



Appeal Decisions

Site visit made on 29 November 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2023

Appeal A Ref: APP/C3620/C/21/3276946

Appeal B Ref: APP/C3620/C/21/3276995

Land known as Godstone House, Cobham Road, Fetcham, Leatherhead, Surrey KT22 9SJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr A Omotajo (Appeal A) and Mrs J Omotajo (Appeal B) against an enforcement notice issued by Mole Valley District Council.
- The notice, numbered 2018/0136/ENF, was issued on 17 May 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of two single storey detached buildings marked A and B on the attached plan¹.
- The requirements of the notice are to:
 - (1) To remove completely from the Land the two single storey detached buildings marked A and B on the attached plan, and any associated bases, fittings, materials and debris.
 - AND
 - (2) Restore the land to its former condition.
- The period for compliance with the requirements is twelve months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) 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.
- Appeal B was proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal in ground (a) and the application for planning permission deemed to have been made under s177(5) of The Act as amended, have lapsed. Accordingly, Appeal B is proceeding only on the grounds set out in section 174(2)(c) and (g) of the Act.

Appeal C Ref: APP/C3620/X/21/3281430

Land at Godstone House, Cobham Road, Fetcham KT22 9SA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Janni Omotajo against Mole Valley District Council.
- The application ref MO/2021/1202 is dated 25 June 2021.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is: The demolition of existing outbuildings and (1) the erection of a garage for up to 6 cars and (2) the erection of a double garage and home gym.

¹ Reference in the header to 'the attached plan' is to the plan attached to the enforcement notice subject of Appeals A and B.

Summary Decision: Appeals A and B succeed in part on ground (c), but are otherwise dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision. Appeal C is dismissed.

The Notice

1. The post code for the land to which the notice relates is different to the post code given by the appellants on the appeal form and given for the address of the site on the LDC application form subject of Appeal C. Otherwise, all the papers before me indicate that the appeal sites relate to the same postal address. There appears, therefore, to be a typographical error in the notice that can be corrected without causing any injustice to the parties.

Ground (c) for Appeals A and B and Appeal C

Preliminary Matters

2. The development subject of Appeals A and B relates to two single storey buildings on the appeals site. Appeal C relates to an application for an LDC for the proposed demolition of these two buildings and the erection of two detached buildings in an alternative location on the site. In the case of the ground (c) appeals and Appeal C, the dispute between the parties is whether or not the buildings benefit from the planning permission granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order).
3. Notwithstanding this, there are differences between the two schemes that are relevant in my determination of the appeals. Firstly, the development proposed in the LDC application includes demolition, as well as new development. Secondly, there is a difference in the size of the proposed buildings when compared to the existing. There is also the matter of the location of the existing development. Accordingly, where I am able, I have considered the ground (c) appeals and Appeal C together. Otherwise, the relevant matters have been considered separately.
4. To be clear with regard to the basis of my determination of the appeals, to succeed on ground (c), the appellants must demonstrate that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control. As for Appeal C, section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The burden of proof is on the appellants.

The Main Considerations

5. With regard to the buildings subject of Appeals A and B, and those proposed in the LDC application, the parties refer to Class E, Part 1, Article 3, Schedule 2 of the 2015 Order, hereinafter referred to as Class E. This permits, among other matters, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Provided at E.1. of Class E is a list of the limitations or circumstances where development would not be permitted by Class E. There is no dispute

between the parties that any of the criteria listed at E.1. of Class E apply to either the Appeal A and B buildings or the Appeal C buildings.

6. Notwithstanding the above, the parties' dispute whether or not the buildings subject of either the enforcement appeals or the LDC appeal are required for a purpose incidental to the enjoyment of the dwellinghouse at the appeals site, having regard to the use of the buildings (existing and proposed) and their size.
7. The Council have acknowledged that the buildings proposed in Appeal C would be provided within the curtilage of the dwellinghouse. Having considered the evidence before me, I have no reason to disagree with this. The Council are, however, of the view that the buildings subject of Appeals A and B have not been provided within the curtilage of the dwellinghouse on the appeals site. For this reason the Council say that the buildings do not benefit from the permission granted by Class E and are not, therefore, lawful.
8. In addition to the matters above, the description of development subject of the LDC application includes the proposed demolition of the existing building on the site. Accordingly, I must consider whether or not the proposed demolition would have been lawful if instituted or begun at the time of the LDC application.
9. I have dealt with each of the above matters in turn in below.

