



Appeal Decisions

Inquiry held on 10-12 January 2023

Site Visit made on 12 January 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal A Ref: APP/J4423/C/21/3289754

Land at Slack Fields Lane and Storth Lane, Wharncliffe Side, Sheffield S35 0DW

- 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 Paul Burgin against an enforcement notice issued by Sheffield City Council (the LPA).
- The enforcement notice was issued on 18 November 2021.
- The breach of planning control as alleged in the notice is:

On 14th February 1995 planning permission was granted under reference 94/1522P for "Sub-division of existing dwellinghouse to form 3 separate dwellinghouses and construction of access road to Owl Gate" which amongst other things was granted subject to the following conditions;

2 The sole means of vehicular access to and egress from the site shall be gained from and to Owl Gate.

6 The dwellinghouses shall not be used unless a physical barrier prohibiting access to Slackfields Lane has been erected to the satisfaction of the Local Planning Authority and before the development is commenced details of such barrier shall have been submitted to and approved by the Local Planning Authority.

7 When the above-mentioned barrier has been erected thereafter such barrier shall be retained.

It appears to the Council that the above conditions have not been complied with as a means of access has been created to Slackfields Lane.

- The requirements of the notice are:
 - (i) Cease the use of Slack Fields Lane for vehicle access and egress to Ivy Cottage, and the other dwellinghouses at Slack Fields Farm.
 - (ii) Remove the means of access and egress to Slack Fields Lane by the construction and retention of a dry stone wall along the light blue line shown in the photo with Appendix 1, blocking the access to Ivy Cottage from Slack Fields Lane.
 - (iii) In all other respects comply with conditions 2, 6 and 7 of planning permission reference 94.1522P.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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 and the enforcement notice is upheld with variations as set out in the Formal Decision below.

Appeal B Ref: APP/J4423/C/21/3289755

Land at Slack Fields Lane and Storth Lane, Wharncliffe Side, Sheffield S35 0DW

- 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 Paul Burgin against an enforcement notice issued by Sheffield City Council.
- The enforcement notice was issued on 18 November 2021.
- The breach of planning control as alleged in the notice is:
 - (i) An engineering operation to significantly raise the land level.
 - (ii) The change of use of the Land from agriculture to residential garden use, in connection with the dwellinghouse Ivy Cottage.
 - (iii) The construction of a retaining wall around the Land associated with the change of use in 3(ii).
- The requirements of the notice are:
 - (i) cease the use of the Land for domestic purposes,
 - (ii) restore the level of the Land to its pre existing condition and level,
 - (iii) demolish the dry stone wall referred to in paragraph 3(iii) and identified in Appendix 2 hereto.
 - (iv) following on from compliance with step 5(ii), erect a dry stone retaining wall along the light blue line shown in the photograph in Appendix 1.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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 and the enforcement notice is upheld with corrections and a variation as set out in the Formal Decision below.

Preliminary Matters

1. At the Inquiry, the appellant withdrew the ground (e) appeal in respect of both Appeal A and Appeal B. In addition, Appeal B on ground (b) was withdrawn. As a result, Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the 1990 Act. Appeal B proceeds on grounds (a), (c), (f) and (g).
2. The appeals relate to separate enforcement notices on the same Land. Given that the two are interlinked, and the appeals made by the same appellant, I have dealt with them in one decision letter. Separate considerations and conclusions have nonetheless been reached on each. I will refer to the notice to which Appeal A relates as "EN1" and the notice to which Appeal B relates as "EN2".
3. In both enforcement notices, the address is given as Slack Fields Lane. However, in all written submissions, the parties refer to it as Slackfields Lane. I have used the latter in my decision. I nevertheless see no reason to correct the notice, since the Land to which it relates is clear on its face.
4. The spelling of the appellant's name on the appeal forms is incorrect. I have used the correct spelling in the headings above.
5. All evidence given at the Inquiry was done so under affirmation.

Appeal B – The Notice

6. 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 section 55 of the 1990 Act. This can be corrected without injustice to the appellant or the LPA.

7. The alleged breach of planning control involves the material change of use to residential garden. That being the case, the requirement to cease the use should also refer to residential garden, rather than domestic use. I can correct the notice accordingly without injustice to the LPA or the appellant.

Background

8. Planning permission was granted in 1995¹ for the sub-division of existing dwellinghouse to form three separate dwellinghouses and construction of access road to Owler Gate (the 1995 permission). This resulted in the creation of three dwellings – Slackfield Farm, the Barn and Ivy Cottage. I saw from my site visit that there is also a dwelling on the farm complex adjacent to the Land. However, it is indicated that it is unlawful, having been subject to a recent enforcement notice which was upheld on appeal².

