
Appeal Decisions

Site visit made on 6 December 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2023

Appeal A Ref: APP/R5510/C/21/3285099

Land lying to the east of Chestnut Avenue known as 91 Park View Road, Uxbridge UB8 3LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Lee Baldwin against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 14 September 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the use of this area of land for scrap metal storage, processing and distribution.
- The requirements of the notice are:
 1. Cease the use of this area of land for scrap metal storage, processing and distribution.
 2. Remove from this area of land all hardstanding, vehicles, materials, equipment, machinery, tools and paraphernalia that facilitate the unauthorised use.
 3. Remove from this area of land all fixtures and fittings, waste and building material together with all plant, equipment and machinery associated in compliance with requirements (i) and (ii) above, as appropriate.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B Ref: APP/R5510/C/21/3283592

Land lying to the east of Chestnut Avenue known as 91 Park View Road, Uxbridge UB8 3LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Lee Baldwin against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 20 August 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of corrugated roofed structures associated with the storage and distribution of scaffolding materials; and other paraphernalia facilitating the use.
- The requirements of the notice are:
 1. Remove the newly constructed large canopy structures which facilitate the use of the land for the storage and distribution of scaffolding materials.
 2. Remove from the land all resultant waste, debris and building material associated with the removal of said structure.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections, and planning permission is refused on the deemed application in the terms set out in the Formal Decision below.

Appeal C Ref: APP/R5510/C/21/3283591

Land lying to the east of Chestnut Avenue known as 91 Park View Road, Uxbridge UB8 3LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Lee Baldwin against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 20 August 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land for the storage and distribution of scaffolding materials.
- The requirements of the notice are:
 1. Cease the use of the land for the storage and distribution of scaffolding materials.
 2. Remove all scaffolding materials, including but not limited to, scaffold tubes and scaffold boards from the land and all other materials, equipment, machinery, tools and paraphernalia that facilitates the unauthorised use.
 3. Remove all associated structures which facilitate the use of the land for the storage and distribution of scaffolding materials.
 4. Remove from the land all fixtures and fittings, waste and building material together with all plant, equipment and machinery associated in compliance with requirements (i), (ii), and (iii) above, as appropriate.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with corrections, and planning permission is refused on the deemed application in the terms set out in the Formal Decision below.

APPEAL A

The Enforcement Notice

1. The enforcement notice is directed at a material change of use. That being the case, the allegation should also state a material change of use, as this is the act of development as defined by statute. This can be corrected without injustice to the appellant or the Council.
2. In their ground (f) submissions, the appellant states that the requirement to remove the hardstanding is vague and imprecise. Vague or uncertain requirements go to the question of whether the notice is a nullity. However, it seems to me that the recipient would have understood what was required of them upon receipt of the notice since it is clear on its face that the hardstanding which has facilitated the unauthorised use should be removed. Thus, I find the notice is not a nullity.

Appeal A on ground (b)

3. An appeal on ground (b) is made on the basis that the matters alleged to constitute a breach of planning control as stated in the notice have not occurred as a matter of fact.
4. The notice, as corrected, alleges the material change of use of the Land for scrap metal storage, processing and distribution. Whilst the Land had been cleared and no use appeared to be taking place at the time of my site visit, what matters is what was taking place at the date the notice was issued.
5. The appellant states that there are no industrial processes being carried out on the Land, rather it has been used for commercial storage. However, photographs from the Council's site visit on 6 August 2021, just prior to the notice being issued, show large quantities of scrap metal in piles. There is also at least one skip present filled with material, pointing towards a storage use. There is also an excavator with a grab attachment shown. In addition the presence of tyres, seats and other vehicle parts in the photos suggests the process of processing waste metal though car breaking had been carried out. Whilst it is difficult to ascertain solely from the photographs whether the metal was being distributed, there are flatbed trucks present on the Land. Thus, it may have appeared to the Council at its visit that the scrap metal was being distributed from the site.
6. The appellant indicated in their grounds of appeal that affidavits and aerial photographs would be provided. A single aerial image said to be from 2021 is provided. However, it is of such low resolution that it is difficult to ascertain exactly what is taking place on the Land. The appellant infers that the Council has confused the alleged use with that which is taking place on land to the south of the appeal site. However, photographs provided by a local resident appear to show the excavator and waste metal on the area of Land identified in the notice. As such, in the absence of compelling evidence from the appellant, I am led to conclude that the alleged breach of planning control has occurred as a matter of fact.
7. The appeal on ground (b) therefore fails.