Curtilage – Appeal A and B Buildings

10. I note reference to Article 3(5)(b) of the 2015 Order which states that the permission granted by Schedule 2 (and, therefore, Class E) does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful. I also note that there has previously been consideration of the lawfulness of the use of the land in question, with regard having been had to the continuity of its use over a 10 year period.
11. Curtilage is not, however, a use of land. Whether or not land is within the curtilage of a building (in this case a dwellinghouse) is a matter of fact and degree. The planning permission granted by Class E is crystallised when the development begins. Accordingly, for the Appeal A and B buildings to be permitted by the 2015 Order, I must determine whether, at the time the works began to construct the buildings, the land upon which they have been constructed was within the curtilage of the dwellinghouse at the appeals site.
12. In order to determine this, the MHCLG technical guidance on Permitted development rights for householders provides some assistance. At page 7 it states:

"Curtilage" – is land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.
13. As noted above, the curtilage of a building must form part and parcel with the building and should, therefore, be intimately associated with the building. Important to my consideration of this matter is: (i) the physical layout of the building and the land said to be curtilage; (ii) ownership of the land (past and present); and (iii) use or function of the land (past and present).

Layout

14. The Appeal A and B buildings are located adjacent to an area of hard surfacing to the rear of the dwellinghouse on the site. At present the buildings face towards, and are open to, the rear of the dwellinghouse and its garden to the west. Along with the hard surface area, they are closely associated with the dwelling. Notwithstanding this, I must have regard to the layout of this part of the site prior to the construction of the buildings.
15. I have been provided with the details of a series of LDC applications that were submitted in 2020². The existing plans submitted with these applications indicate the layout of the site prior to the construction of the buildings. They show an open grassed area to the west and north west of the dwellinghouse, and a masonry wall along its northern boundary. They also show an enclosed paved area to the rear of the dwellinghouse. To the north of the enclosed paved area is a former outbuilding (identified as 'A') and an existing outbuilding ('D') along part of its eastern boundary. The plans also show a former garden shed ('E') adjoining outbuilding A. I observed outbuilding D during my site visit; this is also referred to in evidence as the 1950's outbuilding. The evidence suggests that the garden shed E and outbuilding A were removed some time ago.
16. At paragraph 4.5 (6) of their statement the appellants refer to the north facing elevation of outbuilding D and describe this as aligning 'with a line that extends to the west for about 15 metres before turning north for about 7 metres and then returning westwards across the remainder of the site for about 37 metres to meet the western boundary of the site'. This description of the location of a stepped line running east to west across the site is consistent with features annotated on the above mentioned LDC plans, as well as features visible on some of the aerial photographs and other photographs provided by the appellants.
17. The appellants have provided a 2009 aerial photograph³ and say that at this time the 'long narrow building adjacent to the 1950's building [(outbuilding A)] has been demolished and a path cleared to provide access to the garden shed'. Whilst outbuilding A may have been removed prior to the 2009 aerial photograph, a means of enclosure (a solid white painted wall) extending from the rear of outbuilding D to the former garden shed E was present and can be seen in the 2012 photographs 13 and 14 of the appellants' appendix Q. Indeed, this enclosure appears to have been annotated on existing layout plans submitted with the 2020 LDC applications, adjacent to the south facing elevation of former outbuilding A.
18. This means of enclosure is also prominent in photograph 15 of the appellants' appendix Q, which also shows the step of the east to west enclosure, as well as part of the patterned concrete block wall referred to by the appellants. The patterned concrete block wall is also visible in the 2013/14 photographs⁴, adjacent to a concrete path. It is also visible in the 2013 photograph⁵, taken from a point south of the wall, where the step in the east to west enclosure is visible in the background. The position of almost the entirety of the stepped

² Appendix C, D and E of the appellants' statement.

³ Photo 5 of the appellants' appendix Q.

⁴ Photo 10 of the appellants' appendix Q.

⁵ Photo 16 of the appellants' appendix Q.

line of both the solid white painted wall and the patterned concrete block wall is visible on the appellants' first 2018 aerial photograph⁶.