Appeal A on ground (b)

9. An appeal on ground (b) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters have not occurred.
10. The notice alleges a means of access has been created from the Land to Slackfields Lane in breach of condition 2 of the 1995 permission. Condition 2 sets out that the sole means of vehicular access to and egress from the Slackfields Farm site shall be gained from and to Owler Gate.
11. The LPA's case is that the engineering operations to raise the Land subject of EN2, along with the removal of part of the wall on Slackfields Lane, has been done to create a means of access which circumvents the existing gate on Slackfields Lane. The gate is in place as a result of conditions 6 and 7 of the 1995 permission.
12. Given the withdrawal of Appeal B on ground (b), there is no argument from the appellant that the engineering operations subject of EN2 have not occurred. Nor does the appellant argue that the removal of the wall on Slackfields Lane has not occurred. The appellant's case is that regardless of those operations, there has been no intention to use the Land as a means of access and even then, actual use of the access has been so limited as to be immaterial. Thus, it is said, the creation of a means of access has not occurred.
13. Since the notice was issued, the appellant has commenced construction of a wall where the previous wall has been removed. Timber posts have also previously been laid which the appellant says was to dissuade use as an access. I heard from the appellant at the Inquiry that they have no intention to allow the Land to be used as an access to and from Ivy Cottage or the wider Slackfields Farm site.
14. Appendix SC8 of the LPA's evidence contains a photograph of the Land, taken from the east at some point during the winter of 2019/2020. The appellant suggests the date is some point in spring 2020. Either way, the photograph shows the engineering operations are substantially complete but the Land is

¹ LPA Ref: 94/02149/FUL (94/1522P)

² Planning Inspectorate Ref: APP/J4423/C/21/3273084 & APP/J4423/C/21/3273085

not yet covered in grass. The parties agreed at the Inquiry that the image shows vehicular tracks imprinted in the top soil. The appellant accepts that this points towards a vehicle having used the Land to bypass the gate. Whilst little substantive evidence is before me regarding the circumstances of that incident, the appellant suggested at the Inquiry that it likely derived from a vehicle making a delivery to Ivy Cottage.

15. Evidence from the occupiers of Slackfields Farm indicates that in early 2020, the occupiers of the unlawful dwelling began using Slackfields Lane repeatedly, in contrast to previous, sporadic use. However, the evidence does not indicate whether Slackfields Lane was accessed via the Land or the existing gate. Overall, substantive evidence of actual use of the Land as a means of access is limited. Nonetheless, even if actual use has been limited, any creation of a means of access onto Slackfields Lane would amount to a breach of condition 2 of the 1995 permission.
16. It thus seems to me that one must look beyond intention or actual use, and also look at the characteristics of the works as a whole to ascertain whether or not a means of access has been created.
17. In this instance, the level of the Land has been raised such that it continues the topography of Slackfields Lane. This is in contrast to the situation prior to the breach when the two were separated by the wall, with the Land at a visibly lower level than Slackfields Lane. Moreover, a section of the wall along Slackfields Lane has been completely removed from the point at which the lane meets the gate. The gap is of sufficient width to allow vehicles to drive from Slackfields Lane onto the Land. Indeed, I saw from my site visit that, at the point the Land adjoins Slackfields Lane, it is of sufficient width to facilitate its use by any road going vehicle which would be capable of using Slackfields Lane. Whilst there is a noticeable adverse camber to the Land, it is not so adverse as to be impassable.
18. The appellant points towards the unenforced subsoil and grass construction of the Land as unsuitable for vehicular use. Thus, it is said, a means of access has not been created. I accept that any regular and prolonged use may degenerate the structural integrity of the Land over time due to its lack of reinforcement. Nevertheless, this does not render the Land physically incapable of use by vehicles and, in that sense, it is similar to many field accesses or other green lanes which are common in rural areas. Moreover, whilst the appellant suggests there is some form of sub-surface to Slackfields Lane itself, I saw from my site visit that almost all of the lane is in very poor condition. Thus, it seems to me that vehicles that are capable of travelling up the lane would find the surface conditions on the Land no less difficult or adverse than those which they have already encountered in reaching that point.
19. Furthermore, even if one were to consider intention of use as determinative, the Land would facilitate the circumventing of the permitted access route onto Owler Gate. I heard at the Inquiry it can be impassable in certain weather conditions. I also heard that Slackfields Lane is a more direct route into Wharncliffe Side, albeit my own observations suggest that any time benefit of using the lane over Owler Gate is marginal. Nevertheless, I also heard that use of Slackfields Lane by residents of Ivy Cottage would not negate any interaction or interference with other residents on the wider Slackfields Farm site. It is noted that whilst the appellant is the land owner, they do not occupy

Ivy Cottage. There is nothing from the occupiers of Ivy Cottage which indicate a lack of intention or preference to use Slackfields Lane. As a result, it seems to me that whatever the appellant's intentions, the actual capability to use the Land as a means of access may attract use from residents at certain times.