Appeal A on ground (f)

8. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary. Section 173(4) of the 1990 Act sets out that the purpose of an enforcement notice can be (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach.
9. The notice requires the unauthorised use to cease and the removal of all hardstanding, vehicles, materials, equipment, machinery, tools and paraphernalia which have facilitated the use. I am satisfied, therefore, that the purpose of the notice is to remedy the breach of planning control by discontinuing any use of the Land and by restoring the Land to its condition before the breach took place under section 173(4)(a) of the 1990 Act.
10. The appellant argues that the hardstanding has been in situ for a period of more than four years, indeed it was said to have been laid more than 10 years ago in connection with a previous commercial use on the Land.

11. The courts have held in *Bowring*¹ that, where a notice alleges a material change of use and requires that certain works are removed, those works must have been integral to, or part and parcel of, the making of the material change of use. The notice cannot require the removal of works that were undertaken for a different and lawful use and which could be utilised in that other lawful use if the unauthorised use ceased.
12. However, it was held in *Kestrel Hydro*² that it is not enough in ground (f) cases for the appellant to show that the works could serve the lawful use. The notice may still require the removal of such works if they were in fact installed to enable the unauthorised material change of use.
13. In this case, whilst it is stated that there was a previous commercial use, the appellant provides very little evidence of the previous lawful use of the Land. No affidavits, photographs or other contemporaneous evidence has been provided which shows how long the hardstanding has been in place. Again, a single aerial image has been provided but is of insufficient quality to ascertain whether there is hardstanding in place in 2015 as suggested. Indeed, it is also difficult to ascertain from the Council's historical aerial images how long the current hardstanding has been in place. In the absence of such evidence, I must conclude that the hardstanding which was in place at the date the notice was issued was laid to facilitate the unauthorised use. On that basis, the requirements as stated in the notice do not exceed what is necessary to remedy the breach of planning control.
14. The appeal on ground (f) thus fails.

Appeal A on ground (g)

15. An appeal on ground (g) is made on the basis that the time for compliance stated in the notice falls short of what should be reasonably allowed. The notice gives a time period of 1 month for compliance.
16. The appellant argues that a period of 3 months would be more appropriate. However, they do not state why an extended period would be necessary. It seems to me that 1 month would be sufficient to cease the use and remove the material from the Land, along with the works which have facilitated the use.
17. On that basis, the appeal on ground (g) fails.

APPEAL B

The Enforcement Notice

18. The appellant indicates that the notice is vague and uncertain as it is not clear what is to be done in respect of the requirement to remove the newly constructed large canopy structures. The alleged breach stated in the notice is the erection of corrugated roof structures. The reasons for issuing the notice refer to the unauthorised canopy structure. I am satisfied therefore that on a fair reading of the notice, the requirement refers to the removal of the structures referenced in the alleged breach. Whilst there ought to have been greater consistency in the wording, I am of the view that the notice is not vague or uncertain to the point that it is a nullity. Moreover, I am satisfied that

¹ *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin)

² *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784

I can correct the notice to ensure that consistency without injustice to the appellant or the Council. The notice is not therefore invalid.

19. The notice relates to the Land edged in red and marked "C" on the plan attached to it. The appellant states that the plan is inaccurate and should relate to the whole of the Drayton Tyres site, suggesting it is a single planning unit in a mixed use. The Land edged in red on the plan covers the entirety of the site, rather than the planning unit marked "C" on the attached plan. It seems to me that the notice is directed against the works carried out with the planning unit marked "C" on the attached plan. As the Council points out, each area marked with a letter constitutes separate planning units which are functionally and physically separable from one another, being accessed via the adjacent area of Land. This appeared to be the case on my site visit. Thus, the notice should be corrected to refer to the Land as that edged in blue and marked "C" on the attached plan rather than edged red. There would be no injustice caused since the area against which the notice is directed would be reduced.