19. In addition to the above, the 2012 photographs show that the land to the north of the solid white painted wall had a hard surfaced area leading to the garden shed E. Along this hard surfaced area is an established hedge row and then a timber fence. At the time of the 2012 photographs the area appears enclosed on three sides by the solid white painted wall, the shed and the hedgerow and fence. Accordingly, it appears to have been a distinct parcel of land, separated not only from the paved area to the south, but also from the former nursery land to the north. The 2013 photograph⁷ taken the same year as the appellants' purchase of the site, shows that the hedgerow and fence were removed, opening up this part of the site to the former nursery land to the north. The layout of the site in this location is likely to have remained unchanged from 2013 up until the time of the first 2018 aerial photograph.
20. The appellants say that the patterned concrete block wall was removed 'in 2018 to facilitate the construction of the garage building'⁸. This is the building indicated with an 'A' on the enforcement notice plan, which I will refer to as 'Building A'. This would have been shortly after the first 2018 aerial photograph was taken, as the second 2018 aerial photograph⁹ shows both buildings in situ. Having compared the two 2018 aerial photographs, I have no reason to doubt that the solid white painted wall directly to the rear of the dwelling was also demolished to make way for the construction of the building indicated with a 'B' on the enforcement notice plan, which I will refer to as 'Building B'. Accordingly, it is more likely than not that, prior to the construction of Building A and Building B, the layout of the site in the location of the buildings accords with that shown on the first 2018 aerial photograph and included the stepped east to west means of enclosure.
21. With this in mind, I can see that the patterned concrete block wall and the solid white painted wall were not insubstantial means of enclosure and formed a prominent physical boundary across the appeals site, east to west. The patterned concrete block wall marked the northernmost boundary of the grassed area to the west of the dwellinghouse. Although in the first 2018 aerial photograph I can see a feature that separates this land from the paved area to the rear of the dwellinghouse, it appears that this grassed area directly adjoined or came very close to the west facing elevation of the dwellinghouse. Accordingly, at this time this grassed area would have been part of the land within which the dwellinghouse sat.
22. The solid white painted wall formed a formal boundary and was part of the means of enclosure of the paved area of land to the rear of the dwellinghouse. As such, prior to the construction of the enforced against buildings, the solid white painted wall marked part of the boundary of the land to the rear of the dwellinghouse that was, at that time, closely associated with the dwelling. This paved area was at that time part of the land within which the dwellinghouse sat.

⁶ Photo 18 pf the appellants' appendix Q.

⁷ Photograph 14 of the appellants' appendix Q.

⁸ Paragraph 4.5 (9) of the appellants' appeal statement.

⁹ Photograph 19 of the appellants' appendix Q.

23. I cannot, however, say the same for the land north of the solid white painted wall. This was a separate parcel of land that was physically divorced from the dwellinghouse by the solid white painted wall, the stepped section of the east to west wall and outbuilding D. In view of this, I cannot conclude that prior to the construction of Building A and Building B this land would have been intimately associated with the dwellinghouse or that this would have been part of the land within which the dwellinghouse sat.
24. Having regard to the above, I note the appellants have undertaken a topographical survey showing the location of Building A and Building B¹⁰. This has been overlaid with the OS plan showing the location of the former east to west stepped enclosure¹¹. I note that the outline of the dwellinghouse and outbuilding D on both the OS plan and the topographical survey have been aligned. As such, this plan can be relied upon to show the location of the enforced against buildings in comparison with the structures and buildings formerly on the site. This plan shows that Building A is located to the south of the pattered concrete block wall and, therefore, wholly within land enclosed with the dwellinghouse. Building B, on the other hand, straddles the line of the east to west enclosure (i.e. the solid white painted wall) and is mostly located within the land to the north of the former enclosed paved area.

Ownership

25. The appellants say that they purchased the property in 2013. The plan submitted with the LDC application outlines in red a large parcel of land including the dwellinghouse, land to the west and east of this, and a significant area to the north. I have no reason to doubt that this plan identifies the area of land that has been owned by the appellants since 2013. The evidence suggests that, prior to this, the ownership of this site may have been divided. Nevertheless, the dwellinghouse and the land upon which Building A and Building B have been constructed have been in single ownership, by the appellants, since 2013. This is, of course, some considerable period prior to the erection of the buildings.

Use or Function

26. Much of the parties' evidence refers to the use of the site and, in particular, the land upon which the enforced against buildings have been constructed. With regard to the grassed area to the west of the dwellinghouse, I have no reason to doubt that the appellants have used this land as garden since their purchase of the site. This is consistent with the first 2018 aerial photograph showing this land as a lawn with trees and planting along its boundaries. The south and west facing elevation of the dwelling appears to be open to this land. Building A is entirely within this land. Accordingly, I have no doubt that prior to the construction of Building A this land had a use and function that was intimate with the dwellinghouse.
27. I would conclude the same with regard to the enclosed paved area to the north of the dwellinghouse. There is no dispute that this land was used as a garden prior to the construction of Building B. I have no reason to disagree with this, having regard to its location directly adjacent to the rear of the dwellinghouse. However, the appellants' appendix O plan shows that Building B is only partly

¹⁰ The appellants' appendix N.

