



Appeal Decision

Site visit made on 16 May 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

**Appeal Refs: APP/D3830/C/21/3284216 & APP/D3830/C/21/3284217
Land at Springwood Nursery, Nash Lane, Scaynes Hill,
West Sussex RH17 7NJ**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Warren Constantinou and Ms Rhona Moore against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 31 August 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a residential dwellinghouse (C3) ("the Dwellinghouse") on the Land shown hatched blue on the Plan and associated development of the erection of entrance gates on the Land ("the Entrance Gates") shown in blue between the points marked "A" and "B" on the Plan, the erection of a toilet building ("the Toilet Building") on the Land shown edged blue on the Plan and the installation of a klargester sewerage treatment plant ("the Klargester") on the Land (all matters to be referred to as "the Unauthorised Development").
 - The requirements of the notice are to:
 - 1) Cease the construction of the Dwellinghouse shown hatched in blue in the approximate position on the Plan.
 - 2) Dismantle or demolish the Dwellinghouse including the removal of the timber frame, concrete base and any footings or foundations shown hatched in blue in the approximate position on the Plan.
 - 3) Dismantle or demolish the Toilet Building including the removal of the timber frame and any footings or foundations shown edged in blue in the approximate position on the Plan.
 - 4) Permanently disconnect the Unauthorised Development from all services including electricity, mains water and gas.
 - 5) Permanently cap and remove all foul drainage systems on the Land including the Klargester.
 - 6) Dismantle and permanently remove from the Land the Entrance Gates across the vehicular entrance marked in blue in the approximate location marked A-B on the Plan.
 - 7) Make good and reinstate the land to its former condition.
 - 8) Permanently remove from the Land all materials and other debris resulting from steps 2), 3), 4), 5) and 6) above.
 - The period for compliance with the requirements is, for step 1), within 2 days after this Notice takes effect; for steps 2), 3), 4), 5) and 6), within 3 months after this Notice takes effect, and for steps 7) and 8), within 6 months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Summary of Decision

1. The enforcement notice is corrected in the terms set out below in the Formal Decision and, subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. These appeals have given rise to a great many representations and accompanying paperwork, some relating to matters which have previously been resolved. Some of the material prepared for the appellants, in terms of the actual issues it raises is largely peripheral with case law cited that is not directly applicable to the actual planning position, and the implications arising therefrom, at the appeal site. In illustration, the inclusion of case law details in respect of s56 of the 1990 Act as to works carried out being different to those shown on the approved drawings is referred to in the 'Representations of the Appellant' document in its legal grounds section. However, given the Class Q criteria and limitations thereto, which I analyse in full later in this decision, s56 cannot be of direct relevance to the appeal on the legal grounds.
3. Indeed, I would consider that reference to case law, somewhat tenuously related to the issues in the current appeal, has only served to pad out the appellants' case without getting to the crux of the determinative issues upon which the appeal turns. I also see little point in revisiting the consideration of the application for prior approval which allowed for the conversion of a former agricultural building (the chicken shed) and what issues the Council took into account in the reaching the decision it did. I shall nevertheless address this matter also, later in this decision letter.
4. In terms of the appeal on ground (a) - involving the application deemed to have been made for planning permission - most of the issues arising have already been explored in the previous unsuccessful s78 appeal decisions relating to development at the site. These appeals are referenced; firstly, (APP/D3830/W/15/3136792), in 2016 and, more recently, (APP/D3830/W/19/3234270) from December 2019. I attach particular importance to the latter decision letter as the Inspector makes reference to, and comments on, what existed on the site at the time of her visit.
5. That said, I have had due regard to the new material produced by the appellant, notably that relating to the appellants' personal circumstances, the consideration of the best interests of the child, a Preliminary Ecological Appraisal and also the s174 appeal decision (APP/N1025/C/19/3238932/3) relating to a development in Breaston, Derbyshire whereby the value of a previous Prior Approval scheme, amongst other factors, came to the fore in an enforcement notice being quashed and planning permission being granted for a new dwellinghouse in the green belt.
6. Although no appeal against the enforcement notice was made on ground (b), when originally lodged, I accept the appellants' stance that the representations give an implied appeal on such, and I am therefore including an analysis on this in my decision letter.
7. During the appeal process, on 29 June 2022, the Council adopted its Site Allocations Development Plan Document (SADPD) which serves to complement its District Plan (LP), adopted in 2018, which is the local plan for the

Mid Sussex area. In the circumstances I gave the opportunity for both main parties to comment as to whether the new document afforded weight to their respective cases. Both parties subsequently responded.

