
Appeal Decisions

Inquiry held on 11, 12 & 13 January 2022

Site visit made on 14 January 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal A Ref: APP/J4423/C/21/3273084

Appeal B Ref: APP/J4423/C/21/3273085

Land adjacent to Slackfields Farm, Owler Gate, Wharncliffe Side, Sheffield S35 0DU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by Mr Thomas Burgin (Appeal A) and Mrs Jacqueline Moya Burgin (Appeal B) against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 25 February 2021.
- The breach of planning control as alleged in the notice is the erection of a dwellinghouse and associated outbuilding (together “the unauthorised development”).
- The requirements of the notice are: (1) Demolish the unauthorised development in its entirety, including the foundations; (2) Remove all materials resulting from compliance with (1) from the land; and (3) Following on from compliance with the steps specified in (1) and (2), make good the land, by grass seeding the surface of the land such that it is neat and tidy.
- The period for compliance with the requirements is: on or before 1 September 2021.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 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 Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Act.

Summary of decisions: Both appeals succeed in part on grounds (f) and (g) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decisions. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act in respect of Appeal A.

Preliminary matter

1. The appellants’ opening submissions confirmed, in respect of the appeals on ground (b), that they do not dispute a dwellinghouse and associated outbuilding had been erected on the land when the notice was issued. However, they contend the dwellinghouse benefits from planning permission, a matter that may, without injustice, be more appropriately considered in the appeals on ground (c). It was therefore not necessary to take evidence on ground (b) on oath or affirmation.

Appeals A and B - the appeals on ground (b)

2. For the appeals to succeed on this ground, it would need to be shown that a dwellinghouse and associated outbuilding had not been constructed when the notice was issued. However, the appellants accept they had been constructed as a matter of fact and the appeals on ground (b) fail accordingly.

Appeals A and B - the appeals on ground (c)

3. To succeed on this ground, it would need to be shown that the dwellinghouse and outbuilding were not erected in breach of planning control. It is not disputed that they are development within the meaning of section 55 of the Act, nor is it contended that either was permitted development¹. It therefore remains to be considered whether they were permitted by a grant of express planning permission, in this instance 15/04377/FUL, granted on appeal on 17 February 2017 ('the 2017 permission'). That permission did not include an outbuilding, so even though it has since been demolished, the appeals on this ground cannot succeed in that regard.
4. There are 2 ways in which the appeals on this ground could fail in respect of the dwellinghouse. The first would be if it were found to not be the one that was consented by the 2017 permission. While it was suggested any variations could be treated as a breach of condition 2, which lists the approved plans, and not development without planning permission, that must, to some extent, depend upon the degree of variation. More fundamentally, the power to issue a breach of condition notice is in addition to, and does not detract from, the power to issue an enforcement notice. If the appeal on this ground does not fail in that first way, it will be necessary to consider whether any breach of condition 3, relating to land contamination, means that the 2017 permission was not lawfully implemented.
5. The dwellinghouse is wider and longer than approved, in each case by 0.67 m, and the ridge of the roof is 0.2 m to 0.4 m higher than approved. A chimney and a set of external steps shown on the plans approved as part of the 2017 permission have not been formed, although they could be added, if practicable, should the building be found to be a lawful implementation of that permission.
6. Changes to the roof frame have allowed the formation of an accessible loft area running the length of the dwellinghouse with a maximum headroom, at the ridge, of 1.6 m. There are 5 roof lights in the roof plane of the front elevation and windows in the apex of each gable. All of these provide light to the loft, and none are shown on the plans approved in 2017.
7. The front door is of a different design and the opening in which it and an adjacent glazed panel are set is wider than shown on the approved plans. This has been accompanied by a repositioning of the central window in the front elevation. The dining kitchen is served by a narrower window, with a different glazing pattern, in the front elevation. In the rear elevation, where the plans approved in 2017 showed 3 windows, there are now 2, including one that is larger, with a different glazing pattern.
8. These variations must be considered holistically to decide whether, as a matter of fact and degree, the dwellinghouse is a lawful implementation of the 2017 permission. If a development is granted planning permission but carried out in such a way that some parts of what was permitted are incapable of being implemented or completed, the whole of that development is unlawful².
9. Mr Bolton accepted in oral evidence that the variations are not *de minimis*. Sections 96A and 73 of the Act provide, respectively, for non-material

¹ By virtue of Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Singh v SSCLG & Sandwell BC [2010] EWHC 1621 (Admin); [2011] JPL 777

variations and minor material variations to be made to a development granted planning permission. However, if variations are fundamental or substantial, they are of a magnitude that requires a new planning application, and they cannot also be a lawful implementation of the original permission. Either it is the same development, but with limited alterations, or a different one.

