



Appeal Decisions

Inquiry held on 22 & 23 November 2022

Site visit made on 21 November 2022

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2023

Appeals A & B Refs: APP/P0119/C/21/3286651 & 3286652

Land at The Rosary, Chesley Hill, Siston, South Gloucestershire, BS30 5NE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Mark Palmer & Ms Nicola Garland respectively against an enforcement notice issued by South Gloucestershire Council.
 - The notice, numbered COM/21/0306/OD/3, was issued on 7 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the subdivision of the former single residential planning unit to create an additional new residential planning unit, including the erection of a residential dwelling within that new unit.
 - The requirements of the notice are:
 1. Demolish the building (as identified as marked (A) on the attached picture in Appendix 1, and in the approximate position as outlined in blue on the attached map) and remove the materials from the land.
 2. Remove any other associated building or engineering operations (e.g. hard standing areas, drainage works).
 3. Remove the associated hardcore for the dwelling (as identified in the approximate position of the edged green on the attached plan).
 4. Restore the land subject to the breach to grass.
 5. Cease the use of the land as a separate residential planning unit independent of The Rosary and return the land to the use as residential garden of The Rosary.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), and (f) 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 is proceeding on grounds (b), (c), (d), and (f).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - describing the breach as: 'without planning permission, the material change of use of the land originally part of The Rosary by its subdivision to create an additional separate dwelling house',
 - removing the 'e.g.' from Requirement 2 so that the bracketed part of it simply reads '(the hard standing area and drainage works)', and
 - deleting 'and return the land to the use as residential garden of The Rosary' from Requirement 5.

2. Subject to these corrections, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Application for Costs

3. An application for costs was made by the Council against the appellants. This application is the subject of a separate Decision.

The Notice

4. The allegation is of the creation of an additional dwelling in the garden of The Rosary, a detached house, a material change of use, involving the sub-division of the existing residential curtilage of The Rosary and the creation of a new residential planning unit, to which the 10-year immunity period applies. The allegation in the notice should state this on its face, albeit it is clear that this is what the notice alleged from the evidence put forward by both parties at the Inquiry.
5. I also agree that the requirements of the notice should be specific, which therefore requires the removal of the 'e.g' from Requirement 2 because that wrongly suggests that there might be some other unspecified building or engineering works. Additionally, it is unnecessary to specify what the lawful use of the land may be and is sufficient to simply require the cessation of the unauthorised use. For these three reasons the notice is corrected accordingly, with no injustice to the parties.

Procedural Matters

6. The initial appeal form only stated that the appeals were made on grounds (a), (d) and (f). The second revised appeal form added ground (c), and ground (b) was subsequently added by the date of the Inquiry. I will therefore address all these grounds, albeit they are clearly inter-linked as I elucidate below.
7. Evidence was given on oath.

Reasons

Grounds (b) and (c)

8. Ground (b) is that the matters alleged in the notice have not occurred. The appellants argue that no separate residential planning unit has been created because the building situated on the land attacked by the notice (hereinafter referred to as 'the Building'¹ and 'the Land') is simply part incidental and part ancillary accommodation for the family, albeit only Mr Palmer sleeps in it. Ground (c) is that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control. Given the circumstance of this case, both these grounds are best dealt with together.
9. The Building as erected approximately and essentially exhibits the floorplan as submitted by Mr Palmer with his response to the Planning Contravention Notice (PCN) on 11 August 2021. I saw during my visit a large kitchen/dining area in the southwest corner which also contains a number of Mr Palmer's classic motorbikes on stands, behind a double garage fronting towards the road, within which are two of Mr Palmer's classic cars and some more motorbikes.

¹ And referred to as the Eastern Building or EB by the advocates in their Openings and Closings

The eastern side of the building contains five separate rooms, one of which is clearly used by Mr Palmer as a bedroom and another contains gym, video games equipment and a table tennis table. These rooms are labelled as a lounge, bathroom and three separate bedrooms on the submitted floor plan, the master bedroom in the southeast corner of the building incorporating an ensuite shower room, albeit this room is now being used as walk-in storage. Both the rooms envisaged as bathrooms have small windows for ventilation on the Building's west elevation.

