size of the building and its claimed curtilage is not a relevant consideration; *Skerritts*.
    - Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration, but it is not a legal requirement that the claimed curtilage should be ancillary; *Skerritts*.
    - The degree to which the building and the claimed curtilage fall within one enclosure is relevant, *Sumption*[10] and the quotation from the Oxford English Dictionary (OED) cited in *Dyer* – and this will be one aspect of physical layout (*Sutcliffe*).
    - The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself; *Sumption*.

48. The land at Lee Farm, the area edged with a thick black line on the plan attached to the enforcement notice, has been within the ownership of the appellant since the late 1980's (herein cited as the appeal site). Prior to that date it was part of a larger site owned by a Mr Cannon. Before the second world war the appeal site was associated with Lee Farmhouse and was part of the overall holding belonging to that farm. It appears from the evidence that Mr Cannon utilised the outbuildings as workshops and storage purposes. There is no dispute that since the 1970's the appeal site has not been used for agricultural purposes.

49. The garden areas that wrap around the main dwelling at the front, one side and part of its rear include plants, paths and garden furniture in a very domestic arrangement. They are enclosed by boundary treatments which includes hedging and walls of the courtyard outbuildings. These garden areas are relatively private and have a very intimate association with that dwelling. This is due to their proximity to it as well as the enclosure which provides well-defined boundaries to other activity that may take place in the courtyard and along the driveway.

50. The building is sited in the paddock which is a relatively large mainly grassed area that has hedging on large parts of its boundaries. The grass is mown but there is little ornamental planting and garden furniture within this area. As a result, its character and appearance are appreciably different to that of the garden areas that wrap around the main dwelling. The courtyard outbuildings and part of the driveway are located between the garden areas and the paddock. There is pedestrian access, that is not gated, from the garden areas through the courtyard and along the driveway to the paddock.

[10] *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin)

51. Nonetheless, the walls of the Olde Dairy together with the boundary landscaping impart a compelling perception of enclosure around the paddock. Furthermore, the paddock is some distance from the main dwelling and its garden areas. The concept of "smallness" is not relevant when determining the curtilage of a building. However, the factors highlighted above serve to reinforce a strong sense of distinct enclosure and separation between the paddock and the main dwelling and its garden areas. Consequently, in my judgement, the paddock does not have an intimate association with the dwellinghouse, Lee Farm.

52. I have no doubt that the paddock, serves a necessary and reasonable purpose for the appellant and his family as it provides, amongst other things, space for children to play, for sitting and general recreation and for holding parties and barbecues. Consequently, it is and has been used for purposes that can be treated as being incidental to the enjoyment of the main dwelling. However, the paddock is also used by Mr Mason and the occupiers of the Olde Dairy for general recreation purposes with the permission of the appellant. It has also been used for car shows and community events.

53. Furthermore, it is clear that the appellant collects, stores, repairs and restores classic cars in a number of the outbuildings. Whilst the appellant maintains that this is now a hobby it is clear, from a number of the third party letters[11] submitted in support of the appellant, that Mr Hedges ran a business for some time repairing and servicing cars from the appeal site. In addition, the evidence before me indicates that vehicles have been parked on the paddock whether it was associated with the appellant's business or hobby or a car show. Therefore, the use of the paddock is and has been multi-functional and reasonably cannot be treated as being solely used for a purpose incidental to the enjoyment of the main dwelling. Nevertheless, the paddock serves the purpose of the dwellinghouse, Lee Farm in a reasonably necessary or useful manner.

54. The appellant considers that the paddock and the main dwelling are part of the same planning unit. It is widely accepted that the concept of the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of a change of use. Nevertheless, the use or function of the paddock and the overall appeal site is only one factor to be taken into account with regard to curtilage. At paragraph 31 of the *Challenge Fencing* judgment it is stated that *'There may well be situations where the planning unit is different (and almost certainly larger) than the curtilage of the building. The two concepts are not the same, and many of the factors that go into defining the planning unit will not apply to determining curtilage.'* Therefore, even if I were to conclude that the paddock and main dwelling are part of the same planning unit that is not decisive as to whether the paddock is within the curtilage of the main dwelling.

55. The use or function of the paddock has been associated with the dwellinghouse, Lee Farm and it has fallen within the same ownership for many years. However, due to the physical layout of the appeal site the paddock does not have an intimate association with that dwellinghouse and cannot reasonably be treated as land which forms one enclosure with it. Consequently, I find as a matter of fact and degree, on the balance of probabilities, that the paddock does not form part of the curtilage of the

[11] Core documents, Volume 3, pages 456; 470; 473; 483; 488; 492; 497; 499; 501; 504 and 510

dwellinghouse, Lee Farm. It follows that the building does not benefit from the permitted development rights in Class E of the GPDO. As such, there is no need to consider whether the development meets the limitations and conditions of that class of the GPDO.