Matters concerning the enforcement notice

8. The appellants, in referring to the enforcement notice's Requirement 1 which stipulates that construction of the dwellinghouse cease, say that there is no dwellinghouse being constructed in the position shown hatched blue on the plan. The Requirement actually states "*...in the approximate position on the plan*". There is only one dwellinghouse being constructed on the land. The same applies to the timber toilet building. The requirements are clear, and I shall correct the enforcement notice to reflect this.

Background

9. The recent planning history of the site has been well documented and I only need to summarise it below insofar as it is directly relevant to the current appeals.
10. The land, previously part of Orchard farm, had been used for agricultural purposes and, in 2017, a vacant timber-framed building associated with this use was the subject of an application to determine whether prior approval was required for its change of use to a two-bed dwelling. The application was subsequently approved (ref DM/17/2215), subject to two conditions; that the development be completed within three years of the decision (ie no later than 27 July 2017), and that it be carried out in accordance with the approved plans. In the event the works were not completed by this date but, importantly, the original building apparently collapsed during high winds in February 2019.
11. A planning application was then made in April 2019 for '*demolition of existing buildings and erection of 1 no dwelling*'. Although of a similar profile to the chicken shed, no longer standing, the proposed building shown on the submitted plan would have been slightly longer, wider and with an increased ridge height. Planning permission was refused, with the Council's decision subsequently upheld on appeal in December 2019.
12. The Council had made clear that, due to the circumstances, it was of the view that the approval for the conversion and change of use of the original building given had been lost. Moreover, as works had resumed to create the dwelling, and with the development now unauthorised, the Council issued an enforcement notice requiring, amongst other things, cessation of the construction works, and demolition and removal of the unauthorised development.
13. The enforcement notice was appealed and was later quashed by the appointed Inspector as it did not specify with sufficient clarity the alleged breach of planning control and the time for compliance. The current appeals relate to the enforcement notice, reissued and re-worded to address the previous Inspector's concerns.

The appeal on ground (b)

14. An appeal made on this ground is that the breach or breaches alleged have not occurred as a matter of fact. In other words, the planning position is not as

the Council alleges in the enforcement notice and *'the construction of a residential dwellinghouse'* does not represent a contravention of planning control.

15. The onus of proof on such matters of fact is on the appellant, and is on the balance of probabilities.
16. For this to be the case the conversion and change of use of the chicken shed building approved on 27 July 2017 under the Prior Approval regime must still hold good and the development in situ at the time the enforcement notice was issued on 31 August 2021 did not contravene the provisos and conditions set out under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
17. Class Q of the GPDO allows for the conversion of agricultural buildings to dwellinghouses providing only that a number of criteria are met, and one of the most common issues is satisfying that the works involved to achieve this would amount to a conversion rather than a complete rebuild.
18. To expound, in order to satisfy the limitations of Class Q, the development under Class Q(b) must not consist of building operations other than the installation or replacement of windows, doors, roofs or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse, and partial demolition to the extent reasonably necessary to carry out the building operations listed there.
19. The case of *Hibbitt v SSCLG and another* [2016] EWHC 2853 highlights the difficulties in satisfying the initial criteria. Having had regard to the government's planning practice guidance (PPG) as worded at the time it was held that if the proposed development is not 'conversion' then it cannot benefit from the Class Q entitlement. In the context of the proposed development the subject of this case the Court decided that the works went beyond conversion as the *'development was in all practical terms starting afresh, with only a modest amount of help from the original architectural building'*.
20. It was held in the judgement that the concept of conversion, found in the overarching provisions of Class Q, introduced a discrete threshold issue such that, if a development did not amount to a 'conversion', it failed at the first hurdle and there was no need to delve into the exceptions in Q1.
21. The PPG was updated in June 2018 deleting reference to taking into account structural elements to assess, for instance, whether the existing building was strong enough to take additional loading without further structural support. It now states:

"It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right."
22. Accompanying the Prior Approval application was a Supporting Statement and it would appear that, in reaching its decision, the Council accepted the assurance from the applicant that the barn can be converted without any substantial building operations, although a number of internal walls would need

to be installed. On this basis the Council considered the chicken-shed building to be of sufficient solidity to allow for its conversion.