10. I accept in principle, in terms of the caselaw on this issue, that despite the Building not being purely incidental to the use of The Rosary as the appellants acknowledge, it could still have been and be being used as ancillary accommodation to the main house, in other words for purposes integral to the residential use of The Rosary. The question that arises is whether it is. In order to determine this, I assess the evidence presented at the Inquiry below.
11. The appellants are an unmarried but longstanding couple with three sons: Sean (34 years of age), Dean (33) and Will (16): Sean and Will live in the Rosary with their mother, Ms Garland. The appellants' evidence² is that Mr Palmer sleeps/lives in the Building but uses and maintains the wider garden and the facilities in The Rosary, including eating some meals, showering and socialising there; he only uses the building's kitchen to prepare snacks and eats out when his eldest son is present in the main house because Mr Palmer's relationship with Sean benefits from physical separation; Ms Garland and their children also use the facilities in the Building and the whole of the wider garden including that part immediately adjacent to it. Their evidence also says that Mr Palmer often parks his car and uses the drive of the main house because he often takes Will to sports coaching; he moves his 10 rare breed sheep between the eastern paddock of the wider property and the larger paddock to the south across the garden next to the Building and also cares for the family's animals (birds, dogs), which are housed in the main dwelling and the outbuildings immediately to the west of it.
12. The Council did not dispute any of this, although I note that it is fundamentally at odds with Mr Palmer's response to the PCN. But it must be considered in the light of the nature of the Land. There is a separate vehicular access to the site. It has its own parking and turning area. Although Mr Palmer says he shares a car with Ms Garland and often parks it on the main drive, he has other cars and the implication is that he does not always use the main drive. He admits he and he alone sleeps/lives in the Building, which has all the facilities for self-contained living, albeit family members frequently visit him there.
13. The Council acknowledges that the hedge between the Building and The Rosary's garden to the west is not continuous. I acknowledge that what Mr Palmer annotated as a continuous border hedge on the site plan he submitted with his PCN response is actually laid out as several curving beds which allow passage between that part of the wider garden to the west and the garden behind the Building. But nonetheless, in effect these planted beds do largely separate The Rosary from the Building and the Land, in part because the planting in them has matured in the last few years as is shown on the series of aerial photos over time. The appearance of these beds is of a hedge between the Building and The Rosary. In any case, Mr Stokes rightly accepted

² Mark Palmer's Witness Statement of 25 October 2022 and paragraph 3.6 of Mr Stokes's Proof of Evidence

- on cross-examination that an impenetrable border is not a requirement to establish a separate residential unit.
14. The fact that there is a shed located at the front of the Land close to the vehicular access gates to the road, which is used to store garden maintenance equipment used by Mr Palmer on the whole of the wider garden of The Rosary is not evidence that the Building is not a dwelling. If the Building was subsequently put up for sale, any such equipment would simply be moved to The Rosary's outbuildings or to any new dwelling Mr Palmer may choose to live in, in the same way that anyone moving house would do.
 15. The Council maintain that Mr Palmer and Ms Garland have split up and are no longer a couple. It is not necessary for me to determine whether this is definitively the case because I accept that Mr Palmer has caring responsibilities for his family, which he carries out, notwithstanding that Ms Garland states in her declaration that their relationship became very strained in May 2017 and that they have 'not been able to live together' since Sean's illness.
 16. But only Mr Palmer, with the exceptions of visits from Dean and his family (who live elsewhere distant), lives in the Building, which has all the facilities for independent living. I accept that Ms Garland, Sean, Will and Dean and his family may well come into the Building and use the gym, another bedroom or bedrooms (in the case of Dean and his family), and the garden, including the trampoline and washing line there, just as Mr Palmer may well use the main drive of The Rosary, the outbuildings, western Annexe building and the main house's internal facilities at times. But this is no different to how a typical family with grown-up children operate, visiting each other's houses. He may well cut the lawn on the whole of the land he owns. It is his current choice to keep his rare breed sheep in the eastern paddock and move them across the building's rear garden into the southern paddock of The Rosary. All this is a given because of his responsibilities and commitments as a father and owner of the wider landholding. He would still have these paternal commitments even if his place of abode did not abut The Rosary.
 17. However, none of these things preclude the Building functioning as a separate dwelling. If the Land and Building was put up for sale tomorrow, no reasonable person could claim that it wasn't a dwelling with its own garden and vehicular access to the public highway. Indeed, Mr Palmer registered the Land and the eastern paddock under a separate title at the Land Registry on 8 May 2019 – title number GR436129, which registers Ms Garland as the proprietor. He says that this was done to give her some security given that the title of the whole landholding of The Rosary had previously been registered in his name alone under the original title number. This may well have been the case, but the creation of a separate title would make it much easier to sell this land as a separate residential plot or dwelling, particularly if a house had been built on it.
 18. I acknowledge that the land under title number GR436129 was re-transferred back into Mr Palmer's name on 20 October 2021 and also that the S106 unilateral undertaking (the S106) dated 24 November 2022, submitted as part of the appeal, commits him to restoring all his wider landholding at The Rosary back into one title within six months of any planning permission granted or variation of the notice as a result of this appeal. However, I consider that the Registration of this separate title is evidence of Mr Palmer's likely intention to build a separate dwelling house in the Green Belt, a location which he knew