20. As such, the evidence leads me to conclude that the works to the Land, in terms of their physical and functional characteristics, and the removal of the wall, have resulted in the creation of a means of access onto Slackfields Lane. This is supported by the, albeit limited, evidence of actual use and, notwithstanding the appellant's intentions, also by the prospect of its use.
21. I conclude, therefore, that the creation of a means of access from the Land onto Slackfields Lane has occurred and there has, as a result, been a breach of condition 2 of the 1995 permission.
22. The appeal on ground (b) therefore fails.

Appeal A on ground (c)

23. An appeal on ground (c) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters (if they occurred) do not constitute a breach of planning control. Section 171A(1)(b) of the Act makes clear that failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
24. The appellant's case is predominately that the lack of evidential use of the Land as a means of access means that its creation has not led to a breach of planning control.
25. However, as set out in the appeal on ground (b), the wording of condition 2 is such that the provision of any access to the wider Slackfields Farm site which is not from Owler Gate would amount to a breach of that condition. Since I have found in the ground (b) appeal that a means of access has been created, then it follows that a breach of planning control has occurred.
26. The appellant points to previous correspondence in 1997 in which the LPA said that it would have no issue with occasional use of Slackfields Lane via the gate. However, the wording of condition 2 is clear on its face. It does not allow for any use of any access other than that from Owler Gate. As the LPA pointed out at the Inquiry, the question of whether occasional use may be permitted goes to a decision for the LPA as to whether it is expedient to take enforcement action. It does not go to whether or not a breach has occurred through that occasional use. Moreover, that correspondence related to the use of the gate onto Slackfields Lane, not the use of the Land as a means of access.
27. Furthermore, even if one considered that there had been no use of the access, and that meant there had been no breach of condition 2, section 171A(1)(a) of the Act sets out that the carrying out of development without the required planning permission is also a breach of planning control. Section 55(1) of the Act states that engineering operations constitute development. Section 336(1) of the Act states that engineering operations includes the formation or laying out of means of access to highways. Means of access means any means of access, whether private or public, for vehicles or for foot passengers. Therefore, the provision of a means of access on the Land through the works which have been carried would amount to development.

28. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants, under Class B, Part 2 of Schedule 2 of the Order, planning permission for the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule. There is no suggestion the means of access here is required in connection with a development permitted by any Class in Schedule 2 of the GPDO. Thus, the means of access is not permitted by Class B. It would therefore amount to development without planning permission and thus a breach under section 171A(1)(a) of the Act. Either way, the provision of a means of access onto Slackfields Lane from the Land is a breach of planning control.

29. The appeal on ground (c) therefore fails.

Appeal B on ground (c)

30. The appellant's case on Appeal B on ground (c) is that the construction of a retaining wall around the Land associated with the material change of use as cited in the breach in EN2 is development for which planning permission has been granted by Article 3(1) of the GPDO.

31. Class A of Part 2, Schedule 2 of the GPDO sets out that the erection of a wall is permitted development, subject to the limitations in paragraph A.1. Limitation A.1(b) states that development is not permitted if the height of the wall exceeds 2m. It is common ground between the parties that the wall which has been erected here does not exceed 2m in height.

32. The LPA, however, argue that the wall does not benefit from the permitted development right. It is said that the wall is not a means of enclosure but rather solely has a retaining function for the Land behind. However, regardless of whether that is the case, it seems to me that the wall would still have the purpose of enclosing the adjacent Land to the north.

33. Nevertheless, the LPA say that the wall was not a freestanding act of development, rather it was part and parcel of a single engineering operation which involved the raising of the land levels. In contrast, the appellant argues that the wall was constructed as a self-supporting field wall, with it only being afterwards that the Land was infilled behind it. The appellant says that the wall performs no retaining function for the Land and that the wall does not depend on the material behind it.

34. I accept that the stability of the wall is not dependent on the soil behind it. It is clear from the photographic evidence and that given at the Inquiry that it is a self-supporting, free-standing wall. However, the inverse is not necessarily true, that being that the engineering operations are not dependent on the wall for stability.