¹¹ The appellants' appendix O.

located within the former paved area. As I have already noted, the majority of the footprint of the building falls within the land that was to the north of the paved area and the solid white painted wall enclosing it.

28. Whilst the appellants do not disagree with this, it is their case that this land is garden associated with the dwellinghouse and that it has been used as such since the erection of outbuilding D (the 1950's outbuilding). I note reference to an appeal decision¹² dated 16 April 2003 against the issue of an enforcement notice. I also note reference to the 8 October 2019 appeal decision¹³ for an LDC, in which the Inspector has relied upon the plan attached to that previous enforcement notice. Whilst the Inspector in the LDC appeal may not have been given the correct enforcement notice plan, this is of little relevance to this case as the layout, use and function of the site in the location of Building B has moved on since the 2003 decision.
29. The photographs from 2012¹⁴ show the land in question. The appellants say that at this time this area was used for keeping general garden maintenance equipment and tools 'associated with the residential garden, rather than the former commercial nursery use on adjacent land further to the northeast'. I have no reason to doubt that at the time the photographs were taken this land was used for a purpose incidental to the enjoyment of the dwellinghouse. However, I cannot conclude that it would have been land that was used intimately with the dwellinghouse. Rather, it was land used in a functional manner associated with the wider residential property. That it is screened and physically separated from the dwellinghouse, as shown in the 2012 photographs, speaks to the functional purpose of this part of the site.
30. As I have noted above, the 2013 photographs show that the hedgerow and fence enclosing this parcel were removed by this time. The evidence does not, however, lead me to conclude that this altered the relationship between the use or function of this part of the site and the dwellinghouse. Whilst this land was opened up to the former nursery land to the north, the white painted wall remained. Indeed, as I have noted above, it is likely that the solid white painted wall remained in place up until it was demolished to make way for Building B.
31. Having regard to the above, I can only conclude that prior to the erection of Building B the land to the north of the solid white painted wall had a use and function that was not intimately associated with the dwellinghouse.

Summary on Curtilage

32. Having regard to all of the above, I can conclude that as a matter of fact and degree Building A was provided on land within the curtilage of the dwellinghouse at the appeals site. I cannot, however, conclude the same with regard to Building B. This building may well have been constructed on land that had been owned and used for some time for a purpose incidental to the enjoyment of the dwellinghouse. However, I have had regard to the layout of the site in the location of Building B prior to its construction. I have also had regard to the use and function of the land to the north of the solid white painted wall, upon which Building B has mostly been constructed. These lead

¹² Appeal reference APP/C3620/C/02/1102675

¹³ Appeal reference APP/C3620/X/18/3216746

¹⁴ Photographs 12, 13 and 14 of the appellants' appendix Q.

me only to the conclusion that, prior to the construction of Building B, this part of the site was neither intimately associated with the dwellinghouse, nor did it form part and parcel with the dwellinghouse, such that it was part of the land within which the dwellinghouse sat. For these reasons, I conclude that Building B has not been provided on land within the curtilage of the dwellinghouse.

33. I note the approach of the previous Inspector and their conclusions with regard to the 'lawful curtilage of the dwellinghouse'. Nevertheless, for the reasons set out in my opening remarks to this part of my decision, the approach I have taken in this case is correct. My approach is consistent with the MHCLG technical guidance and its advice with regard to the curtilage for properties with large grounds.
34. In view of my conclusions above, the construction of Building B would not have been permitted by Class E of the 2015 Order. I have not been made aware of any other reason why the construction of this building would not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act, and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the erection of Building B constitutes a breach of planning control. For this reason the ground (c) appeals must fail in so far as they relate to this building. As such, my consideration of the remainder of the ground (c) appeals will only be in respect of Building A.

Incidental Use

35. An essential feature of an incidental use is that it should have a functional relationship with the primary use (i.e. the dwellinghouse at the appeals site in this case), and the relationship should be one that is normally found. The MHCLG technical guidance identifies garages as common buildings permitted by Class E, but says that this is as long as they can properly be described as having a purpose incidental to the enjoyment of the dwellinghouse.
36. My attention has been drawn to the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909. This is relevant to the case before me as it indicates that, even if the nature of the activities carried out in a proposed building were considered to be incidental or conducive to the very conditions of living in the dwellinghouse, the scale of those activities is important. The case suggests that, if the nature and scale of such activities go beyond a purpose merely incidental to the enjoyment of the dwellinghouse as such, they may constitute something greater than a requirement related solely to that purpose. It advises that 'the fact that such a building has to be required for a purpose associated with the enjoyment of a dwellinghouse cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case'.
37. The judgment informs that the test to be applied is 'whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house'. It also states that 'when a matter is looked at as a whole, size may be an important consideration but not by itself conclusive'.