Appeal B on ground (e)

20. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required by section 172 of the Act.
21. The appellant considers that the Council's identification of the area marked "C" on the plan and its service of the enforcement notice has not allowed other interested parties the right to appeal. However, the appellant does not identify other parties with an interest in the Land. The Council has provided a copy of the Title Register for the Land, which shows the appellant, along with two others, as the owners of the Land. All three were served with copies of the notice. Moreover, the notice was also served against the occupiers of the Land.
22. It therefore seems to me that copies of the notice were served on every owner, occupier and person having an interest in the Land. The notice therefore complies with section 172 of the Act.
23. The appeal on ground (e) therefore fails.

Appeal B on ground (c)

24. An appeal on ground (c) is made on the basis that the matters which constitute the alleged breach of planning control stated in the notice, do not constitute a breach of planning control
25. Section 55(1) of the 1990 Act defines development as including building operations on Land. The appellant argues that the structures are not permanent, not fixed to the ground and thus are not development for the purposes of section 55 of the Act. In *Skerritts*³, the Courts held that three primary factors were identified as decisive in determining what was a building. They are size, permanence and degree of physical attachment.
26. At the time of my site visit, the structures had been removed from the Land. My judgement is therefore reached on the basis of the written submissions of the parties. It is clear from the aerial images provided by the Council that the structures covered a considerable proportion of the footprint of the site. The Council's evidence indicates that they were constructed from scaffolding poles.

³ *Skerritts of Nottingham Ltd v SSETR (No. 2)* [2002] EWCA Civ 5569

This is supported by photographs from an interested party which shows scaffolding structures of considerable size erected on the Land in the same position as those shown on the aerial image. The structures have been roofed in corrugated sheeting, with what appears to be tarpaulin sheets to the sides. They are of considerable height, extending high above the boundary fencing with the adjacent residential properties. Indeed, part of the structure is of substantial height, broadly two storeys in scale.

27. Given the size of the structures and the nature of the materials used to construct them, it seems to me that they must have been erected on site rather than brought onto the site in their complete or partially complete form. Moreover, whilst the structures would have been capable of being moved, it is likely that they would have to have been either fully or partially dismantled before doing so. Furthermore, there is no evidence that the structures were intended to be anything other than permanent features kept in place to facilitate the storage and distribution of scaffolding materials.
28. In addition, whilst the appellant indicates that the structures were not fixed to the ground, they appeared to have been of such size and scale that they would have been held in place under their own weight. As a result, I consider that having regard to size, permanence and physical attachment, the structures amount to buildings for the purposes of section 336(1) of the 1990 Act. Consequently, building operations have been carried out on the Land and thus the alleged breach amounts to development under section 55(1) of the Act. In the absence of planning permission for such development, the alleged breach amounts to a breach of planning control under section 171A(1)(a) of the Act.
29. The appeal on ground (c) therefore fails.

Appeal B on ground (d)

30. In an appeal on ground (d), it is necessary for the appellant to demonstrate, on the balance of probabilities, that at the date the notice was issued, no enforcement action may have been taken in respect of the breach of planning control stated in the notice. Section 171B(1) of the Act states that, where there has been a breach of planning control consisting of the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which operations were substantially completed. Thus, for the ground (d) appeal to succeed, the appellant must demonstrate that the structures were substantially complete on or before 20 August 2017.
31. The appellant's case is brief, stating that the structures have been in place for more than four years. It is stated that evidence will be made in aerial photographs and sworn affidavits. However, no such statements have been provided. A single aerial image has been submitted which is said to be from 2017 however it is otherwise undated. In any event, it appears to show different structures to those subject of the notice.
32. The Council has provided a series of aerial images which show the structures were present in June 2019. However, in an image from May 2018, the structures are not present on the Land in their entirety. Indeed, whilst there are structures apparent, these appear to be a different location, layout, size and scale to those which are subject of the notice. This is further emphasised by the image from April 2017, the last before the relevant date of 20 August

2017. In this image, there are far fewer structures, again which are clearly not the same size nor in the same location as that subject of the notice.