23. In the event, following the commencement of works to convert the building involving the removal of cladding from the walls and the asbestos roof covering, the appellant states that, during a severe storm in February 2019, the building collapsed.
24. Both parties have provided a series of photographs to illustrate the relevant chronology of events. The original chicken-shed is shown in the appellants' photos 12 and 13 and the Council's photos 1 and 2 (dated January 2018).
25. Photographs 8, 9, and 10 from the Council dated February 2019 show the building following the commencement of works and, importantly, photo 11 (dated 21 October 2019) show that the original building no longer exists, with photo 12, dated 23 April 2020, giving a close up view of the concrete base. It is clear that there are no surrounding walls.
26. Photo 13 (dated 19 May 2020) reveals a new timber frame under construction, as do the appellants' photos 18 and 19. Finally, the Council's photos 15 and 16, taken in November 2020, show the new building with its walls in place and overlain with roofing.
27. The appellants say that the timbers from the chicken shed were re-used but that does not alter the fact the chicken shed had been demolished and the structure erected in its place is a rebuild or fresh build, rather than a conversion.
28. Notwithstanding the clear evidence otherwise, I fail to understand the basis of the comments in paragraph 27 of their 'Representations' that these were "*legitimate works of conversion*", and the works where the appellants "*resurrected the frame...were de minimis or were ancillary to the permitted development carried out*". Further, the pronouncement in the paragraph stating "*There was no demolition, as the Council appear to be suggesting*" flies in the face of the reality of the situation.
29. This stance continues, albeit slightly softened, in the appellants' letter of 27 December 2020 headed 'Response to Local Planning Authority Appeal Statement' whereby in commenting on paragraph 5.6 of the Council's document states:

"There has only been partial demolition to the extent reasonably necessary to carry out the allowed building operations."
30. The assertion is clearly inconsistent with the photographic evidence referred to and my findings are reinforced by those of the previous appeal Inspector who, in referring to her site visit on 25 November 2019, states in paragraph 13 of her decision letter:

"The pre-existing chicken shed (or barn) has been removed and from what I saw at my visit the concrete base of that building remains."
31. It is clear from the *Hibbitt* judgement that the question of whether the works to change the use of an agricultural building to a dwellinghouse amount to a conversion or rebuild is one of substance, not form, and this is a matter for the decision maker. In the current case, following the original building's collapse,

and with its external walls and roof no longer in existence, the rebuild or fresh build necessary for works to precede cannot fall within the parameters of Class Q and thereby fall outside the scope of works for the original building's conversion and change of use approved under DM/17/2215.

32. Given the relevant statute the appellants' comment in their letter of 27 December 2020 that the building, when fully complete, will comply with the Prior Approval, is clearly incorrect.
33. Accordingly, the building and its associated operational development, as it stood on 31 August 2021 (the date the enforcement notice was issued), constituted development requiring the benefit of planning permission.
34. As no planning permission or any consent to this extent had been granted at the time the enforcement notice was issued the appeal under ground (b) must fail.

The appeal on ground (c)

35. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control.
36. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
37. I have found, under the implied ground (b) appeal, that the planning position at the site amounted to development for which planning permission was required. Consequently, as no planning permission existed and the works did not fall within the parameters of permitted development under the GPDO, the appeal made on ground (c) cannot succeed.

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

Main Issues

38. There are three main issues; these being:

- 1) Whether the site is appropriately located for new residential development to avoid an over-reliance on the private motor vehicle;
- 2) The effect of the development on the character and appearance of the surrounding area; and
- 3) The effect of the proposal upon the nearby ancient woodland.

Reasons

39. As I have mentioned all the above issues were explored, to varying extents, by the appointed Inspectors at the two previous appeals; most recently the decision of 10 December 2019. Their findings are clear material considerations but I have also taken account of the new evidence adduced, and also any implications from the recent adoption of the SADPD.