10. The most significant variation in the scale of the dwellinghouse arises from the increases of 0.67 m in length and width. These result in the footprint of the building being materially different from that approved in 2017. Mr Bolton explained in cross examination that this change arose from the use of stone in the walls. The differences between the internal and external dimensions marked on the 'as built' plan, CD 4.7, support that explanation, although, as drawn, the walls do not appear to be any thicker than those of the approved plan³. As a result, the spacing and positioning of windows and other openings do not appear to precisely match any of the plans that were presented.
11. The approved plans give no indication whether or where access to the loft was intended. As built, the hall is wider and an enclosed space, with a loft hatch and folding loft ladder, has been formed within part of it. In her oral evidence to the Inquiry, Mrs Burgin stated that the loft was never intended to be more than a storage area, but she hadn't considered fitting light bulbs as a less costly alternative to the roof lights and the gable windows.
12. It was revealed on my site visit that the walls and ceiling of the loft are plastered and painted, with several recessed lights in the ceiling. The appellants had a loft conversion business, so it may have been relatively easy for them to do this. However, it is an unusually high specification for a loft intended for nothing more than domestic storage. While this and the enclosed space in the hall are uncommon features, the loft is unheated and accessed via a folding ladder. Accordingly, and notwithstanding any potential for further works, another floor of habitable accommodation had not been formed when the notice was issued as a matter of fact and degree. Nevertheless, the changes from what had been permitted above ground floor level, not least the installation of the gable windows and rooflights, are substantial.
13. Other internal changes are significant. The dwellinghouse includes an en-suite bathroom and a separate washroom rather than the single bathroom shown in a different position on the approved plan. The sitting/dining and kitchen area shown on the same plan has been partly subdivided, with the kitchen occupying a different position and the dining area and sitting room partly divided. The 2 bedrooms have changed in size and form. While these were interior changes that may not have materially affected the external appearance of the building, they were not acts of maintenance, improvement, or other alteration but were part of the construction of the dwellinghouse.
14. Viewed cumulatively, the differences between the dwellinghouse and the 2017 permission are far more than marginal and what has been constructed does not fall broadly within the parameters of the building that was approved. These variations are material and substantial, such that the dwellinghouse is a different development from what was permitted.
15. The scale of the variations in length and width mean that the construction process began with footings that are substantially and fundamentally different

³ Drawing 195/354/02, CD4.9

from what had been approved. As that deviation occurred at the start of the construction process, there is no evidence of prior lawful implementation. It therefore follows that the entire building is unauthorised, and compliance with the 2017 permission's contamination condition does not need to be considered.

16. I appreciate the clarity of the appellants' argument that a developer could use the same logic to evade planning conditions after claiming immunity from enforcement action. However, this ground of appeal must be determined on the facts, and not according to the desirability of any consequences.
17. For these reasons, and on the facts, the construction of the dwellinghouse was not a lawful implementation of the 2017 permission and the entire construction of the outbuilding was unauthorised development. Accordingly, the appeals on ground (c) must fail.

Appeal A - the appeal on ground (a)

18. The appeal on this ground is restricted to the dwellinghouse and the main issues are:

- Whether it is inappropriate development in the Green Belt ('the GB').
- Its effect on the openness and purposes of including land in the GB.
- Whether it is consistent with locational policies of the development plan, including whether those policies are consistent with the National Planning Policy Framework ('the Framework').
- Its effect on landscape character.
- If it is inappropriate development, 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 required to justify the proposal.

Whether the dwellinghouse is inappropriate development

19. New buildings are inappropriate development in the GB unless one or more of the exceptions in paragraph 149 of the Framework applies. None of those exceptions is claimed, and no exception provided by any policy of the development plan is suggested. The dwellinghouse is therefore inappropriate development and is, by definition, harmful to the GB.