38. Having regard to the above, I have considered Building A and the proposed Appeal C buildings in turn.

Building A

39. This building is used to accommodate 6 vehicles which are part of the appellants' classic car collection. A small part of the building is also used to store such items as garden tools, a mower, cleaning items and bicycles. Garages are a common type of outbuilding within the curtilage of a dwelling, particularly garages that are used to store domestic items, as well as vehicles. That the MHCLG technical guidance identifies garages as common buildings permitted by Class E supports the conclusion that the use of Building A is incidental or conducive to the very conditions of living in the dwellinghouse at the appeals site.
40. Whilst I note the size of the building, a substantial floor area would be required to store even a small number of vehicles. Furthermore, it is not unusual for some households, particularly large families with adult children, to own multiple vehicles. I do, however, find a collection of 6 cars stored in this building extensive for a domestic residence.
41. In making its case the Council has considered the cumulative size (floor space) of both Building A and Building B. Building B accommodates garage space for the storage of 2 vehicles. This results in existing garage space for 8 vehicles in total, which exceeds the number of vehicles referred to in the other examples the appellants have drawn to my attention. In this regard, I share the Council's concerns in this case. Even for a large household, the scale of the activities (i.e. buildings used for the storage for 8 vehicles) goes beyond a purpose merely incidental to the enjoyment of the dwellinghouse.
42. However, I have concluded above that Building B is not lawful. I have also concluded below that permission ought not to be granted for the building. The enforcement notice will, therefore, be upheld requiring the removal of Building B. Accordingly, my consideration of Building A under these ground (c) appeals should not take account of the garage space for 2 vehicles provided within Building B. Aside from Building B, I saw no other buildings on the site that were used to provide storage for vehicles.
43. In addition to the above, the appellants say that they use their collection of vehicles for day to day activities. This suggests that the vehicles kept within Building A are not only for the appellants' hobby, but that they also provide the everyday transport for the household. I also note that the building is no larger than it needs to be to accommodate 6 vehicles and a domestic storage area.
44. Having regard to the above, I am persuaded that Building A is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. For this reason, I conclude that Building A benefits from the permission granted by Class E of the 2015 Order and that the ground (c) appeals must succeed in so far as they relate to this building. The appeal on ground (a) and (g) for Appeal A and the appeal on ground (g) for Appeal B do not, therefore, fall to be considered with regard to Building A.

Proposed Building 1 - Garage

45. Despite a slight difference in the size of the proposed Building 1 when compared to the existing Building A, the plans submitted with the LDC

application show a building with a very similar layout to the existing. The building would be used to accommodate 6 vehicles and would provide a small storage area at one end. Accordingly, were I to consider this building in isolation, I have no reason to reach a conclusion that differs from that reached in respect of Building A. However, I must also consider the building within the context of the planning unit.

46. In this regard, at the time the LDC application was made, the site (i.e. the planning unit) was, and still is, occupied by Building A, which I have concluded is permitted by the 2015 Order. The provision of an additional building on site to accommodate a further 6 vehicles would be excessive as it would result in there being buildings on site for the accommodation of 12 vehicles. Accordingly, its use would go beyond a purpose that is merely incidental to the enjoyment of the dwellinghouse. For this reason I conclude that Building 1 would not have been permitted by Class E of the 2015 Order and would not, therefore, have been lawful if it had been instituted or begun at the time of the LDC application.

Proposed Building 2 – Gym and Double Garage

47. The plans show that Building 2 would be divided into two rooms with an internal connecting door. One room would accommodate a gym laid out with gym equipment, and the other room would accommodate two vehicles.
48. The Council says that Building 2 'would be of an acceptable size when viewed in isolation and would be of a use which could be considered as incidental to the dwellinghouse'. When considered in isolation, I have no reason to disagree with this. A home gym would not be a use that is part and parcel of everyday living in a home. Rather it is a use that would be ancillary or subordinate to the dwellinghouse. Furthermore, as I have already concluded above, the use of a building as a garage would be incidental or conducive to the very conditions of living in the dwellinghouse at the appeals site.
49. However, I must again consider the proposed development within the context of the planning unit. With regard to the gym, as there are no other buildings on site used for this purpose, I would still conclude this use of the building would be incidental to the enjoyment of the dwellinghouse as such. However, proposed Building 2 would also provide a 2 car garage, which would be in addition to an existing 6 car garage (Building A). I have already concluded above that garage space for 8 vehicles on site would not be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. My conclusion is, therefore, the same with regard to the garage space proposed in Building 2. Accordingly, considered as a whole, I conclude that Building 2 would not have been permitted by Class E of the 2015 Order and would not, therefore, have been lawful if it had been instituted or begun at the time of the LDC application.