35. The appellant set out in their evidence that the engineering operations and the erection of the wall were carried out in a short time period around February and April 2020. Indeed, the photographic evidence shows that the wall was under construction whilst fill was being moved into place with an excavator. It is clear that neither operation was completed before the other commenced and thus, their construction was concurrent. The evidence I heard at the Inquiry makes clear that part of the reason for erecting the wall was to prevent fill

from running down the slope. Ultimately, it was accepted that the wall is holding back the soil and if the wall was removed, the fill could not be retained in its present form. It seems to me, therefore, that the wall is part and parcel of the engineering operations to raise the land levels.

36. Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if the permission is granted for works where (a) the building operations involved in the construction of that building are unlawful; or, (b) the existing use is unlawful. The appellant accepted at the Inquiry that if one reaches the conclusion that the wall is part and parcel of the engineering operations, then it cannot benefit from the permitted development right under the GPDO as a result of Article 3(5). I see no reason to conclude otherwise. As a result, the erection of the wall amounts to development for which no planning permission is granted, either by virtue of the GPDO or the grant of express planning permission. It thus amounts to a breach of planning control under section 171A(1)(a) of the Act.

37. The appeal on ground (c) therefore fails.

Appeal A on ground (d)

38. An appeal on ground (d) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Essentially, it is claimed that the alleged breach is immune from enforcement action, having subsisted for a period of ten years prior to the notice being issued. Section 171B(3) states that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the breach of condition 2 has continued uninterrupted for a period of 10 years beginning on or before 18 November 2011.

39. In cases such as this where a condition which has a continuing requirement is breached, and then the offending activity is ceased and the condition is complied with once more, the breach of planning control is deemed to have ended and the ten year clock will restart if and when the condition is breached again. However, this only applies if the interrupting compliance is significant and not *de minimis* as a matter of fact and degree. What matters is whether the LPA could have taken enforcement action against a breach of the condition at any point during the period.

40. The appellant's case is that Slackfields Lane has been used for access via the gate since around 1997 and therefore the condition has not been complied with for over 10 years. The appellant gave evidence at the Inquiry regarding the use of Slackfields Lane. Undoubtedly, as owner of Ivy Cottage and with familial ties to the site, they would have some familiarity with it. Nevertheless, the appellant indicated that they have not lived at the Slackfields Farm complex since 1991. Indeed, the appellant accepted at the Inquiry that they have had no day-to-day knowledge of the comings and goings to and from the appeal site throughout the relevant period.

41. At the Inquiry the appellant could not recall with any degree of precision how often they themselves had used the Slackfields Lane access. Moreover, the

appellant indicates that, throughout the approximately 9 month period they were carrying out building works to Ivy Cottage, they saw only the current owner of Slackfield Farmhouse use it in bad weather. They also state that their daughter did not use Slackfields Lane at all during their period of occupation of Ivy Cottage.

42. The occupiers of Slackfields Farmhouse indicate that they have lived there since 2009. They state in their written submissions that people have occasionally used Slackfields Lane in severe winters when the track from Owler Gate has been impassable. Nevertheless, they state that has been a very rare occurrence. The occurrences they are aware of have involved medical appointments or urgent travel needs rather than casual or frequent use. Their submissions indicate it had largely been a pedestrian route throughout their occupation up until early 2020, when it is said the occupants of the unlawful dwelling began repeatedly using the lane in a vehicle.
43. Ultimately, the appellant accepts that the use of the Slackfields Lane access has been low level. Indeed, the appellant's own evidence is that only one resident of an adjacent property used it during a period of 9 months whilst they were carrying out work on Ivy Cottage. Ultimately, the evidence of all parties points towards Slackfields Lane only being used in poor weather conditions and there being significant passages of time between occasions when Slackfields Lane was used. By its very nature, poor weather lasts for only a short spell of time in the context of a ten year period. It thus seems to me that there would have been significant gaps between its use if that was the case. In those circumstances, the breach would have ceased. Subsequent use of the access would have been a fresh breach and the ten-year period restarted.
44. Overall, it appears that the use of the Slackfields Lane access would have been of such a low level at various points throughout the ten year period, that the LPA could not have taken enforcement action at any point throughout that period. Thus, the evidence does not demonstrate, on the balance of probabilities, that the breach of condition 2 has continued uninterrupted for a period of 10 years beginning on or before 18 November 2011. Consequently, the alleged breach of planning control was not immune from enforcement action at the date the notice was issued.
45. The appeal on ground (d) therefore fails.

Appeal A on ground (a)

Preliminary Matters

46. In the appeal on ground (a), the terms of the deemed planning application derive directly from the alleged breach of planning control. In breach of condition cases, the deemed application is to carry out the development subject of the planning permission without complying with the conditions enforced against.