The effect on the openness and purposes of including land in the GB

20. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of the GB are its openness, which must be considered in spatial and visual terms, and permanence. A timber building that was on the site has been removed, and the dwellinghouse of the 2017 permission was not built and the period for its lawful commencement has expired. The starting point in this assessment must therefore be the site before construction of the unauthorised dwellinghouse began, with no buildings.
21. From that perspective, the development places a building where there was previously none, so it clearly has a spatial impact on the openness of the GB. The Council's calculated volume above finished ground floor level, 389 cu m,

was not challenged, and it represents a significant increase in the quantum of built development in the GB.

22. The dwellinghouse stands on rising ground, above the valley of the Tinker Brook, and can be seen in views across that valley from Wharncliffe Side and from Glen Howe Park and nearby public rights of way. The visual effect of the dwellinghouse is mitigated where it is seen against the backdrop of the group of buildings at Slackfields Farm. However, it stands apart from the group in views from Storth Lane to the north and Owler Gate to the south.
23. When the 2017 permission was granted, it was noted that groupings of nearby trees also provided screening to the site, although it would appear some of those trees are no longer present. A landscaping strategy submitted pursuant to the 2017 permission (CD 1.13b) confirms there were conifers to the south of where the dwellinghouse now stands and which would have provided some screening in views from Owler Gate. These are shown to be removed on the submitted drawing and they have been cut down at ground level, although the strategy was never approved. The drawing also shows a group of 3 trees to the immediate northwest of the site that has since been lost, exposing the site, and therefore the dwellinghouse, in views from that direction.
24. Of the 5 purposes of Green Belts set out in paragraph 138 of the Framework, only one, to assist in safeguarding the countryside from encroachment, has been referred to. While the surrounding land uses and buildings may be taken into consideration, the siting of the dwellinghouse, slightly apart from the farm group, is such that there is some encroachment, with attendant limited harm.
25. Accordingly, and being inappropriate development, the dwellinghouse has a material and detrimental effect on the openness of the GB in spatial and visual terms and, to a lesser extent, to one of the purposes of including land within it.

Consistency with the development plan, and of that plan with the Framework

26. Policy CS71 of the Sheffield Core Strategy ('the CS') articulates the strategic vision for the city's development insofar as it relates to the GB. Unaccompanied by detailed spatial policies, it does not provide a full means of assessing the effect of the dwellinghouse on the GB. Saved policy GE1 of the Sheffield Unitary Development Plan ('the UDP') makes a broad presumption against development that would be contrary to 4 of the 5 purposes of Green Belts, including safeguarding the countryside from encroachment. The identified harm through encroachment, albeit limited, therefore conflicts with the policy. The policy does not refer to preserving the setting and special character of historic towns, but the site is not near one, so there is no inconsistency with the Framework in the facts of this appeal.
27. Saved policy GE3 of the UDP does not fully reflect the exceptions under which the construction of new buildings may be found not inappropriate in the GB in paragraph 149 of the Framework. However, the dwellinghouse is not a replacement building and is not on previously developed land or in a village, so inconsistency with the Framework could only arise if it constitutes affordable housing under exception (f)⁴.

⁴ Limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites)

28. The fact that the appellants were able to build the dwellinghouse confirms it was affordable to them. However, exception (f) relates to affordable housing that addresses local community needs under development plan policies. Evidence of such local policy justification was not produced, and the appellant accepts that the dwellinghouse is not an affordable dwelling⁵. As exception (f) cannot apply to the dwellinghouse, there is no inconsistency between saved policy GE3 and the Framework in the facts of this appeal. On those facts, the dwellinghouse is inconsistent with saved policy GE3 and the Framework.
29. Saved policy GE5 of the UDP exceptionally allows new housing in the GB if it would infill a single plot within a village, a group of buildings or a substantially developed road frontage. Of these, only infill within a village, corresponds to exception e) in paragraph 149 of the Framework and the site is not within a village. Accordingly, and as the dwellinghouse is not in a road frontage and stands slightly apart from the farm group, there is no inconsistency between the policy and the Framework in the facts of this appeal. On those facts, the dwellinghouse is inconsistent with saved policy GE5 and the Framework.