33. As a result, the appellant has not demonstrated, on the balance of probabilities, that the structures subject of the notice were substantially complete four or more years prior to the notice being issued. The structures were not therefore immune from enforcement action when the notice was issued.

34. The appeal on ground (d) thus fails.

Appeal B on ground (a) and deemed application for planning permission

Preliminary Matters

35. The Council's reasons for issuing the notice solely relate to alleged Green Belt harm, indicating conflict with Green Belt related development plan policies. The Council's statement indicates, however, that the development would also give rise to harm to the living conditions of neighbouring residents by reason of noise and disturbance. The development subject of the deemed application is derived directly from the alleged breach. In this case that is the erection of corrugated roof structures. Whilst the breach indicates they have been erected to facilitate an unauthorised use, that use does not form part of the matters. It is addressed in a separate notice, subject of Appeal C. As such, it is difficult to see how the structures in themselves would give rise to harmful levels of noise and disturbance. I have thus focussed on the main areas in dispute between the parties solely in respect of Appeal B.

Main Issues

36. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to relevant development plan policies and the National Planning Policy Framework (the Framework), including the effect of the development on the openness of the Green Belt;
- if the development is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate Development and Openness

37. The Land lies within the Green Belt. Paragraph 147 of 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 149 of the Framework sets out that the construction of new buildings is inappropriate development.

38. Consistent with the Framework, Policy G2 of the London Plan 2021⁴ states that the Green Belt should be protected from inappropriate development. Policy EM2 of the Hillingdon Local Plan Part 1 – Strategic Policies 2012 (the LP1) states

⁴ The London Plan: The Spatial Development Strategy for Greater London March 2021

that proposals for development in the Green Belt will be assessed against national and London Plan policies. Policy DMEI4 of the Hillingdon Local Plan Part 2 – Development Management Policies 2020 (the LP2) states that inappropriate development in the Green Belt will not be permitted unless there are very special circumstances. It also states that redevelopment on sites in the Green Belt will only be permitted where the proposal would not have a greater impact on the openness of the Green Belt.

39. The appellant does not seek to argue that the development falls within any of the exceptions set out in paragraphs 149 and 150 of the Framework. However, it seems to me that the development could potentially fall within the exception of paragraph 149(g) which states that the partial or complete redevelopment of previously developed land would not be inappropriate development provided it does not have a greater impact on the openness of the Green Belt than the existing development. It is therefore necessary to assess impact on openness in order to ascertain whether or not the structures amount to inappropriate development, as well as whether they accord with LP2 Policy DMEI4.
40. The Council's aerial imagery shows that there were structures on the Land prior to the breach taking place. However, in terms of footprint, those structures appear to have covered much less of an area than the structures subject of the notice. As such, in spatial terms, the structures subject of the notice have had a greater impact on the Green Belt than the existing development prior to the breach in that they have significantly increased the amount of built form upon the Land. Moreover, judging by the photographic submissions, in visual terms many of the structures were of considerable scale in terms of height and volume. They were visually prominent from nearby residential properties and would have been prominent from Park View Road to the north. As such, there would have also been a greater impact in visual terms which is harmful to Green Belt openness.
41. As a result, I conclude that the development has a greater impact on the openness of the Green Belt than the development which existing prior to the notice being issued. As a consequence, the development does not fall within any of the exceptions contained in paragraphs 149 and 150 of the Framework.
42. I conclude therefore that the development constitutes inappropriate development in the Green Belt. I also conclude that the development has a harmful impact on the openness of the Green Belt. Thus, the development is in conflict with the policies contained in the Framework, and also conflicts with London Plan Policy G2, LP1 Policy EM2 and LP2 Policy DMEI4. In accordance with paragraph 148 of the Framework, I afford substantial weight to the harm to the Green Belt which arises by reason of inappropriateness, and also substantial weight to the harm which arises to Green Belt openness.