Location

40. The appeal site lies in open countryside, approximately 0.7 miles outside the settlement boundary of Scaynes Hill village, although there is some sporadic development along Nash Lane which turns into Church Road. Although Scaynes Hill has a primary school, a public house, a petrol station and other minor facilities, it has only limited essential services in serving the locality.
41. There are two infrequent local bus services running close to Scaynes Hill, although they pass along Lewes Road (A272) which is situated at the far end of the village, when approached from Church Road. The site, located off Nash Lane which has no street lighting, does not benefit from public footpaths or cycle paths and is therefore only realistically accessible by means of the private motor vehicle. Accordingly, vehicular trips would need to be made to the wider area. Given this, the residential development proposed would be heavily reliant on such.
42. Although I would not regard the proposed development as resulting in an isolated home in the countryside, I am mindful of the advice within the National Planning Policy Framework (the Framework), which promotes sustainable development, and indicates the importance of new development being located to minimise the need for the private car, reflecting that of LP policy DP21
43. In addition, there is also conflict with the Lindfield & Lindfield Rural Neighbourhood Plan (NP), which is part of the Council's development plan, and its policy 1 which seeks to direct new development only within the built up areas of Lindfield and Scaynes Hill.
44. I note the SADPD site allocation of 2.2ha of land for 20 new dwellings, which would extend the Scaynes Hill envelope at its north-eastern end, and the appellants' point that this would have the effect of bringing the settlement slightly close to the appeal site. This extension would realistically make no difference given the distance to the appeal site, and the private motor vehicle would almost certainly still be employed by the appellants for movements to and from the site. The options referred to as regards a footway/path along Nash Lane is, at the current time, only an aspiration.
45. In view of my findings I concur with the comments of the previous two appeal Inspectors. Accordingly, I conclude that the site is not appropriately located to satisfy the aims and requirements of LP policies DP21, NP policy 1 and relevant advice within the Framework.

Character and appearance

46. The Council's spatial objectives, in relation to sustainability, must be coupled with LP policies DP12, which serves to protect and enhance the countryside, and DP15 which says that new homes will only be permitted where 'special justification' has been demonstrated. The accommodation is not essential for agriculture, and conflicts with the Council's Settlement Hierarchy, as set out in LP policy DP6, and neither is it a replacement dwelling. Although the appellants would consider the proposal to be the re-use of a former rural building, I have already dealt with this point, and found otherwise. No special justification therefore exists.
47. The appellants, in their initial grounds, say that planning permission is sought which accords with the previous Class Q prior approval. However, Prior

Approval is not a planning permission in itself, it merely means that a developer has to seek approval from the Council that specified elements of the development are acceptable before works can proceed. Apart from certain considerations to be satisfied the full suite of planning policies and guidance relating to whether or not development would be acceptable, and in a particular location, are not applied in such cases. Consequently, there is no guarantee that a conversion and change of use permitted through the prior approval regime, would be granted full planning permission.

48. From my site visit I observed that the building is, at best, utilitarian in form and of a very plain, unimaginative design. It is certainly not of the high quality and layout envisaged by and referred to in the text of LP policy DP26. This is doubtless due to the appellants' attempt to replicate the chicken-shed's form and design. The appellants comment that the Council did not raise any objection on grounds of design and appearance to the proposed conversion of the chicken-shed by way of the Prior Approval application. That may be the case, but I note that in issuing the enforcement notice there was no direct objection in terms of design, rather that the unauthorised development causes harm to the character and appearance of the area.
49. Although, at a lower land level than Nash Lane, and set into the site, glimpses of the building can be seen when passing along the lane and this, combined with the gates installed, does have an urbanising effect on the immediate area, as would the domestic paraphernalia common to residential gardens.
50. The building proposed under application ref DM/19/1391, and dismissed on appeal, was seemingly of a similar design and dimension to that now in situ. Similarly, therefore, given my findings, I have no reason to disagree with the comments of the previously appointed Inspector in her decision letter. Landscaping would not sufficiently mitigate against the development's impact.
51. Accordingly, I conclude that the proposed development would be harmful to the character and appearance of the surrounding area, and is in material conflict with the aims and requirements of LP policies DP6, DP12, DP15 and DP26 and paragraph 130 of the Framework.