Landscape character

30. The site lies within an Area of High Landscape Value ('the AHLV') but limited evidence was presented on this issue. Nevertheless, the appellant correctly identifies that the dwellinghouse of the 2017 permission was found to be acceptable in terms of its effect on the landscape.
31. However, as noted, some trees that provided screening in 2017 are no longer present. In addition, the rooflights and gable windows mean that, when the loft lights are on, the dwellinghouse will be more prominent in the landscape than that permitted in 2017 would have been. Furthermore, like the GB assessment above, the starting point in this appeal is a cleared site. In contrast, the assessment that led to the 2017 permission started with an existing building.
32. Despite those differences, when viewed in the context of the farm group and nearby housing, the dwellinghouse has a minimal effect on the appearance and character of the AHLV, which is therefore protected.

Other considerations

33. While the material and substantial differences between what was permitted in 2017 and what has been built may not be appreciated by the casual observer, the planning considerations are not that simple. That is particularly so in respect of the absence of a previous building and in differences in tree screening. Accordingly, and in view of the different starting point for this appeal, only limited weight can be afforded to the site's planning history.
34. Under section 57(4) of the Act, where an enforcement notice has been issued in respect of any development of land, planning permission is not required for the use for the purpose for which it could lawfully have been used if the development the subject of the notice had not been carried out.
35. Apart from the tracks leading from Owler Gate and flanking the southern and western boundaries, the land subject of the notice benefits from a certificate of lawful use or development granted in 2015⁶. It certified that the use of an

⁵ Mr Bolton's proof of evidence, paragraph 8.81

⁶ 15/00223/LU1, granted 5 June 2015

- outbuilding, since removed, and surrounding land for business storage was lawful. The resumption of that use should the appeal fail, if realistic and not merely theoretical, would weigh in support of the appeal if it would cause greater harm to the GB and landscape character than the dwellinghouse.
36. Whether the storage use has been abandoned turns on 4 criteria: the period of non-use; the physical condition of the land; whether there has been any other use; and whether it was intended to suspend the use or to cease it permanently. Ceasing storage before construction began on the dwellinghouse in 2017 is not, of itself, sufficient to constitute abandonment. The erection of the dwellinghouse and associated changes in levels have altered the physical condition of the land, but not so far as to prevent outdoor storage being undertaken in the future.
37. Mrs Burgin stated that, apart from a horse box and occasional storage of materials by other people, the storage prior to construction of the dwellinghouse had been in connection with her husband's former loft conversion business. Although the 2017 permission was not lawfully implemented, the appellants believed they were doing so. The proposed site plan⁷ clearly indicated that storage would end in favour of residential use, so it is reasonable to conclude they did not intend to carry out any storage, apart from their use of the outbuilding prior to its removal.
38. Mrs Burgin also confirmed the outbuilding had been used to store her husband's tools, although she did not say whether those tools had been for personal or business use. However, if they were used for business purposes, their storage at home, a common practice of self-employed contractors, may be viewed as incidental to the residential occupation and not a separate business storage use. The distinction is clearer when the subsequent storage of those tools in the loft, following removal of the outbuilding, is considered.
39. Mr Bolton stated the appellants may have to come out of retirement if the appeals fail but no firm evidence of the likelihood of that, or of business storage being undertaken at the site, by them or anyone else, was provided.
40. These uncertainties make it difficult to be sure that the business storage use has been abandoned. However, it is not taking place at present and the prospect of it being resumed is theoretical, rather than realistic. As such, I afford little weight, if any, to the fallback of resumed business storage use and its likely effect on the GB and landscape character.
41. While Mr Bolton asserted the Council's decision to take enforcement action was inconsistent with the approach to other cases in Sheffield, the only example given was a 2003 appeal decision relating to a new building⁸. Only the Decision Letter was provided, and it confirms the Council had issued an enforcement notice in that case. Consequently, and as the appeal decision pre-dates the Framework, The CS and the Council's Local Enforcement Plan, the policy context was different, and inconsistency has not been shown.
42. Nevertheless, a separate consideration of whether the Council's decision to issue the notice was in the public interest is raised. Enforcement action is discretionary and should always be proportionate and the Council's Local

⁷ Drawing 195/354/03B, CD 2.5

⁸ APP/J4423/C/03/1109215, allowed 11 July 2003

Enforcement Plan confirms it will not take such action simply because a breach has occurred or to punish those responsible for it.