Demolition

50. The LDC application proposes the demolition of the existing Building A and Building B. Development is defined in section 55(1) of the 1990 Act as including the carrying out of building operations. Section 55(1A) informs that "building operations" includes the demolition of buildings. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land.

51. The Town and Country Planning (Demolition – Description of Buildings) Direction 2014 provides that the demolition of any building the cubic content of which, measured externally, does not exceed 50 cubic metres shall not be taken to involve development for the purposes of the 1990 Act. However, both Building A and Building B clearly have a cubic content greater than 50 cubic meters. Accordingly, permission would be required for the demolition of the existing Building A and Building B.
52. I acknowledge that my conclusions on the ground (c) appeals will mean that the enforcement notice will be upheld and will, therefore, require the demolition of Building B. However, the notice and, therefore, its requirements had not come into effect on the date the LDC application was submitted.
53. Notwithstanding the above, Class B of Part 11, Article 3, Schedule 2 of the 2015 Order grants permission for 'any building operation consisting of the demolition of a building'. Criteria (a) to (e) of B.1. specify the circumstances where the demolition would not be permitted by Class B. I have no reason to conclude that the any of the criteria of B.1. would apply in this case.
54. As for the conditions of Class B, provided at B.2., there is no suggestion that the demolition of the buildings is urgently necessary in the interests of safety or health, such that condition B.2.(a) would apply. As such, compliance with condition B.2.(b) is required for the demolition to be permitted by Class B. Criterion (i) of this condition informs that 'the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site'.
55. There is nothing before me to suggest that the necessary prior approval has been applied for in this case, such that the development could commence in compliance with criterion (vii) of the condition. For these reasons I conclude that the demolition of buildings A and Building B would not have been permitted by Class E of the 2015 Order and would not, therefore, have been lawful if it had been instituted or begun at the time of the LDC application.

Ground (a) and the deemed application for planning permission for Appeal A

Main Issues

56. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Having regard to my conclusions on the ground (c) appeals, the ground (a) appeal and the deemed application for planning permission is confined to Building B alone.
57. I note the substantive reasons for issuing the enforcement notice and from these I have identified the following main issues:
- Whether or not the proposal would be inappropriate development in the Green Belt;
 - 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; and

- If the proposal is inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

58. The appeal site is within the Metropolitan Green Belt. As such, the National Planning Policy Framework (the Framework) informs that new buildings in the Green Belt should be regarded as inappropriate. The Framework sets out exceptions to this. The appellant points to one such exception, which is limited infilling or the partial or complete redevelopment of previously developed land. This is criterion g of paragraph 149. I have had regard to the caselaw on this matter, referred to by the appellant, *R (on the application of Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404.
59. Previously developed land is defined in the Framework as including 'land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure'. I acknowledge that the definition of previously developed land excludes land in built up areas such as residential gardens. However, having regard to the location of the appeal site, I am satisfied that this exclusion does not apply to this case. As such, the dwellinghouse and its curtilage fall within the definition of previously developed land.
60. I have, however, concluded under the ground (c) appeals that Building B was partly constructed on land that was not within the curtilage of the dwellinghouse at the time of the building's construction. Accordingly, the paragraph 149 g) exception could be regarded as not applying to the development in this case.
61. Notwithstanding this, I acknowledge that the land upon which Building B sits was occupied by the former white painted wall, with the paved area on one side and the hard standing leading to the former garden shed E on the other. These items were removed to make way for the building. With this in mind, I note that the Framework's paragraph 149 g) exception applies where the development would 'not have a greater impact on the openness of the Green Belt than the existing development'. Accordingly, if I were to regard the location of Building B as previously developed land, I must consider the effect of the development on the openness of the Green Belt, and carry out a comparison with the previous development on the site, in order to determine whether or not exception g) applies.