Ancient woodland

52. Beyond the site to the south is an area of ancient woodland and fencing has been erected as a line of demarcation. LP policy DP37 serves to support the protection and enhancement of trees and woodland with, in particular, ancient woodland being protected. The text says that development should be positioned as far as possible from ancient woodland with a minimum of 15 metres maintained between the woodland and the development boundary and, in this particular instance, the buffer zone has been encoached upon.
53. I have had regard to the salient points in the Preliminary Ecological Appraisal, dated 16 February 2022, submitted to accompany the appeal. It comments as to a "minor incursion" into the buffer zone, and that mitigation measures are not necessary, although some enhancement measures are recommended.
54. There is clear dispute between the main parties on this matter, and I am mindful of the relevant advice in paragraph 180 of the Framework. In the absence of relevant detailed material to consider here – the appraisal is brief, being what it says, only 'preliminary' – and also, given that I have found harm

on two of the three main issues on which the ground (a) appeal turns, it is not necessary in the circumstances that I explore this particular matter further.

55. In this connection the appellants comment that the Council raised no objection to the prior approval application on grounds of proximity to the ancient woodland. However, the provisions of Class Q – as in effect at the time – did not allow for a consideration as to ecological impact, and LP policy DP37 could not therefore be applied.

Additional Considerations

56. The appellants have raised some new points, not explored by the previous appeal Inspectors. These relate mainly to their personal circumstances, and associated matters.

Timeline and consequences of works undertaken

57. Some evidence has been provided that one of the appellants is suffering from [REDACTED] seemingly compounded by her small son's particular needs, with letters from 'Children First' and 'Early Help Services' to this effect. The situation is apparently made worse as she and her two children are living with her in-laws, and away from her partner. This is obviously not an ideal situation.
58. In response, the Council, in paragraph 5.39 of its Statement makes a point in that it considers the actions of the appellants, in carrying out development without planning permission, has exacerbated the matter and may have resulted in additional stress on the family.
59. I have therefore considered the chronology of events leading up to the enforcement notice, now at appeal, being issued. Firstly, despite the appeal decision of December 2019, construction works for the existing building commenced in April 2020. The photographs produced would confirm this and, from my understanding, dialogue then took place between the appellants and the Council yet, as works continued, the Council saw fit to issue an enforcement notice in July 2020, accompanied by the service of a stop notice. Notwithstanding this, construction works did continue and the Council applied for, and obtained, an Interim Injunction in November 2020. In the following month a full injunction was obtained.
60. Although the Council's actions, extra to the enforcement notice, are not material considerations in this appeal they are an indication of the approach taken by the appellants regardless of the unsuccessful s78 appeal. All this must have given the appellants a clear indication as to the likely ultimate outcome. The enforcement notice issued in July 2020 - although quashed due to its vaguely worded requirements - would have only illustrated the planning position further yet, despite this, construction works did not cease.
61. It is not the Council's fault that the conversion works to the original building were not completed in the time that elapsed – some seventeen months – between the Prior Approval being granted in July 2017 and the building's collapse in February 2019. The appellants indicate that the Council made contact to inform them that the Prior Approval consent had been lost and, in the circumstances, any delays brought about by the Covid lockdown which started in March 2020, are irrelevant to the planning position. Yet, in the following month, construction works for a fresh build commenced.

62. In the circumstances, I agree that this must have been a great worry to the appellants, yet continuing with the unauthorised works will have only compounded problems. Whilst I must sympathise with the appellants' plight it is not unreasonable to suggest that when the land was purchased in 2018, although with the benefit of the Prior Approval consent, the structural state of the former chicken-shed building should have been a consideration at the time. The term, 'caveat emptor', or 'buyer beware' springs to mind, with the benefit of hindsight and, as it is likely that the building was not structurally sound, its subsequent collapse effectively nullified the consent. In the face of the evidential facts in this case the limitations of the Class Q legislation must come to the fore.

Appeal decision (APP/N1025/C/19/3238932/3)

63. The Derbyshire appeal I have referred to, provided in support of the appellants' case, related to an enforcement notice served against a new dwellinghouse which the Council had identified as new-build rather than the conversion of an agricultural building as had been previously approved under Class Q.
64. The enforcement notice, as in the current appeal, required for the dwelling's demolition.
65. In allowing the appeal, granting planning permission by way of the DPA, and quashing the notice the Inspector, in her reasoning states in paragraph 44 of the decision letter:

"I give significant weight to the extraordinary circumstances that arise from the appellants' historical connection to the site, their perseverance in securing prior approval to convert the agricultural building to a dwelling and their explanation of events and reasoning that led to the operational development stepping beyond what is permitted by Class Q(b) and therefore resulted in a fresh build in planning terms."