43. I have not considered this matter in terms of the alleged failure to comply with the land contamination condition of the 2017 permission because that permission was not lawfully implemented and can no longer be built out. For the same reason, and with the timber building removed, proportionality must be considered in terms of the dwellinghouse and outbuilding, as they were when the notice was issued, and the previously cleared site. Accordingly, and as the prospect of the lawful business storage use resuming is no more than theoretical, the effect on the GB already noted indicates there was a public interest in issuing the notice.
44. There was a period of uncertainty while the appellants awaited final advice from the Council on conformity with the 2017 permission. During that period there were instances of unclear and contradictory communication, which undoubtedly caused the appellants difficulty. The evidence indicates that this was primarily to do with the land contamination condition, which I have not considered for the reasons already given. However, the arc of the Council's communications over that period confirms that, regardless of the outcome on the land contamination condition, it repeatedly stressed the need to ensure compliance with the approved plans.
45. As such, the responsibility for the fact that the dwellinghouse is not the one permitted in 2017 must lie with those who built it and I afford limited weight, if any, to the Council's conduct.
46. The need to negotiate with another party in respect of a covenant undoubtedly complicated the project and may have prolonged the period between the grant of the 2017 permission and work starting on site. The appellant also cites Covid-19 as a contributory factor and Mr Bolton referred to difficulties in getting work commissioned. However, and even though the dwellinghouse is not the one approved in the 2017 permission; work began on it before the expiry of the commencement period for that permission. Accordingly, I cannot afford weight to these matters.
47. The Council calculates it had a 4-year supply of deliverable housing sites in October 2021. However, this should be reduced because the Council has not demonstrated that new student housing would do more than meet the needs of a growing student population and add to overall supply. The appellant calculates this would bring the supply down to 3.1 years, significantly below what is required by the Framework. Nevertheless, the dwellinghouse was complete in October 2021 and has not been shown to form part of the supply of deliverable housing sites then. Even if it were, its loss would not have a significant effect on the overall supply, so I afford limited weight to this matter.
48. The dwellinghouse has not been shown to meet the definition of affordable housing in the glossary to the Framework and it does not address local community needs under development plan policies. Nevertheless, if it were lost, the appellants and any dependents may add to local need for affordable housing. While this would make very little difference to the city's ability to provide adequate affordable housing for its population, the matter would be of great concern to the appellants. However, the planning system cannot influence the need for affordable housing other than through the supply of such

- housing. From that perspective, and as the loss of the dwellinghouse would not alter the supply of affordable housing, I can only afford limited weight to this.
49. Similarly, while the appellants may have built the dwellinghouse, its loss would not alter the city's supply of self-build plots. Furthermore, as it is already built its retention would not assist anybody on the Council's self-build register. Accordingly, I cannot afford this matter any weight.
50. While the appellant provided evidence to suggest the Council has a poor record in delivering family housing, no definition of family housing was provided, nor was a relevant development plan policy promoting it identified. However, within CD 3.2, policy CS41 of the CS includes a commitment to promote 'homes for larger households, especially families' outside the City Centre. The appellant's evidence⁹ suggests this may mean houses with 3 or more bedrooms, which accounted for only 19% of all completions in the city between 2015 and 2020. On the evidence provided, it has not been shown that the dwellinghouse, comprising 2 bedrooms, is family housing in the policy sense, or that its loss would alter the supply of such housing. Consequently, I cannot afford this matter any weight.
51. The demolition of the dwellinghouse would cause the appellants to lose their home. This would interfere with the rights afforded by Article 8 of the European Convention on Human Rights ('the ECHR') and Article 1 of the First Protocol to the ECHR, as incorporated by the Human Rights Act 1998. Furthermore, Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
52. The foregoing rights are qualified; meaning they may be interfered with provided such interference is proportionate and to a legitimate end. The rights of the appellants' dependent granddaughter should be afforded due weight, as a primary consideration, subject to the circumstances of the case. The evidence indicates her best interests are the continuation of the stable family environment provided by the appellants, with the benefits that flow from it, including educational opportunities.
53. The loss of a home is likely to cause significant disruption to the occupiers, especially any children, in terms of their education, health and wellbeing, and Mrs Burgin stated these effects would be devastating. While the appellants may not have the funds to buy another home of the size they would like in the area, the only evidence presented on current house prices, in Mrs Burgin's oral evidence, was that nearby new houses with more than 2 bedrooms sell for over £300,000. However, an unsigned and undated statement she made in 2020¹⁰ ('the 2020 statement') indicated that properties then for sale within 3 miles of her granddaughter's school began at £84,000.
54. Nevertheless, and in view of their ages and retired status, it may be difficult for the appellants to secure a mortgage, although evidence to demonstrate this was not presented. While it is understandable that the appellants would prefer owner-occupation, there is no evidence of a fundamental reason why renting, which they have done before, would not allow them to enjoy a reasonable home life and provide their granddaughter with a stable family environment. Mr