Other Considerations

43. The appellant indicates that the use of the land for the retail sale and fitting of tyres and exhaust systems, along with the open storage of tyres is lawful through the passage of time, having subsisted continuously on the Land since 1963. There is nothing in the Council's evidence which disputes the claim. Thus, the appellant says that there is a fallback position which is more harmful than the development.

44. There is limited evidence that there is a firm intention from the appellant to use the Land for tyre storage, retail sale and fitting in the event the notice is upheld. However, even if there were, there is little evidence that such use would be more harmful than the scaffolding use which the appellant says the structures subject of the notice are necessary for. It seems to me that there would be little material difference in the effects of a use on the Land which deals with the storage of and distribution of scaffolding materials and one which deals with the fitting, storage and sale of tyres and car exhaust systems. That is certainly the case on the limited evidence before me. I therefore afford the fallback position very little weight in favour of the development.
45. The appellant is willing to provide a 2m wide landscape buffer strip on the boundary with the adjacent residential properties. Such measures could be secured by condition and are a benefit to biodiversity which I afford moderate weight given the scale and extent of them.
46. The provision of acoustic fencing is not a benefit since it is designed to mitigate the alleged noise effects of the development. It thus falls neutrally in the balance.
47. It is also stated that the cessation of the unauthorised use would put at jeopardy the jobs within the business. However, little evidence has been put forward which demonstrates the financial stability of the business would be unduly harmed by a need to vacate the site. I thus afford it little weight.

Very Special Circumstances

48. Having regard to paragraph 148 of the Framework, I attribute substantial weight to the Green Belt harm which arises by reason of inappropriateness. In addition, I attribute substantial weight to the harm which arises to the openness of the Green Belt.
49. On the other hand, I afford moderate weight to the benefits to biodiversity. I do nevertheless give very little weight in favour of the development as a result of the alleged fallback position and little weight to the benefit that would arise in economic terms through job retention.
50. I conclude overall that the harm arising to the Green Belt by reason of inappropriateness and harm to openness, is not clearly outweighed by other considerations. There are no planning conditions that could be imposed which would overcome the identified harm.
51. As a consequence, the very special circumstances necessary to justify the development do not exist. I conclude, therefore, that the development conflicts with London Plan Policy G2, LP1 Policy EM2 and LP2 Policy DMEI4. As a result, the development is in conflict with the development plan taken as a whole.

Conclusion

52. For the reasons given above, and having considered all matters raised, I conclude that the appeal on ground (a) should be dismissed and the deemed application for planning permission is refused.

Appeal B on ground (f)

53. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary.
54. The notice requires the structures to be removed from the Land. I am satisfied therefore that the purpose of the notice is to remedy the breach of planning control by restoring the Land to its condition before the breach took place under section 173(4)(a) of the 1990 Act. It seems to me that the requirement to remove the structures does not go beyond what is necessary to remedy the breach.
55. The appellant argues that the planning harm can be overcome through lesser steps which involve granting planning permission subject to the provision of landscaping and biodiversity gains. However, as I have set out in the appeal on ground (a), such benefits do not clearly outweigh the harm to the Green Belt such that very special circumstances have been demonstrated. Those measures do not therefore provide an obvious alternative to the removal of the structures that would overcome the planning harm.
56. The appeal on ground (f) does not therefore succeed.

Appeal B on ground (g)

57. An appeal on ground (g) is made on the basis that the time for compliance stated in the notice falls short of what should be reasonably allowed. The notice gives a time period of 3 months for compliance.
58. The appellant argues that a period of 8 months would be more appropriate. The appellant states that such a period is necessary to ensure the scaffolding company does not “go to the wall” and inflict unnecessary hardship on the company and its employees. However, no evidence has been provided that a period of 3 months would unduly affect the operation of the business. There is no evidence that an alternative site could not be found in that time nor that removal of the structures from the Land would financially impact the company’s profitability. It seems to me that 3 months is an appropriate period of time for the structures to be removed and for the occupant to find alternative premises.
59. As such, the appeal on ground (g) fails.