Effect on Openness

62. Paragraph 137 of the Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that openness is one of the essential characteristics of a Green Belt. Openness can be defined as an absence of development; it has both a spatial and visual aspect.

63. I have described the former white painted wall as a substantial means of enclosure across part of the site, east to west. The former hard surfacing upon which Building B has been erected also covered a large portion of the buildings foot print. The former development would, therefore, have already had an effect on the contribution the site makes to the openness of the Green Belt in this area.
64. In comparing this former development to the current Building B, the evidence indicates that the building occupies a greater area than the white painted wall and hardstanding. It extends over the site of the former hedgerow, which became a grassed area visible in the first 2018 aerial photograph. The second 2018 aerial photograph has been annotated and indicates that Building B has a length comparable to the length of the white painted wall. However, its depth extends the built development so that it is in line with the former patterned concrete block wall. Accordingly, the building has resulted in a substantial visual encroachment of built development into the more open land to the north of the former boundary of the site delineated by the white painted wall.
65. I note that Building B has a flat roof and that it might have a height that is not much greater than the height of the former enclosure. I cannot, however, ignore that the volume of built development is now far greater than it would have been prior to the construction of Building B. I acknowledge that when considering the effect of development on the openness of the Green Belt, regard must be had to more than the size of buildings or structures. Whilst this part of the appeal site may well have been put to a use that was incidental to the enjoyment of the dwellinghouse prior to the erection of Building B, the scale of the existing development erected to facilitate this use of the site far exceeds what previously existed.
66. For the reasons given above, I can only conclude that Building B has a detrimental effect on the openness of the Green Belt in this location in terms of the visual and spatial aspect. I also conclude that the development has a greater impact on the openness of the Green Belt when compared to the development that existed prior to Building B's construction. Accordingly, I conclude that the Framework's paragraph 149 g) exception does not apply in this case and that Building B is inappropriate development in the Green Belt. I also conclude that the development causes harm to the openness of the Green Belt in this location.

Character and Appearance

67. The appeal site is located in a predominantly rural area. Whilst there is a row of detached properties opposite the appeal site, along Cobham Road, the site is occupied by a lone detached dwelling set within open fields and woodland to the north, east and west. Although the land to the north of the dwellinghouse (the former nursery land) is owned by the appellant and forms part of his property, the character of this land is different to that of the garden area close to the dwellinghouse. The nursery use of the land has ceased and the land has an open rural character, where built development is limited to the concrete paths of the former nursery.
68. The appeal site is well screened from views from Cobham Road by a high and solid means of enclosure along its boundary shared with the highway on Cobham Road.

69. Prior to the construction of Building B, although there was (and still is) extensive hard surfacing to the east of the dwellinghouse, there were few buildings on the site. As I noted earlier in this decision, former outbuildings had been removed some considerable period prior to the development subject of this ground (a) appeal. The only prominent form of development on site at this time was the stepped east to west enclosure across the site, the outbuilding D, and the hard surfacing.
70. Building B has mostly been erected on land to the north of the white painted section of the east to west enclosure. It has, therefore, pushed the built development in this location of the site towards the former nursery land and, therefore, encroaches into land that has a more rural character.
71. I acknowledge that the building is in line with the permitted Building A and that it fills the gap between Building A and the outbuilding D. I also note that the height of Building B is comparable to these two existing outbuildings. However, the gap between the two existing buildings was substantial. By filling the gap, Building B has created a sprawl of built development across the appeal site east to west. This has had a detrimental effect on the character of the site and the surrounding area.
72. Notwithstanding the above, views of the site are limited. For this reason the development has had a limited effect on the appearance of the site and the surrounding area when viewed from public vantage points. This does not, however, mitigate the harm identified above.
73. All things considered, whilst the development has a limited effect on the appearance of the site, it has an unacceptable effect on the character of the site and the surrounding area. The development is, therefore, in conflict with the saved policies ENV22 (General Development Control Criteria) and RUD9 (Garages and Other Ancillary Domestic Buildings in the Curtilage of Dwellings in the Countryside) of the Mole Valley Local Plan adopted 12 October 2000 (MVLPL). These require, amongst other matters, that development does not constitute a dominant feature, having regard to the scale of the existing dwelling, and that development respects and does not detract from the rural character or appearance of the locality.