66. She continued in paragraph 45:

"In addition, the dwelling has been designed and constructed to meet the appellants' long-term health and disability needs. While I have no substantive evidence to demonstrate that the appellants have nowhere else to live, the demolition of the dwellinghouse would result in the appellants losing their home."

67. In noting also that moving away would also mean an end to his operation of the small holding she concluded:

"These personal circumstances are unlikely to be repeated with any regularity and would not set a precedent for similar cases. I give the appellants' personal circumstances considerable weight."

68. The Inspector considered that very special circumstances, given that the site fell within the green belt, had here been demonstrated.
69. Importantly, in that case, the appellant would have lost his home, where he was residing.
70. Direct parallels between different cases are not easily drawn and, whilst noting some similarities, each case has to be assessed on the individual circumstances

and particular factors involved. I am not fully convinced here as to definite parallels and, as such, the Derbyshire appeal has not affected my conclusions.

Human Rights and the Best Interests of the Children

71. The appellants have raised both these matters and I shall deal with them with reference to case law authority. Although the case law involve gypsy and traveller appeals the principles are clear and these can be applied to the current appeal.
72. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
73. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
74. Article 3(1) of the United Nations Conventions 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.
75. In 2013, in the High Court judgement of *Stevens v SSCLG* [2013] EWHC 792 (Admin) it was held that where the Article 8 rights are those of children, their best interests are a primary consideration. Once identified, although a primary consideration, the best interests of the children were not determinative of the planning issue, but no other consideration was more important or to be given greater weight and those best interests had to be kept at the forefront of the decision maker's mind.
76. Importantly, it was held that the best interests of the children were not only not determinative, neither were they paramount, the judge noting that Article 3 says "*a primary consideration*" rather than "*the primary consideration*". Nor should they be considered temporally or logically first.
77. In the case the planning appeal Inspector, in her assessment, had referred to the children's benefit as carrying moderate weight. However, the court decided that, after examining all the material considerations, she was not giving the children's best interests inherently less weight than the visual harm to which the development had given rise. She was, therefore, fully entitled, after that analysis, to conclude that the dismissal of the appeal against the refusal of planning permission would not have a disproportionate impact on the family.
78. Also in 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account in the overall exercise was a question of substance, to be answered by the detailed reasoning of the decision letter as a whole. It was acknowledged that the Secretary of State had, in substance, taken the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, but that the children's best interests and the other factors in favour of granting planning permission were outweighed by the harm that would be caused.

79. If the appellants or intended occupiers are living on the site it should be regarded as their home. However, in the current case, the building is not being occupied for habitable purposes. The appellants representations are therefore incorrect in saying that a refusal of planning permission will lead to the loss of a family home for the appellants and their two small children, and I consider that this reduces the weight to be afforded to both Article 8 and the best interests of the children.
80. There is no actual loss of a family home in this case, and the dwelling that was under construction was an aspiration. From the representations, the current living arrangements at the in-laws' house would appear cramped, but that does not mean that planning restrictions, to which other people are subject, should be here set aside.
81. I find there was a legitimate aim in the Council's decision to issue the enforcement notice. In this instance the aim was clearly to prohibit the continuation of works which ultimately would involve the creation of what the Council considered an unauthorised dwellinghouse to which there were clear policy objections. Such residential development had already been the subject of two previous unsuccessful s78 appeals, thereby vindicating the Council's approach. With the breach identified, the resultant building involved and the fact that the intended dwelling, being created, was not yet occupied nor complete, I am satisfied that the Council's decision to take formal enforcement action was necessary and proportionate.
82. In weighing up all the relevant factors, and material considerations involved I am not convinced that the notice's requirements can, as things stand, constitute a violation of the occupiers' right to peaceful enjoyment of the land, neither does it unduly compromise the right of respect for their private and family life, and nor do the best interests of the child outweigh the harm caused in this particular instance which I have identified.

Other matters

83. I note that the Council can demonstrate a five year housing land supply. The appellants do not dispute this but the point is made that permitting the development would count towards windfall housing delivery. Such a contribution, though, with the creation of a single dwelling would be extremely limited, and I afford this point little weight.
84. The Council, in its Statement, says that no information relating to biodiversity net gain was provided, and the appellants respond by saying that the Council has not indicated any local policy which requires that biodiversity net gain be achieved on this development. In the event, as the DPA has been determined by other substantive matters, this is not an issue which needs consideration here.
85. Finally, I have had regard to the small number of representations received from interested parties but the points raised have not affected my conclusions.