APPEAL C

The Enforcement Notice

60. The notice relates to the Land edged in red and marked “C” on the plan attached to it. The appellant states that the plan is inaccurate and should relate to the whole of the Drayton Tyres site, suggesting it is a single planning unit in a mixed use. The Land edged in red on the plan covers the entirety of the site, rather than the planning unit marked “C” on the attached plan. It seems to me that the notice is directed against the works carried out within the planning unit marked “C” on the attached plan. As the Council points out, each area marked with a letter constitutes separate planning units which are functionally and physically separable from one another, being accessed via the adjacent area of Land. This appeared to be the case on my site visit and I agree with the Council that the area marked in “C” is a separate planning unit rather than part of a wider unit in a mixed use. Thus, the notice should be corrected to refer to the Land as that edged in blue and marked “C” on the attached plan rather

than edged red. There would be no injustice caused since the area against which the notice is directed would be reduced.

Appeal C on ground (e)

61. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required by section 172 of the Act.
62. As with Appeal B, the appellant considers that the Council's identification of the area marked "C" on the plan and its service of the enforcement notice has not allowed other interested parties the right to appeal. However, the appellant does not identify other parties with an interest in the Land, the Land being the area marked "C" on the plan and, with the correction, edged in blue. The Council has provided a copy of the Title Register for the Land which shows the appellant, along with two others, as the owners of the Land. All three were served with copies of the notice. Moreover, the notice was also served against the occupiers of the Land.
63. It therefore appears that copies of the notice were served on every owner, occupier and person having an interest in the Land. The service of the notice therefore complied with section 172 of the Act.
64. The appeal on ground (e) thus fails.

Appeal C on ground (b)

65. An appeal on ground (b) is made on the basis that the matters alleged to constitute a breach of planning control as stated in the notice have not occurred as a matter of fact. The notice alleges a breach comprising a material change of use of the land for the storage and distribution of scaffolding materials.
66. I have dealt with the appellant's arguments in respect of the extent of the site in the preliminary matters above. Beyond that, the appellant argues that no use of the Land for the parking of motor vehicles has taken place. However, whilst the notice refers to the parking of motor vehicles in the reasons for its issue, the notice is not directed against a breach of planning control comprising of parking. There is no dispute that the material change of use of the land for the storage and distribution of scaffolding materials has taken place.
67. The appeal on ground (b) fails.

Appeal C on ground (a) and the deemed application for planning permission

Main Issues

68. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to relevant development plan policies and the Framework, including the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area;

- the effect of the development on the living conditions of neighbouring properties, with particular regard to noise and disturbance; and,
- if the development is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate Development and Openness

69. The Land lies within the Green Belt. Paragraph 149 of the Framework sets out that the construction of new buildings is inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is the policy laid out in the Framework, along with Policy G2 of the London Plan, Policy EM2 of the LP1 and Policy DMEI4 of the LP2.
70. As with Appeal B, the appellant does not seek to argue that the development falls within any of the exceptions set out in paragraphs 149 and 150 of the Framework. It seems to me that the development could fall within the exception of Framework paragraph 149(g) regarding the partial or complete redevelopment of previously developed land provided it does not have a greater impact on the openness of the Green Belt than the existing development.
71. It is therefore necessary to assess impact on openness in order to ascertain whether or not the use of the Land amounts to inappropriate development, as well as whether it accords with LP2 Policy DMEI4.
72. The Council's aerial imagery shows that there were structures on the Land prior to the breach taking place. However, in terms of footprint, those structures appear to cover much less of an area than the structures which have facilitated the use stated in the notice. Moreover, the use has also meant the Land is occupied for the parking of vehicles associated with the use, the movement of vehicles to and from the site, along with scaffolding materials.
73. As such, in spatial terms, the development has a greater impact on the Green Belt than the condition of the Land prior to the breach, or indeed the use of the Land for parking in association with the tyre use which the appellant says was its last lawful use. It has significantly increased the amount of built form upon the Land. Moreover, judging by the photographic submissions, in visual terms many of the structures which have facilitated the use were of considerable scale in terms of height and volume. They were visually prominent from nearby residential properties and would have been prominent from Park View Road to the north. As such, there would have also been a greater impact on Green Belt openness in visual terms. I find that greater impact to be harmful to openness.
74. Consequently, the use of the Land for the storage and distribution of scaffolding materials, including the associated structures and parking has a greater impact on the openness of the Green Belt than the existing development. As a consequence, the development does not fall within any of the exceptions contained in paragraphs 149 and 150 of the Framework.