⁹ Appendix 5 to Mr Bolton's proof, paragraph 5.3

¹⁰ CD 1.2 pages B39 – B47

Bolton referred to evidence regarding the benefits of owner-occupation to children, but that evidence was not produced. Consequently, it has not been tested and cannot be directly related to the circumstances of this appeal.

55. The 2020 statement indicated the rent the appellants paid while the dwellinghouse was under construction exceeded their combined income and was therefore not a sustainable long-term solution. However, the rental property had a third bedroom, so it was larger than is now required. This may explain why the rent was significantly higher than those of alternative properties then available within 3 miles of their granddaughter's school that are mentioned, but not identified, in the same statement.
56. Reference was made to the possibility of moving to an area with lower rental levels and the appellants' main argument against this was that it would force their dependent granddaughter to change schools and lose contact with friends. It is not unusual for children to change schools if their family moves from one locality to another. However, it was not shown that moving would preclude the appellants' granddaughter from continuing at her present school or maintaining social contacts, nor was it stated she would be unable to adapt to such a change if it became necessary. Furthermore, Mrs Burgin confirmed that progression to a secondary school will occur in 2 years' time in any event.
57. Moving home can present challenges for any household and there can be little doubt that the appellants and their dependent granddaughter would prefer to stay where they are. The loss of the capital invested in the dwellinghouse and the resulting financial implications for the appellants would have some effect on their ability to find suitable alternative accommodation in the local area. However, and although Mrs Burgin stated financial evidence had been prepared, it was not submitted, and thus could not be tested.
58. If it were necessary to move so far that changing school became unavoidable, that would be likely to increase any effects of relocation on the appellants' dependent granddaughter's education, health and wellbeing. However, Mrs Burgin confirmed in oral evidence that a stable family environment had been provided while the household was previously in rented accommodation and on moving to the dwellinghouse. She also confirmed that the same steps could be taken in the event of any future move. It has therefore not been demonstrated that moving home, however unwelcome, would mean the appellants could not continue to provide a stable family environment for their granddaughter.

Conclusion on ground (a)

59. For the reasons given, the dwellinghouse is inappropriate development and harmful to the openness of the GB and this carries substantial weight. There is conflict with UDP policies GE1, GE3 and GE5 and Part 13 of the Framework.
60. The absence of harm to landscape character is neutral in the overall balance and neither weighs for or against. For the reasons given I can only afford limited weight to most of the considerations that have been advanced, including the planning history, the resumption of business storage, various aspects of housing supply, the covenant, and the Council's actions.
61. While I have given significant weight to the rights of the appellants' dependent granddaughter and have also considered the human rights of all household members, to which I also attach significant weight, the advanced

considerations in support do not, individually or cumulatively, on balance, clearly outweigh the harm to the GB. Consequently, the very special circumstances necessary to justify the development do not exist. As such, any adverse impact on the interests of the child and on the household members' human rights would be a proportionate response.