Other Considerations

74. Balanced against the harm caused by the development in this case, the appellant points to two fall-back positions. He says that, with the benefit of the permission granted by Class E of the 2015 Order, the buildings could be demolished and re-erected either in its current location or elsewhere within the curtilage of the dwellinghouse.
75. There is no dispute that Building B has the same layout and use as the proposed Building 2 that is the subject of Appeal C. In my determination of Appeal C I have acknowledged that, in isolation, such a building would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. However, in considering the development within the context of the planning unit, I must take into account the accommodation comprised in the permitted Building A and the use to which it has been put.
76. In doing so, I have concluded that neither Building B nor the proposed Building 2 benefit from the permission granted by Class E. I have found that

the resultant garage space for 8 vehicles on site would not be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, the demolition of Building B and the construction of a similar building anywhere within the curtilage of the dwellinghouse would, therefore, require the benefit of planning permission. As the necessary permission has not been granted, I cannot regard either of the appellant's suggested fall-back positions in this case to be a realistic prospect. Furthermore, no other alternative fall-back position has been drawn to my attention.

77. For the reasons above, I can give no weight to the suggested fall-back positions in this case. Furthermore, no other considerations have been drawn to my attention that might be balanced against the harm identified in this case.

Planning and Green Belt Balance and Conclusion

78. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development subject of this ground (a) appeal is contrary to the development plan when considered as a whole.
79. I have also concluded that Building B is inappropriate development which is, by definition, harmful to the Green Belt. The Framework informs that substantial weight is given to any harm to the Green Belt.
80. The harm I have identified in this case, including harm to the Green Belt, is not clearly outweighed by other considerations. Very special circumstances referred to in the Framework do not, therefore, exist. There is nothing before me to indicate that my determination of the ground (a) appeal should be made otherwise than in accordance with the development plan. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not. Accordingly, the ground (a) appeal should fail and the deemed planning application should be refused.

Ground (g) for Appeals A and B

81. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The ground (g) appeals are confined to Building B alone, which accommodates a home gym and a two car garage. The notice specifies a period of twelve months after the notice takes effect. The appellants have suggested a period of 24 months. In doing so, they suggest that more time is needed in order for them to submit further LDC applications for buildings on site, in an alternative location. They say it is hoped that materials from the existing buildings could be used for the construction of other buildings in an alternative location on the site.
82. The LDC application referred to in the appellants' statement for Appeal A and B is that subject of Appeal C. I note the appellants' wish to replace Building B, and I acknowledge that this may take some time. However, as I have concluded that Appeal C should be dismissed, I do not have a reason to conclude that the replacement of Building B could be achieved, even in the period requested by the appellants.

83. More importantly, I am not persuaded that the harm caused by Building B is outweighed by a need to retain this building until a replacement is constructed.
84. The notice will require, once varied as I intend, the removal of Building B from the land. The 12 months given is a substantial period for this requirement to be complied with. It may well be the case that matters will move on during this 12 month period, such that permission might be secured, or an LDC obtained, for a replacement building. In these circumstances the Council may wish to consider using its powers under section 173A(1)(b) of the 1990 Act to extend the period for compliance with the notice. There is not, however, a good reason for me to extend the period for compliance at this stage.
85. For the reasons given above, I conclude that the ground (g) appeals should fail.

Conclusions for Appeals A and B

86. From the evidence before me, I conclude that the appeals on ground (c) should succeed in respect of those matters which are stated as constituting the breach of planning control insofar as they relate to the building marked 'A' on the enforcement notice plan. The enforcement notice will be corrected, varied and upheld.
87. In these circumstances, the appeals on ground (a) and (g), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not need to be considered insofar as they relate to the building marked 'A' on the enforcement notice plan.
88. Notwithstanding the above, I conclude that the appeals should not succeed insofar as they relate to the building marked 'B' on the enforcement notice plan. I shall uphold the enforcement notice with a correction and variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act insofar as it relates to the building marked 'B' on the enforcement notice plan.

Conclusions for Appeal C

89. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the demolition of existing outbuildings and (1) the erection of a garage for up to 6 cars and (2) the erection of a double garage and home gym was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Formal Decision for Appeals A and B

90. It is directed that the enforcement notice is corrected by the deletion of the post code 'KT22 9SJ' and its substitution with the post code 'KT22 9SA' in part 2.
91. It is directed that the enforcement notice is varied by:
- The deletion of the words 'two single storey detached buildings marked A and B' and their substitution with the words 'a single storey detached building marked B' in part 3.; and

- The deletion of the words 'two single storey detached buildings marked A and B' and their substitution with the words 'the single storey detached building marked B' in part 5.(1).

92. Subject to the correction and variations pursuant to ground (c), the appeals are otherwise dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision for Appeal C

93. The appeal is dismissed.

J Moss

INSPECTOR