75. I conclude as such that the development constitutes inappropriate development in the Green Belt. I also conclude that the development has a harmful impact on the openness of the Green Belt. Consequently, the development is in conflict with the policies contained in the Framework, as well as London Plan Policy G2, LP1 Policy EM2 and LP2 Policy DMEI4. In accordance with paragraph 148 of the Framework, I afford substantial weight to the harm to the Green Belt which arises by reason of inappropriateness, and also substantial weight to the harm which arises to Green Belt openness.

Character and Appearance

76. The Land lies adjacent to a wider area of land characterised by commercial uses such as tyre storage, tyre fitting and parking. In contrast, to the west of the Land the area is predominately residential in character.

77. The use of the Land has been facilitated by the erection of a number of structures which, although now removed, were of considerable size, footprint and volume. The photographs submitted show the structures were higher than other buildings on the wider site and in some instances of similar scale to the houses adjacent. The structures were of sufficient scale that they would have been visible from Park View Road to the north. Moreover, they were constructed from metal poles and corrugated sheet roofs, at odds with the prevailing character of brick and tiled buildings which are found in the area. As a result, the use, and the structures which are necessary to facilitate that use, would have appeared as obtrusive and incongruous features in the street scene.

78. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. The development is therefore in conflict with LP1 Policy BE1 insofar as it states that new buildings should achieve a high quality of design which enhances the local distinctiveness of the area. There is also conflict with LP2 Policy DMHB11 insofar as it states that new development will be required to be designed to the highest standards, incorporating principles of good design.

Living Conditions

79. The Land adjoins the rear gardens of a number of properties on Chestnut Avenue. There is therefore the potential for noise and disturbance to arise through the movement of scaffolding poles, boards and vehicles. The noise levels generated are likely to be similar to those in the other commercial uses carried out on the wider site. In that sense there is little evidence before me which shows that noise levels generated by the use during daytime hours would be harmful to neighbouring residents. However, were the use carried out in the evenings or weekends, such levels of noise are likely to be more noticeable and occur at times when residents have a reasonable expectation of lower ambient noise levels. As such, the noise generated could be harmful to the living conditions of neighbouring residents.

80. Nevertheless, the appellant has indicated a willingness to erect a 2m high acoustic fence along the boundary. Whilst there are no details of how effective this would be in mitigating noise levels, such details could be agreed with the Council. Moreover, conditions could be imposed which require to cease the use on evenings and weekends when lower background noise levels can be reasonably expected. As a result, I am satisfied that subject to appropriately

worded conditions, noise and disturbance generated by the development could be suitably mitigated to prevent detrimental impacts on the living conditions of neighbouring residents.

81. I conclude, therefore, that the development will not have unduly harmful effects on the living conditions of neighbouring properties with particular regard to noise and disturbance. As a result, the development will comply with LP1 Policy BE1 insofar as it states development should protect the amenity of surrounding land and buildings, particularly residential properties. It also complies with LP2 Policy DHMB11 insofar as it states that development should not impact upon the amenity of adjacent properties. The Council cites LP2 Policy DHMB18, however, it relates to the provision of outdoor space and is not therefor relevant.