Conclusion – the ground (c) appeal

56. It follows that the development subject to the enforcement notice has not been shown to constitute permitted development under Schedule 2, Part 1, Class E of the GPDO. I have no evidence before me to indicate that planning permission is not required or is granted for the development. Accordingly, the appeal on ground (c) fails.

The ground (a) appeal

Background and Main Issues

57. The deemed application for planning permission is derived directly from the description of the breach of planning control and therefore planning permission is being sought for the erection of a building on the land. The use of the building is not part of the matters that constitute the breach of planning control. Nevertheless, based on the submissions made by both parties at the Inquiry I am satisfied that the use of the building could be specified or construed through sections 75(2) or 75(3) of the 1990 Act if I was minded to allow the appeal. There is no dispute that for the purposes of this ground of appeal that the appellant intends the building to be used as dwelling when it is completed.

58. The main parties have agreed that the erection of the building represents inappropriate development in the Green Belt, as defined in Section 13 of the Framework. I concur with that position. Consequently, the main issues are:

- The effect of the building on the openness and purposes of the Green Belt;
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the development.

Reasons

Openness and purposes of the Green Belt

59. The appeal site lies within the Metropolitan Green Belt. The Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence.

60. The Court of Appeal in *Turner*[12] has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. Paragraph 14 of the Turner judgment states that "*the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case*". The Supreme Court in *Samuel Smith*[13] *at*

[12] Turner *v SSCLG & East Dorset Council* [2016] EWCA Civ 466
[13] *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3

paragraph 22 states that "openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development".

61. The building has been erected within the paddock close to the boundary of the appeal site with the public house. To the north of the paddock is the Kimblewick Feeds building. The erection of the building on part of the paddock inherently introduces built development where none was previously present. The building is single storey with a dual pitched roof and as stated above it is of a relatively significant size being around 12 metres in length and 5 metres in width. As such, the building has resulted in an appreciable reduction, in spatial terms, to the openness of this part of the Green Belt.

62. In visual terms the paddock is contained within mainly vegetated boundaries and when that vegetation is in full leaf the building is screened from view from the public realm. Nevertheless, at certain times of the year the building is visible in glimpsed views from the carpark of the public house and from Botley Road. Overall, the visual impact of the building from outside the appeal site is limited due to the screening of vegetation.

63. I acknowledge that the Kimblewick Feeds building is a large and relatively prominent structure in the landscape when viewed from Botley Road, approaching the public house from the west. That building and the public house project further to the west than the appeal building. Nonetheless, the Kimble Feeds building has the appearance of a modern agricultural building and does not appear incongruous in this setting. Moreover, the amount of open, undeveloped land adjacent to that building and the public house gives the vicinity of the appeal site a rural character. When visible from the public realm the building is inevitably seen projecting behind the public house carpark and the other buildings and the caravan within the appeal site provide little by way of contextual development. As such, the erection of the building results in urbanisation of the paddock that is apparent from the public house car park and Botley Road for part of the year. Therefore, it has also amounted to limited encroachment into the countryside, contrary to one of the 5 purposes of the Green Belt.

64. Taking into account all of the above, I consider that the erection of the building, when considered as a whole, visually and spatially has resulted in limited harm to the openness of the Green Belt. Moreover, it is in conflict with one of the purposes of including land within the Green Belt set out at paragraph 138 of the Framework.

Other considerations

65. As stated above, the caravan 2020 LDC related to the use of the existing caravan on part of the appeal site. Even though the wording of that LDC is not entirely clear it is apparent that what has been found to be lawful is the stationing of a caravan for residential use on the part of the site indicated within the certificate. The stationing of a caravan on a site for residential purposes relates to a material change of use rather than operational development. The existing caravan, Mr Mason's home, can therefore lawfully be retained and used for residential purposes. The existing caravan is stationed

on a hardstanding that formed part of an old barn that was around the caravan at some point. Parts of the cladding and timbers relating to that barn are shown on photographs within the evidence before me.

66. The appellant considers that as the caravan 2020 LDC did not specify the size of the existing caravan within the certificate itself that it could be replaced by a larger structure, in a similar location on the site, if that structure met the definition of a caravan at section 13(1) of the CSA and section 29(1) of the CSCDA. The Council considers that planning permission would be required if the existing caravan was replaced with a larger one or moved to another location within the paddock.