Main Issue

47. The main issue is the effect of the development without compliance with condition 2 of the 1995 permission on highway and pedestrian safety.

Reasons

48. The appellant seeks the modification of condition 2 of the 1995 permission to allow for the use of Slackfields Lane through the gated access in emergency situations when Owler Gate is impassable due to bad weather.
49. I saw from my site visit that Slackfields Lane is a very narrow track which serves a number of houses on its northern side. Its surface is in poor condition, particularly once it travels beyond the houses on the lane towards the appeal site. The surface is uneven and overgrown in parts and there is a pronounced gradient sloping from west to east.
50. The appellant states that the LPA has conflated the alleged highway safety harm in respect of the failure to comply with condition 2 with that deriving from the lawful use of Slackfields Lane as a public highway up until the gate on the appeal site. I heard evidence at the Inquiry, and have been presented with several photographs, which show a number of instances of vehicles having travelled up Slackfields Lane and stopped at the gate. It is said that they are largely occasions where visitors or delivery vehicles have mistakenly used Slackfields Lane rather than Owler Gate.
51. It seems to me that any vehicles which travel beyond the houses on the lane would be unable to turn without entering the appeal site. Thus, they would have to reverse back down the lane, resulting in potential conflict with vehicles coming up the lane, vehicles pulling out from the driveways of the houses or indeed pedestrians using the public right of way along Slackfields Lane.
52. Even then, I was able to see that forward visibility up Slackfields Lane towards the appeal site is poor due to a curve in the road, such that vehicles travelling up the lane towards the appeal site will have limited view of oncoming vehicles, regardless of whether they are in forward or reverse gear.
53. Whilst I accept the appellant's point that these vehicle movements could still continue to occur lawfully, allowing increased use of the Slackfields Lane access by the dwellings on Slackfields Farm would only serve to compound these existing highway safety issues. It would materially increase the number of vehicles potentially conflicting with one another as they approach from different directions. Indeed, modifying the condition to allow its use in poor weather would only heighten the potential risk of collisions as it would increase the risk of drivers losing control of their vehicles. As a result, allowing use of Slackfields Lane for access or egress from Slackfields Farm would be harmful to highway and pedestrian safety.
54. Moreover, it seems to me that the wording of the modified condition insofar as it refers to "emergency access" and "bad weather" would be imprecise since it is not clear what is meant by emergency access or indeed what qualifies as bad weather. They are both subjective terms and would not meet the tests of paragraph 56 of the National Planning Policy Framework (the Framework). No sufficiently precise alternative framing of the condition was put to me at the Inquiry.
55. As it is, the appellant indicated at the Inquiry that they are willing to comply with the existing conditions and that framing a condition to allow exceptional use would be difficult to do.

56. I conclude, therefore, that either allowing the development subject of the 1995 permission without complying with condition 2 of that permission, or allowing it subject the modified condition put forward, would result in harm to highway and pedestrian safety. This would conflict with Saved Policies H14 and BE9 of the Sheffield Unitary Development Plan 1998 (the UDP) which state that new development will be permitted where it would provide safe access to the highway network and a safe site layout for all vehicles. There is also conflict with paragraphs 111 and 112 of the Framework which state development should be refused on highways grounds if there would be an unacceptable impact on highway safety and that development should minimise the scope for conflicts between pedestrians and vehicles. I therefore find that Condition 2 in its present wording is necessary in accordance with the tests set out in paragraph 56 of the Framework.

Conclusion

57. For the reasons given above I conclude that the appeal on ground (a) should not succeed and planning permission on the deemed application should be refused.

Appeal B on ground (a) and the deemed application

Main Issues

58. 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; and,
- if the development is inappropriate development, 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

59. 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. Paragraph 150 sets out that other forms of development are not inappropriate development provided they preserve its openness and do not conflict with the purposes of including land within it. Paragraph 138 of the Framework sets out the five purposes of the Green Belt. They are: a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; c) to assist in safeguarding the countryside from encroachment; d) to preserve the setting and special character of historic towns; and, e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

60. The types of development set out under Paragraph 150 of the Framework include b) engineering operations and e) material changes in the use of land.

As such, in this case, both the engineering operations to raise the land levels and the material change of use of the land to residential garden will not amount to inappropriate development provided they preserve the openness of the Green Belt and do not conflict with any of the five Green Belt purposes.