Conclusions on the DPA

86. I have found harm on two substantive main issues in this appeal; namely that the location of the site is not suitable for new residential development, given local policies and national advice, and also the adverse impact of the development on the surrounding area. In the circumstances, and in the

absence of detailed information, it was not necessary to explore further any harm that may have been caused, or might be caused, to the nearby ancient woodland. Further, in weighing up all the material considerations identified and the harm caused, the policy objections are not outweighed.

87. For the above reasons, having concluded on the development plan as a whole, and had regard to all matters raised, the application deemed to have been made under s177(5) does not succeed and the appeal is dismissed.

The appeal on ground (f)

88. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. It would appear that the notice here was drafted as a vehicle to remedy the breach.
89. Contrary to the appellants' assertion that the existing building can be used for agricultural purposes the judgement of *Hancock v SSCLG & Windsor and Maidenhead RBC* [2012] EWHC 3704 (Admin) held that when the original building is demolished and a replacement building is constructed without planning permission, the only lawful use is the use of the land and there are no existing use rights to have buildings on the site.
90. In the current appeal, once the original chicken-shed building had been demolished, planning permission was needed to erect the new building, either identical or of different dimension. No fallback position exists in this respect, and the existing building has nil use rights. That said, the enforcement notice does not prevent the agricultural use continuing.
91. The appellants refer to the judgement of *Ahmed v SSCLG* [2014] EWCA Civ 566 which involved a building constructed differently to that for which planning permission had been previously granted. The Council then served an enforcement notice which required for the demolition of the whole building, and appeals were made on both grounds (a) and (f). The principle that planning permission could have been granted under s177(1) for the modified scheme if it could be regarded as 'part' of the development does not apply in the current case as no planning permission has been previously granted.
92. Requirement 2 stipulates the removal of the concrete base and any footings or foundations. However, I must here agree with the appellants. The existing concrete base, shown in the appellants photograph 1, clearly served the original building. The Council's photographs of 23 April 2020 and 19 May 2020 show the base being re-used, and visually prominent, having obviously been skimmed. I also note the underpinning works that took place.
93. On this basis, and despite the absence of any ground (d) appeal in this regard, it would be beyond the Council's powers for Requirement 2 to go further than asking for the dwelling to be dismantled and demolished.
94. It is said that the original building benefitted from its connection to services and I am satisfied that, with the removal of the building Requirement 4, quite reasonably, asks for the disconnection of all services, including electricity, mains water and gas. However, the requirement that there be a permanent

disconnection is unreasonable in the circumstances as this could potentially interfere with any future use of the land.

95. With the photographed foul drainage installations having taken place including the introduction of the Klargestor system, it is permissible for Requirement 5 to require for their removal.
96. Requirement 6 requires for the removal of the entrance gates. I agree with the Council that the gates contribute to the development's urbanising effect and their removal would help to remedy the breach. No appeal on ground (g) was lodged that the specified time period was considered unreasonably short but, should site security prove to be an issue during the period of the remedial steps being complied with, this can be the subject of an arrangement to be made with the Council.
97. Requirement 7 is too vague. The Council says that the land levels have been altered but, in the absence of any measurements in this regard or clear photographic evidence to illustrate what "the former condition" means, I shall delete this requirement.
98. The final Requirement, as to the removal from the land of all materials and debris resulting from compliance with the other steps is standard and will necessitate the removal of the timber frames.
99. The said corrections can be made without injustice to either main party.
100. As a result, the ground (f) appeal succeeds to this extent.

Formal Decision

101. It is directed that the enforcement notice is corrected by:

In Requirement 1, delete the wording "...shown hatched in blue in the approximate position on the Plan" and replace with the wording "on the land".

In Requirement 2, delete the wording "...including the removal of the timber frame, concrete base and any footings or foundations shown hatched in blue in the approximate position on the Plan" and replace with "on the land".

In Requirement 3, delete the wording "...shown edged in blue in the approximate position on the Plan" and replace with the wording "on the land".

In Requirement 4 delete the word "Permanently".

Delete Requirement 7.

102. Subject to these corrections the appeals fail, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended, and the enforcement notice is upheld.

Timothy C King

INSPECTOR