67. The appellant's written and oral evidence indicates that he intends the appeal building to be a replacement home for Mr Mason who has lived in a caravan on the appeal site for many years. The appellant has also stated that he wants to provide Mr Mason with a more energy efficient and modern dwelling. As such, I consider that there is a realistic prospect of the appellant replacing the existing caravan with a replacement caravan in a similar position on the appeal site if this appeal is dismissed.

68. Even if the appellant is correct that a larger replacement caravan can be stationed in a similar location as the existing caravan it is highly unlikely that any replacement caravan would be substantially larger than the appeal building as that building was intended to be a replacement for the existing caravan. Moreover, based on the appellant's oral evidence, it is clear that he does not want to replace the existing caravan with a traditional 'plastic caravan' as that is not the image he wants to portray to guests staying in the Olde Dairy. As such, any replacement caravan would more likely than not be of a similar size to the appeal building and located in a similar position to the existing caravan. This constitutes a fallback position.

69. The visual impact of the appeal building on the openness of the Green Belt is highly likely to be greater than this fallback position. This is because the building projects further to the west behind the public house car park so that when the boundary vegetation is not in full leaf it would be likely to be more apparent from the public realm than a replacement caravan. I acknowledge that the existing caravan has occupied a static position for a considerable period of time and I have found that it is likely that any replacement caravan would be stationed in a similar location.

70. Nevertheless, by definition a caravan can be moved from one place to another. The Inspector in the appeal decision relating to the Turner judgment stated *that 'no valid comparison can reasonably be made between the volume of moveable chattels such as caravans and vehicles on one hand, and permanent operational development such as a dwelling on the other'*. The judgment found *that 'there is no error of approach by the Inspector in his assessment of the issue of impact on the openness of the Green Belt'*. In this case, the appeal building is more harmful by reason of its degree of permanence and this, therefore, has a greater negative effect on the openness of the Green Belt than that of the stationing of a replacement caravan. As such, I consider that overall the building has a greater impact on the openness of the Green Belt than this fallback position. As such, it attracts little weight in favour of the scheme.

71. The appellant has submitted a completed Unilateral Undertaking (UU) that would ensure that the existing caravan and the hardstanding it is stationed on

would be removed from the site, and no caravan would be stationed on the site in the future, if planning permission was granted for the retention of the appeal building and its use as a dwelling. There is no dispute that the UU meets the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and I have no reason to disagree.

72. The appeal building's design and materials are of a higher quality than that of the existing caravan and they are compatible with other buildings on the site. The removal of the caravan and its hardstanding, through the UU, would reduce the overall number of structures within this part of the Green Belt.

73. The appellant and Mr Mason are long standing friends and, as stated above, the appellant wants to provide his friend with a more energy efficient and modern home. Mr Mason has lived on the appeal site for many years and does not wish to move from it. As such, he has not looked at alternative accommodation, but he considers that it would not be affordable for him.

74. I appreciate that, from the appellant's perspective, it would be more convenient and highly desirable to retain the appeal building as a replacement for the existing caravan. However, whilst the appellant does not wish to have a traditional 'plastic caravan' on the appeal site there is little evidence before me to indicate that a replacement caravan could not also provide an energy efficient and modern home for Mr Mason. Therefore, I cannot conclude that a replacement caravan would not provide Mr Mason with an appropriate standard of living accommodation as an alternative to that of the appeal building. Furthermore, a replacement caravan would enable Mr Mason to remain living on the site. Moreover, the appeal building has a greater impact on the openness of the Green Belt than that of the stationing of the existing caravan due its degree of permanence for the same reason as cited above in relation to a replacement caravan. Nevertheless, I consider that the above considerations have appreciable weight, collectively, in support of the development.

75. The appellant has also stated that he could move the building to a position nearer to the main dwelling and use it for a purpose incidental to the enjoyment of that dwellinghouse and it would be permitted development under Class E. Given the financial outlay that the appellant has incurred in the erection of the building there is a realistic prospect that he would try and utilise the building in a different position if this appeal is dismissed. This constitutes a second fallback position.

76. Nonetheless, the only specific location cited is the parking area near to the dwelling. There is little evidence before me as to whether the parking area is of sufficient size to cater for the building. Moreover, I have found within the ground (b) appeal that it has not been demonstrated, on the balance of probabilities, that the structure was physically capable of being moved from one place to another without structural damage by the date the notice was issued. I acknowledge that the building could be dismantled and re-built. However, even if the building could be re-erected on the parking area as permitted development it would be seen as part of the cluster of buildings to the rear of the main dwelling. As such, the visual impact on the openness of the Green Belt of this second fallback position would be less than the development before me and in this respect this fallback position attracts little weight in favour of the scheme.