61. Saved Policy GE1 of the UDP states that in the Green Belt, development will not be permitted, except in very special circumstances, where it would (a) lead to the unrestricted growth of the built-up area; (b) contribute towards the merging of existing settlements; (c) lead to encroachment of urban development into the countryside; or, (d) compromise urban regeneration.
62. Although not entirely reflective of the latter policies of the Framework, Saved Policy GE1 is nevertheless broadly consistent with the theme of restricting development in the Green Belt except in very special circumstances. Similarly, Saved Policy GE3 of the UDP does not permit the construction of new buildings in the Green Belt except in very special circumstances. The policy does nevertheless allow for exceptions such as agriculture, forestry, essential facilities for outdoor sport and recreation, cemeteries and other uses. It too is therefore broadly consistent with the Framework.
63. Paragraph 137 of the Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Openness as a concept has both a spatial and a visual aspect. The absence of visual intrusion does not in itself mean there is no impact on openness. On the other hand, this does not mean that openness has no visual dimension. A number of factors are capable of being relevant and how to take them into account is a matter of planning judgement.
64. Prior to the breach taking place, the Land formed part of the adjacent agricultural field. Free from development and laid to grass, it sloped upwards towards the properties of the Slackfields Farm complex. It was bound by the dry stone wall which extends down Slackfields Lane to the east and links in with the field wall network to the west of the site. The wider field slopes down towards the dense tree cover of Glen Howe Park and the wide expanse of open countryside beyond to the north.
65. The Land is clearly visible in wide ranging views from the north, albeit it is seen in the context of the built form of the Slackfields Farm complex immediately adjacent, as well as the built up area of Wharncliffe Side a short distance to the east. Prior to the development, the Land would nevertheless have made a positive contribution towards the openness of the Green Belt.
66. Following the engineering operations, the Land maintains some of the original visual characteristics, in that it is sloping and laid to grass and vegetation. However, ultimately, the development has resulted in a significant increase in the level of the Land. It has involved the placement of about 400 tonnes of fill which has raised an area of around 300m² by between 1m and 1.5m in height. The development has also changed the nature of the Land. Having previously formed part of an open field providing the foreground for the farm complex, the Land now sits within that complex, forming part of the built environment therein. It is thus now read as part of the farm complex rather than part of the open field.

67. Indeed, whilst the Land remains visible from outside the site, the relocation of the wall has nevertheless resulted in the enclosed area of the farm complex encroaching further into the open field. Although the wall maintains its role within the wider network of dry stone walls, it nevertheless extends for around 60m and has the function of enclosing the Land. It has thus reduced in spatial terms the contribution of the Land to Green Belt openness.
68. Moreover, whilst the change which has taken place is less appreciable the further away it is viewed from, I was able to see from my site visit that the change in the height and sense of enclosure is highly apparent from the public right of way which runs across the field, adjacent to the Land. Furthermore, whilst it was said at the Inquiry that no residential paraphernalia such as chairs or tables had been put on the Land previously, the introduction of the Land into the confines of the residential setting, and its use as residential garden, would encourage domestic items to be placed upon it in the future. The additional human activity that would arise from the extended garden for Ivy Cottage would be a marked change in character from the previous use of the Land for agricultural purposes. It would also, in visual terms, have the effect of extending the envelope of built development within Slackfields Farm to the east, bringing it closer to the built up area of Wharncliffe Side and reducing the sense of separation the farm complex has currently.
69. As a result, I find that the development as a whole has had an adverse effect on the openness of the Green Belt. Openness is not therefore preserved. In addition, by extending the envelope of residential land into land which was previously an open field in agricultural use, the development has failed to assist in safeguarding the countryside from encroachment. Thus, I conclude that the development as a whole conflicts with one of the five Green Belt purposes set out in the Framework.
70. As a consequence, I find that the development would not fall under the exceptions to inappropriate development set out in paragraph 150(b) and 150(e) of the Framework since it does not preserve openness and conflicts with the purposes of including land within the Green Belt.
71. I conclude, therefore, that the development amounts to inappropriate development in the Green Belt. I also find there is an adverse impact on the openness of the Green Belt. The development is therefore in conflict with saved UPD Policies GE1 and GE3 as well as paragraph 148 of the Framework. I afford substantial weight both to the harm which arises to the Green Belt by reason of inappropriateness and harm which arises to openness.

Other Considerations

72. Paragraph 148 of the Framework is clear that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
73. The appellant indicates that the operations involved in restoring the Land to its former condition are complex and will result in significant disturbance and interruption. I accept that the works to remove the wall, the soil and regrade the Land will result in undue visual harm to the landscape. Indeed, one can see from the photographs of the development under construction to see the extent of visual affect that would occur. However, such effects will be temporary, and

limited over a very short period of time. The harm which arises will be a considerably limited time period, particularly when compared against the Green Belt harm deriving from the permanence of the development were it to remain. I thus afford such considerations little weight.