would stand very little chance of securing planning permission for such a new building.

19. The Building is a dwellinghouse by virtue of the circumstances as set out above, as per the relevant caselaw. *Gravesham*³ established that the distinctive characteristic of a dwellinghouse was its ability to afford those who used it the facilities required for day-to day private domestic existence. The Building possesses a fully functioning kitchen and living/dining room, a bathroom, three bedrooms, a lounge and large garage, as well as its own freestanding access onto the public highway, a substantial parking and turning area and its own garden and utilities. So, it is clearly a dwellinghouse, despite Mr Palmer's family living next door in The Rosary and being regular visitors to it. It is not part and parcel of the residential use of The Rosary because it possesses these facilities.
20. More importantly, the planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned. *Burdle*⁴ established the basis for establishing whether or not a new planning unit has been created, in particular that two or more physically separate and distinct areas occupied for different purposes ought to be considered as separate planning units.
21. By the end of the Inquiry the appellants conceded that the sub-division of a residential planning unit through the creation of an additional separate dwelling, as first established by Lord Denning in *Wakelin*⁵ and confirmed by subsequent caselaw over the years as mentioned by both main parties⁶, always amounts to a material change of use, which by virtue of Section 55(1) of the Act is development requiring planning permission.⁷
22. For the reasons set out above, the Building does not constitute an integral part of the main use of The Rosary – it is a new residential planning unit. As such, there has been a breach of planning control because no planning permission for a new dwellinghouse has been granted. Consequently, the appeals under ground (b) and (c) fail.

Ground (d)

23. Ground (d) is that, 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.
24. The floor plan submitted by Mr Palmer with his response to the PCN is very different to the floor plan submitted with the LDC application approved on 6 September 2016 (PK16/3145/CLP), which shows approximately half the (western) floorspace being used as a swimming pool with small ancillary shower/WC and the eastern half being used as a large garage to store Mr Palmer's collection of four classic cars and five motorbikes. The floorplan submitted with the PCN response shows what to all appearances is a new

³ *Gravesham BC v Secretary of State for the Environment & O'Brien* [1983] JPL 306

⁴ *Burdle v Secretary of State for the Environment*, [1972] 1W.L.R. 1207 (1972)

⁵ *Wakelin v Secretary of State for the Environment* (1983) 46 P. & C.R. 214 (1978)

⁶ By the appellants in their Statement of Case, Mr Stoke's Proof of Evidence and their Closing; by the LPA in its Opening

⁷ Appellants' Closing Submissions, paragraphs 6, 9 (as added to orally by Mr Hawley) & 37

house whereas the floorplan submitted with the LDC application shows an incidental outbuilding to The Rosary.