77. During the Inquiry a number of conditions were suggested in relation to the withdrawal of permitted development rights relating to the alteration and extension of the appeal building, any additional hardstanding and any means of enclosure in connection to the use of the appeal building. A suggested condition restricting the residential use of the appeal building to Mr Mason was withdrawn by the appellant. The remaining suggested conditions would be necessary to minimise any additional harm to the Green Belt if I was minded to allow the appeal and grant planning permission for the building to be used as a dwelling. However, they would not mitigate the harm to the Green Belt derived from the breach of planning control. As such, they have little weight in favour of the scheme.

78. The appellant has drawn my attention to an appeal decision[14] where a mobile home was replaced with a bungalow in the Green Belt. Whilst I recognise the need for consistency in planning decisions, I do not have the full details of that case and do not know if the circumstances are directly comparable to the particular set of circumstances at the appeal site. Moreover, from reading the decision letter it appears that in that case the principle of a dwelling (mobile home) on the site was approved based on there being a justification for workers employed by the business to live on site and the bungalow would be situated amongst other buildings. In any event, each case must be determined upon its own merits and that is how I have determined the appeal before me.

79. The Council have not identified any harm in relation to the character and appearance of the area. However, the lack of harm in this respect does not weigh for or against the development.

Other matters

80. Two listed buildings, the Hen and Chicken Public House and Lee Farmhouse are cited within the evidence before me. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the LBCA) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Both parties agreed at the Inquiry that the development does not affect either of these listed buildings or their settings. Based on my observations and the evidence before me I concur, and I consider that the expectations of the LBCA would be met.

81. If I were to dismiss the ground (a) appeal and uphold the enforcement notice the appellant would have to comply with the requirements of the notice. As such, the building would be removed from the appeal site. The Human Rights Act 1998 (HR Act) enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR). It was suggested at the Inquiry that Mr Mason's rights under Article 8 of the ECHR could be violated if the appeal was dismissed. Article 8 states that everyone has the right to respect for his private and family life, his home and correspondence. I do not consider this argument to be well-founded because, as stated previously, I cannot conclude that a replacement caravan would not provide Mr Mason with an appropriate standard of living accommodation as an alternative to that of the appeal building. Furthermore, the enforcement notice has no impact on the retention of the existing caravan. The retention of the

[14] Ref No: APP/H2265/W/19/3229912 (also cited as LUKE v TONBRIDGE & MALLING BC)

existing caravan and /or its replacement with another caravan would enable Mr Mason to remain living on the site. As such, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 of the First Protocol as incorporated in the HR Act.

Planning balance

82. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework establishes that substantial weight should 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 development, is clearly outweighed by other considerations. I acknowledge that other considerations do not have to be rare or uncommon to be special.

83. The erection of the building is inappropriate development and I have found that it has resulted in limited harm to the openness of the Green Belt that it is in conflict with one of the purposes of including land within the Green Belt. I attach substantial weight to that harm.

84. Against the totality of this harm there are other considerations which I have set out above and carry weight in support of the development. For the reasons given above, I find that the other considerations do not, either individually or cumulatively, clearly outweigh the totality of the harm to the Green Belt identified above. Consequently, the very special circumstances necessary to justify the development do not exist. Furthermore, the development conflicts with Policy GB2 of the Chiltern District Plan (Adopted 1 September 1997 (including alterations adopted 19 May 2011) Consolidated September 2007 and November 2011). This policy relates to development in general in the Green Belt and it predates the 2012 version of the Framework. Nonetheless, with regard to paragraph 219 of the Framework this policy is broadly consistent with the Framework and the conflict with it has significant weight. The development is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion – ground (a) appeal and deemed planning application

85. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

86. 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.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Daniel Kozelko – Counsel

He called:

Mr Robert Wallbank – Civil Engineer – RWA Consulting

Mr William Stanwix – Building Surveyor – Stanwix Ltd

Mr Keith Sullivan

Ms Donna Joce

Mr Steve Mason

Mr Steve Hedges - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Dr Alex Williams – Counsel

He called:

Mr Billy Johal – Planning Enforcement Officer - Buckinghamshire Council

Ms Kirstie Elliot – Principal Planning Enforcement Officer - Buckinghamshire Council

DOCUMENTS

CD 6.21 Correspondence with Prime Oak

CD 16.16 Correspondence with Prime Oak

CD 18 Statement of Common Ground

CD 19 Opening Statement of the Appellant

CD 20 Opening Statement of the Council

CD 21 Closing Statement of the Appellant

CD 22 Closing Statement of the Council

CD 23 Completed and Signed Unilateral Undertaking

(numbering follows on from documents in the Core Document List)