74. The appellant indicates that there is a fallback position in that they can lawfully erect a wall in the same place as one exists presently under the provisions of the GPDO. The appellant indicates that a wall would be erected to demarcate the boundary of their Land. However, it seems to me that erecting a wall here would serve no practical purpose, given that it would leave the Land difficult to access and maintain. Ultimately, from what little I heard at the Inquiry about the potential for a wall to be erected, I am not satisfied there is a realistic prospect of such a fallback position occurring. In any event, the harm deriving from such a fallback position would be a lower level of harm than that which results from the development. Such a fallback position would therefore carry very little weight in favour of the development.
75. The appellant offers the alternative of granting planning permission subject to a condition which restricts permitted development rights for the erection of buildings on the Land. Such a condition would prevent any additional harm to the Green Belt from additional buildings. However, it would not overcome the harm which arises from the development subject of the notice. I therefore afford such an alternative very little weight.

Very Special Circumstances

76. 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.
77. In favour of the development, I afford little weight to the temporary harm arising from the works required to restore the Land to its former condition. I also give very little weight to the alleged fallback position and to the prospect of imposing a condition to remove permitted development rights.
78. 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.
79. As a consequence, the very special circumstances necessary to justify the development do not exist. I conclude, therefore, that the development conflicts with Saved UDP Policies GE1 and GE3, as well as the policies of the Framework. As a result, the development is in conflict with the development plan taken as a whole.

Alternative

80. As aforementioned, the appellant suggests that a wall of similar siting, design and height as that subject of the notice could be erected under the GPDO following compliance with the notice. However, whilst the wall without the engineering operations and material change of use would be less harmful to the Green Belt than the development subject of EN2 in its entirety, it would nevertheless have the effect of extending the envelope of built form northwards into the open field. Even with the Land reinstated to its previous

contours and use, a wall in the same location would still have the same effect of visually enclosing the Slackfields Farm complex and encroaching into the Green Belt. The erection of a wall here would amount to inappropriate development in the Green Belt. There is no suggestion it meets any of the exceptions within the Framework. It would also, for the reasons I have set out, result in harm to Green Belt openness. That overall harm to the Green Belt is not clearly outweighed by other considerations.

Conclusions

81. For the reasons given above I conclude that the appeal on ground (a) should not succeed and the deemed application for planning permission should be refused.

Appeal A on ground (f)

82. 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.
83. EN1 requires the cessation of the use of Slackfields Lane for vehicle access and egress and the construction of a dry stone wall to prevent using the Land for such access. It also requires compliance with conditions 2, 6 and 7 of the 1995 permission. It thus seems to me that the purpose of the notice is to remedy the breach of planning control by making the original development comply with the terms, including conditions and limitations, of any planning permission which has been granted in respect of the land.
84. It nevertheless seems to me that the requirement to construct a dry stone wall along the entire length of the blue line on the plan attached to the notice is excessive. This is because a wall of such length is not necessary to prevent the use of the Land as an access. It was discussed at the Inquiry that a smaller section of wall along that part of the Land which adjoins Slackfields Lane would be sufficient to prevent access. Indeed, the appellant has commenced building such a wall. However, it seems to me, having considered the parties agreed position on the requirements, that any requirement to reinstate any part of the wall which has been removed is excessive. The requirements to cease the use of the access and comply with the conditions attached to the 1995 permission is sufficient to remedy the breach of planning control.
85. The parties agreed at the Inquiry that, in the circumstances where both notices are to be upheld, then the second requirement of EN1 should be deleted in its entirety. The reason for this was because the means of access will be removed as a result of compliance with the requirements to reinstate the Land under EN2. However, there is a need to exercise caution in allowing a situation whereby compliance with a notice is dependent on compliance with a separate enforcement notice.
86. As it is, it seems to me that a requirement to reinstate any part of the wall which has been removed is excessive. Whilst the LPA suggests a physical barrier is necessary, the requirements to cease the use of the access and comply with the conditions attached to the 1995 permission is sufficient to remedy the breach of planning control by making the development comply with

the terms of the planning permission. Conditions 6 and 7 have already been complied with by the introduction of the gate. Moreover, the Land subject of EN2 falls outside of the land to which the 1995 permission relates. I will therefore vary the notice to delete the second requirement in its entirety.

87. The appeal on ground (f) succeeds in part.

Appeal B on ground (f)

88. The requirements of EN2 are to cease the use of the Land, restore the level of the Land to its pre-existing condition and level, demolish the dry stone wall and erect a dry stone wall in its previous location. It therefore seems to me that the purpose of the notice is to remedy the breach of planning control by discontinuing any use of the Land and restoring the Land to its condition before the breach took place.