25. The Council's investigating officer (Mrs Jacobs) visited the site on 19 April 2017. Her notes of this visit (dated the next day) record that Mr Palmer told her that he 'is intending on creating a recreational area, a swimming pool and a storage area for bikes/cars'. I find it hard to believe that this was in fact Mr Palmer's real intention because the alterations to the window openings that Mrs Jacobs saw, acknowledged and photographed essentially match the floorplan that was subsequently sent in with the PCN detailed above, including the two small windows on the building's western elevation designed to ventilate the two bathrooms (including the ensuite to the master bedroom) situated abutting the Building's western wall. That floorplan, with its multiple internal dividing walls to create the habitable rooms of the existing residential accommodation, must have been in the process of being implemented or may have already been completed by that date – and not the swimming pool envisaged by the LDC, bearing in mind that work to construct the Building started in October 2016. The suggestion by Mr Palmer that a pool could be retrofitted to fit within the confines of the existing foundations or could sit above the land gradient is fanciful and physically impractical, if not impossible.
26. Mrs Jacobs acknowledges in her notes that the window layout and internal layout did not preclude the LDC being implemented, or another Class E building being built under permitted development rights, which is accurate. But it is clear from the photos of that date that a swimming pool was not in the process of being constructed. It was undoubtedly on the basis of Mr Palmer's comments to Mrs Jacobs that the enforcement complaint (COM/17/0272/OD) was understandably closed by the Council on 5 May 2017. What in fact was being built was new residential accommodation, albeit contained in a building of the same footprint and on the same site as the LDC building.
27. An additional enforcement complaint was received by the Council on 12 April 2021 (COM/21/0306/OD), which led to the service of the first (withdrawn) and then the current enforcement notice. As a result of this complaint the PCN was issued on 14 July, which was responded to by Mr Palmer on 11 August 2021. In this response he confirmed that: the Building was completed in May 2017, it is used as an independent residential dwelling (its only use) by himself only, his occupation commenced in May 2017, it has separate gas, electricity and water bills, and he does not use the main dwelling for cooking or eating or laundry.
28. Mr Palmer now claims not only that the Building was initially occupied incidentally to the use of The Rosary by installing his classic cars, motorbikes, gym, video games and a table tennis table in it between some date in April 2017 following Mrs Jacobs's site visit and when he started sleeping in it in late May 2017 (a period of no more than 6 weeks), but also that it is not used as an independent dwelling.
29. The explanation for this apparent change of mind is that the PCN was completed 'without the benefit of professional advice or an understanding of the case law ...'.⁸ I interpret that comment to mean that Mr Palmer's response to the PCN was simply an honest and truthful one, albeit I note that in paragraph 11 of his Witness Statement dated 25 October 2022 he says: 'I contacted Stoke Morgan Planning Consultants to obtain more information on

⁸ Appellants' Statement of Case, paragraph 18.

the letter I received [the letter and PCN from the Council] and after reviewing the document, Kit Stokes advised me that as I had been living in the outbuilding for over four years, I should be able to stay in the outbuilding.’ Whatever the true use of the Building in fact was, Mr Palmer’s version of events seems to vary depending on how favourable the outcome for him is likely to be, which certainly casts doubts on the credibility of his evidence to the Inquiry.

30. In relation to the first of these claims, – that the Building was first occupied incidental to The Rosary by storing Mr Palmer’s cars and motorbikes and as a gym etc – the Council has produced aerial photos from 14 and 17 June 2017 that shows scaffolding still surrounding it. Nonetheless, Mr Palmer maintains that he was able to install his classic cars into the (clearly unfinished) Building, thereby creating for no more than a 6-week period its interim incidental use prior to him starting to sleep in it from late May 2017. He says that he was able to do this by temporarily moving various scaffolding poles – which it was agreed by Mr Palmer were spaced vertically at about only 2m apart – in order to secure access for his cars into the Building’s garage. I consider this to be, at best, very unlikely because Mr Palmer is not a builder or scaffolder familiar with the stability of scaffolding and clearly values his classic cars and would I suggest be unlikely to risk any damage to them by installing them into a clearly unfinished building still surrounded by scaffolding.
31. For these reasons I conclude that the Building was never used incidentally to the use of The Rosary. On the contrary, it was designed and built either as a dwellinghouse or at the very least to provide residential accommodation. Whether Mr Palmer always intended the Building to be living accommodation/ a new house or whether he only decided this sometime following Sean Palmer’s return from Australia in January 2017 is a moot point, but I have no doubt that it was first built and occupied as such, whether or not it was completed by the end of April or at some later time in the spring or early summer of 2017. I agree with the appellants that it is now completed. The absence of a deck or terrace next to the rear patio doors does not mean it isn’t.
32. Even if there was a very brief period of a few weeks when cars and bikes and the gym equipment were installed in the Building, it was clearly being built as a dwelling/residential accommodation. Such a period, even if it did actually exist, would be purely the initial steps of moving stuff into the new Building and consequently there could not be said to be a change of use to a dwellinghouse sufficient to invoke a 4-year immunity period. As Mr Stokes conceded on cross-examination, storing gym equipment in a room in a building designed as a house does not make that house a gym. The forensic examination of the various invoices for various different works to the Building during the Inquiry in an attempt to establish exactly which works were done when was therefore irrelevant.
33. The appellants do not dispute that, if I determine that there has been a breach of planning control by material change of use, that breach has taken place less than 10 years following completion of the Building, which was sometime in the spring or early summer of 2017. Consequently, the appeal under ground (d) must fail.
34. In any case, it is more than likely that there has been deception here because Mr Palmer had no intention of constructing a swimming pool in the Building on