Other Considerations

82. The appellant advances similar arguments in favour of the development as Appeal B. It is indicated that the use of the land for the retail sale and fitting of tyres and exhaust systems, along with the open storage of tyres is lawful through the passage of time, having subsisted continuously on the Land since 1963. There is nothing in the Council's evidence which disputes the claim. The appellant says therefore that there is a fallback position which is more harmful than the development.
83. There is limited evidence that there is a firm intention from the appellant to use the Land for tyre storage, retail sale and fitting in the event the notice is upheld. However, even if there were, I see no reason why such use would be more harmful than the scaffolding use, particularly since that use has necessitated the erection of structures of considerable scale. The appellant makes clear that the structures are necessary for the use to operate. It seems to me that there would be little material difference in the effects of a use on the Land which deals with the storage of and distribution of scaffolding materials and one which deals with the fitting, storage and sale of tyres and car exhaust systems. That is certainly the case on the evidence before me. Thus, it cannot be said that such a fallback position is more harmful than the development subject of the notice. I therefore afford the fallback position very little weight in favour of the development.
84. The appellant is willing to provide a 2m wide landscape buffer strip on the boundary with the adjacent residential properties. Such measures could be secured by condition and are a benefit to biodiversity which I afford moderate weight given the scale and extent.
85. The provision of acoustic fencing is not a benefit since it is designed to mitigate the effects of the development. It thus falls neutrally in the balance.
86. The appellant argues that upholding the notice would pose a risk to the jobs within the business. However, little evidence has been put forward which demonstrates the financial stability of the business would be harmed by vacating the site. I thus afford it little weight.

Very Special Circumstances

87. I attribute substantial weight to the Green Belt harm which arises by reason of inappropriateness in accordance with paragraph 148 of the Framework. I also attribute substantial weight to the harm which arises to the openness of the

Green Belt. I also attach significant weight to the harm which arises to the character and appearance of the area.

88. In favour of the development, I afford moderate weight to the environmental benefits that would arise from biodiversity enhancements. I do nevertheless give very little weight to the alleged fallback position and little weight to the benefit that would arise in economic terms through job retention.
89. I conclude overall that the harm arising to the Green Belt by reason of inappropriateness and harm to openness, along with other harm, is not clearly outweighed by other considerations. There are no planning conditions that could be imposed which would overcome the identified harm.
90. As a consequence, the very special circumstances necessary to justify the development do not exist. I conclude, therefore, that the development conflicts with London Plan Policy G2, LP1 Policy EM2 and LP2 Policy DMEI4. As a result, the development is in conflict with the development plan taken as a whole.

Conclusion

91. For the reasons given above, and having considered all matters raised, I conclude that the appeal on ground (a) should be dismissed and the deemed application for planning permission refused.

Appeal C on ground (f)

92. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary.
93. The notice requires the unauthorised use to cease and all materials and structures which have facilitated the use to be removed. I am satisfied therefore that the purpose for the notice is to remedy the breach of planning control under section 173(4)(a) of the 1990 Act by discontinuing the use and restoring the Land to its condition before the breach took place. I
94. The appellant states that the requirements beyond removal of the structures are excessive, since it is the structures that result in the planning harm. However, as set out in the appeal on ground (a) I have found that not to be the case. Indeed, it seems that the structures are necessary for the use to operate. Thus the requirements to cease the use and to remove the materials and structures which have facilitated the use do not go beyond what is necessary to remedy the breach.
95. The appeal on ground (f) therefore fails.

Appeal C on ground (g)

96. An appeal on ground (g) is made on the basis that the time for compliance stated in the notice falls short of what should be reasonably allowed. The notice gives a time period of 3 month for compliance.
97. The appellant argues that a period of 8 months would be more appropriate. The appellant states that such a period is necessary to ensure the scaffolding company does not "go to the wall" and inflict unnecessary hardship on the company and its employees. However, no evidence has been provided that a period of 3 months would unduly affect the operation of the business. There is

no evidence that an alternative site could not be found in that time nor that removal of the structures from the Land would financially impact the company's profitability. It seems to me that 3 months is an appropriate period of time for the structures to be removed and for the occupant to find alternative premises.

98. On that basis, the appeal on ground (g) fails.

FORMAL DECISIONS

APPEAL A

99. It is directed that the enforcement notice is corrected by inserting the word "material change of" between the words "the" and "use" in paragraph 3 of the notice. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

APPEAL B

100. It is directed that the enforcement is corrected by:

- deleting the word "red" and substituting it for the word "blue" in section 2 of the notice; and,
- deleting the words, "newly constructed large canopy structures" and inserting the words, "corrugated roofed structures" between the words "the" and "which" in section 5(i) of the notice.

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

APPEAL C

102. It is directed that the enforcement is corrected by:

- deleting the word "red" and substituting it for the word "blue" in section 2 of the notice.

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

J Whitfield

INSPECTOR