62. Accordingly, the appeal on ground (a) should not succeed.

Appeals A and B - the appeals on ground (f)

63. While Mr Bolton suggested that lesser steps could be taken to secure compliance with the notice, none that could be taken if the dwellinghouse is entirely unauthorised were identified. As noted, I have found that the dwellinghouse is unauthorised and that, because of the difference in the footings from the 2017 permission, it was unauthorised from the start. In these circumstances, only the removal of the unauthorised development would remedy the breach of planning control, which is the aim of the notice.

64. However, the requirement to reinstate the land, as stated in the notice, is unclear because of the subjective nature of 'neat and tidy'. This can be addressed, so that it is clear what should be done, without giving rise to injustice.

65. The appeals on ground (f) succeed to this limited extent.

Appeals A and B - the appeals on ground (g)

66. While the notice included a compliance period ending on or before 1 September 2021, that was 27 weeks after the date of issue. I have therefore considered the appeals on the basis that the appellants consider 27 weeks to fall short of what should reasonably be allowed.

67. To comply, the appellants would first need to find and move to a new home that is suitable for them and their dependent granddaughter. Once moved, they would need to demolish the dwellinghouse, remove the resulting materials and make the site good. They contend these requirements would not only present challenges for them personally but could also be made more difficult by the Covid-19 pandemic.

68. Notwithstanding my findings in the appeal on ground (a), the appellants' strong desire to maintain a stable family environment for their granddaughter may require them to exercise particular care in moving home. Their preference that she continues at the local primary school is a significant factor in this and may prolong their search for a new home. Regardless of whether it is necessary to change schools, it would be better that any move is undertaken outside of term time and ideally between school years.

69. Restrictions that had been imposed due to Covid-19 have been relaxed, such that it is now less likely to have any impact. However, home search, the move and site clearance will need to be undertaken in sequence, not simultaneously. Accordingly, and in view of the care to be exercised in moving home and the advantages of being able to do so during summer, 27 weeks may not prove sufficient in all circumstances. It would be a reasonable period for demolition, clearance and restoration alone, but more time may be needed to also find new accommodation and move during the school summer holidays.

70. However, the suggested alternative of 12 months would be equivalent in effect to a temporary permission for harmful inappropriate development in the GB. This would be inconsistent with my findings in the appeal on ground (a). In contrast, a 9-month period would acknowledge the practicalities faced by the appellants while reflecting the expediency of enforcement action and would be a proportionate response to the Rights of the Child.
71. On that basis, the appeals on ground (g) succeed and the notice should be varied accordingly.

Conclusions

72. For the reasons given above, I conclude that the appeals on grounds (b) and (c) and the appeal on ground (a) should not succeed and the appeals on grounds (f) and (g) should succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Appeal A - Formal Decision

73. The appeal is allowed on grounds (f) and (g) and it is directed that the notice be varied in section 5. iii. by the deletion of the words "such that it is neat and tidy" and the substitution of the words " to a condition similar to adjacent grassland".
74. It is further directed that the notice be varied in section 6 by the deletion of the words "on or before 1st September 2021" and their substitution with the words "not later than 9 months after this notice takes effect".
75. Subject to these 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 Act.

Appeal B – Formal Decision

76. The appeal is allowed on grounds (f) and (g) and it is directed that the notice be varied in section 5. iii. by the deletion of the words "such that it is neat and tidy" and the substitution of the words " to a condition similar to adjacent grassland".
77. It is further directed that the notice be varied in section 6 by the deletion of the words "on or before 1st September 2021" and their substitution with the words "not later than 9 months after this notice takes effect".
78. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Satnam Choongh of Counsel

He called

Jacqueline Moya Burgin

Roland Bolton BSc (Hons) MRTPI Senior Director, DLP Planning Limited

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Henderson of Counsel

He called

Stewart Greenslade BSc, MSc, MRTPI Planning Officer, Sheffield City Council

INTERESTED PARTIES:

Barbara James

Alan Chater

Nick Baseley MA (Hons) TP, MRTPI

Director, IBA Planning Limited

Elizabeth Heald MInst.Ch.P

Wayne Stride

Documents submitted at the Inquiry

- 1 Letter of notification of the Inquiry dated 21 December 2021
- 2 Letter of representation from Ms James
- 3 Letter of representation from Mr Chater
- 4 Letter of representation from Ms Heald