19 April 2017 when he said to Mrs Jacobs that that was his intention. This is because he deliberately concealed from the Council that what was being built was not an incidental building but a dwellinghouse by his replies to Mrs Jacob's queries.

35. That behaviour clearly falls within the four features identified by Lord Mance in the Supreme Court *Welwyn Hatfield* judgement as follows:
- i) positive deception in matters integral to the planning process;
 - ii) that deception was directly intended to undermine the planning process;
 - iii) it did undermine that process and;
 - iv) the wrong-doer would profit directly from the deception if the normal limitation period were to enable him to resist enforcement.
36. Under the principles established in *Welwyn Hatfield*⁹, he should not therefore be entitled to rely on the provisions of Section 171B of the Act, the time limits for taking enforcement action. In particular he cannot rely on S171B(1) or (2), the 4-year immunity period for operational development or change of use of any building to its use as a dwellinghouse, even if either could be established to have occurred. Clearly, in Mr Palmer's response to the PCN, he was relying on the fact that he had used the Building as a dwellinghouse for over 4 years to defeat the requirements of the first notice alleging unauthorised operational development, by his own admission as I explain above.

Ground (a)

37. 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.
38. The notice sets out that the breach of planning control is inappropriate development in the Bristol and Bath Green Belt because it does not fall within any of the exceptions in paragraphs 149 or 150 of the National Planning Policy Framework (NPPF). As such it is stated to also conflict with Policies CS5 and CS34 of the South Gloucestershire Local Plan Core Strategy adopted in December 2013 (the CS) and Policy PSP7 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan adopted in November 2017 (the LP). The development is also stated to cause harm to the Green Belt's openness by virtue of its built form.
39. I agree. CS Policy CS5 (Location of Development) only allows small scale infill development within the Green Belt within settlement boundaries and the site is not in one. It states that other proposals in the Green Belt will need to comply with NPPF provisions, which it doesn't, and with other LP policies, which it doesn't because it fails to protect the Green Belt from inappropriate development as required by Policy CS34 (Rural Areas). LP Policy PSP7 (Development in the Green Belt) reiterates the NPPF in stating that inappropriate development is harmful to the Green Belt and will not be acceptable unless very special circumstances can be demonstrated that clearly allow harm to the Green Belt, and any other harm.
40. The notice also states that the development fails to comply with Policy PSP40 (Residential Development in the Countryside) because development within the

⁹ *Welwyn Hatfield BC v Secretary of State for Communities and Local Government & Beesley* [2011] UKSC 15

open countryside will only be acceptable in four limited circumstances, none of which apply here. I agree.