89. The appellant's initial submissions were that it is excessive to require the demolition of the dry stone wall, since the appellant could erect an identical wall in the same location under the permission granted by the GPDO. However, the wall forms part of the breach of planning control and is part and parcel of the other aspects of the breach. Not requiring its removal would therefore fail to remedy the breach.

90. Moreover, electing to effectively under enforce under section 173(11) of the 1990 Act and grant planning permission for the wall under section 73A would not be an obvious alternative which overcomes the planning harm, since I have found in the ground (a) appeal that, even absent the engineering operations and material change of use, the wall would still result in harm to the Green Belt.

91. Indeed, sufficient evidence has not been put forward to demonstrate there is a realistic prospect of a similar wall being constructed under the GPDO in the event the notice is upheld. On that basis there is no justification for varying the notice to remove the requirement to demolish the wall.

92. It is clear that the demolition of the previous wall has facilitated the breach of planning control by allowing the reprofiling work to be done and has facilitated the use of the Land as a garden area. Thus, the requirement to reinstate a wall in the same location is also not excessive.

93. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

94. An appeal on ground (g) is made on the basis that the time for compliance given within the notice is too short. EN1 has a compliance period of 2 months. The appellant argues that a more appropriate period would be 6 months.

95. That argument is predicated on the basis that the entirety of the engineering operations subject of EN2 would need to be removed and a wall constructed along the entirety of the blue line on the plan attached to the notice. However, given my decision to delete the requirement to construct a wall, EN1 now only requires the cessation of the use of Slackfields Lane for access and egress, and ongoing compliance with the 1995 permission. It seems to me that 2 months is a more than adequate period for that to take place.

96. The appeal on ground (g) therefore fails.

Appeal B on ground (g)

97. The time period for compliance in respect of EN2 is 2 months. The appellant argues that 6 months would be a more appropriate time period. The notice requires the use of the Land to cease, the Land to be restored to its pre-existing condition and level, and the wall to be demolished and rebuilt in its original location.
98. I heard at the Inquiry that the works subject of EN2 took around two to three months to complete in their totality. However, I heard that a significant amount of the material used to reprofile the Land was taken from soils excavated from works on the wider Slackfields Farm site. In contrast, compliance with the notice will require all of the material to be moved off-site. Thus, the works are likely to take longer to remove than they did to construct as material will need to be loaded into trucks and transported.
99. Moreover, given the notice requires the demolition and the erection of a dry stone wall, the appellant will be required to source and appoint a specialist dry stone wall contractor. Whilst little evidence of any potential issues in the sourcing of a contractor has been identified, it is nevertheless a specialist construction method. There is therefore an inevitable likelihood that it will take longer to source and appoint such a contractor. As such, it seems to me that a period of six months is a more appropriate time period to carry out all the requirements of the notice. Such a time period is a suitable balance which also deals with the planning harm with the necessary expediency.
100. The appeal on ground (g) therefore succeeds.

FORMAL DECISIONS

APPEAL A

101. It is directed that the enforcement notice be varied by:
- deleting paragraph 5(ii) of the notice in its entirety; and,
 - deleting "(iii)" from paragraph 5 of the notice and substituting it with "(ii)".
102. Subject to these variations, 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 B

103. It is directed that the enforcement notice be corrected by:
- Deleting the words "the change use of" and substituting them for the words "the material change of use of" in paragraph 3(ii) of the notice; and,
 - deleting the words "domestic purposes" and substituting them for the words "residential garden" in paragraph 5(i) of the notice.
104. And varied by:
- deleting the words "2 months" in paragraph 6 of the notice and substituting them for the words "6 months" as the time for compliance.

105. Subject to the correction and variations, 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

APPEARANCES

FOR THE APPELLANT:

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He called:

Paul Burgin

Appellant

Roland Bolton

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FOR THE LOCAL PLANNING AUTHORITY:

Matthew Henderson of Counsel

He called:

Mark Brooks

Principal Highways Development Control Officer – Sheffield City Council

Lee Brook

Planning Enforcement Officer – Sheffield City Council

Lucy Hirst

Planning Officer – Sheffield City Council

DOCUMENTS

- 1 Photographs submitted by the appellant
- 2 Agreed Site Visit viewpoints
- 3 Appellant opening submissions
- 4 LPA opening submissions
- 5 LPA officer report dated September 2021
- 6 List of suggested conditions
- 7 Agreed position on the requirements of the notices
- 8 Appellant list of suggested conditions
- 9 Revised plan to accompany agreed position on the requirements
- 10 LPA closing submissions
- 11 Appellant closing submissions