41. It is also alleged by the Council that the Building, because of its single storey modern appearance in white render which differs from the more traditional appearance of other nearby dwellings, and the hardstanding around and in front of it, fails to respect or enhance the form, character, distinctiveness or amenity of both the site and its local context, contrary to Policies CS1 (High Quality Design), CS9 (Managing the Environment and Heritage), PSP1 (Local Distinctiveness), PSP2 (Landscape) and PSP38 (Development within Existing Residential Curtilages, Including Extensions and New Dwellings). I disagree. There is nothing particularly harmful or offensive about the design of the Building including the hardstanding in its local context including in terms of the design of nearby buildings and I cannot see any fundamental conflict with Policies CS9 or PSP2, because it exhibits no particular environmental or landscape harm to the area.
42. The appellants argue that the retention of the Building and its conversion into self-contained residential accommodation is compliant with LP Policy PSP39 because of its criteria: 1) it would not harm the character or amenity of the area; 2) it would not prejudice the amenity of neighbours; 3) it would provide adequate amenity space; and 4) provide adequate parking space. They also state it will comply with Policy PSP40 in terms of the conversion and re-use of existing buildings because the Building is of permanent and substantial construction. But obviously, these Policies only apply to buildings which are lawful, which this Building is not.
43. In terms of the covenant in the S106, for the Building only to be occupied as a residential annexe ancillary to the main dwelling of The Rosary, that would be unacceptable because it would fail to meet the above Green Belt policies. To allow it on this basis would unacceptably effectively 'wield a scythe' through such policies, which are some of the most currently restrictive planning policies in the country – for good reason.
44. The Building would have required planning permission as ancillary residential accommodation, as the Council's SPD¹⁰ makes clear. The Council has explained why the Building was granted an LDC – because it was incidental – and why a building of this size without a swimming pool would not now be granted another LDC, which I understand and agree with. The SPD, in paragraph 3.2 sets out that to be considered ancillary and not a separate planning unit, an annexe should embody a number of characteristics. Two of these are that: it be subservient (or lesser) in scale to the main house, and that it have (sic) an element of functional connection to it, such as a shared bathroom, living room or kitchen such that it still be reliant on the main building for some living functions. The Building does not fulfil either of those characteristics because it is nearly as large as the main house – actually bigger in terms of its footprint – and entirely functionally self-contained.
45. The reliance on the appellants of the permission for an ancillary annexe at Tudor Cottage, Almondbury are misplaced because the annexe in that case needed to share the kitchen, living and dining area, garden and access with the main house, which is clearly not the case here.

¹⁰ Annexes & Residential Outbuildings: Guidance for new developments Supplementary Planning Document, dated 2 October 2021

46. In terms of whether a fallback exists, the Building has been erected as a dwelling. Whether or not it was ever intended to contain a swimming pool, it does not now contain one and Mr Palmer acknowledged that he now has other priorities. Since it was only necessary to be this size, and an LDC was only granted on the basis that it would contain a swimming pool, a fallback position does not exist because, if the dwelling was demolished, the Council would be unlikely to approve another LDC under Class E for such a large building without a swimming pool and, even if it did, Mr Palmer would be unlikely to build it simply for incidental purposes – because he has not done so to date.
47. The appellants' citing of the *Warwick*¹¹ case as an argument for allowing the Building as an 'extension' is puzzling. The outbuilding in that case, which was judged to be an extension, only had a footprint of 16m². The Building in this case has a gross external area of 188m² compared to 215m² for The Rosary. It is clearly not an 'extension' because it is situated some distance away from The Rosary and is a large self-contained dwellinghouse. Even if it was to be considered an 'extension' as per *Warwick*, it could not conceivably be regarded as a proportionate addition to The Rosary sufficient to comply with the exception in paragraph 149 c) of the NPPF.
48. In summary, even though I find no breach in Policies CS1, CS9, PSP1, PSP2 or PSP38, that is inconsequential because of its fundamental conflict with Green Belt and spatial strategy policies, which means that it fails to comply with the development plan as a whole, as well as with the NPPF as a whole.
49. The above harm to the Green Belt, by reason of inappropriateness and adverse effect on openness, and the breach of the Council's spatial strategy by a material change of use involving the erection of a new dwelling outside a settlement boundary, all contrary to the development plan as a whole and the NPPF, is not outweighed by the above other considerations. Consequently, no very special circumstances exist to justify departure from such planning policies.

Ground (f)

50. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
51. Mr Palmer claims that the laying of the hardstanding was associated with his previous keeping of pigs on the eastern paddock and not part and parcel of the erection of the Building. The Council introduced photos dated 11 June 2015 at The Inquiry, which appear to show that although there are stone chippings between the road and the gates on the new access, there do not appear to be any within the site. These photos clearly followed the enforcement complaint about the new access received by the Council on 29 May 2015, subsequently closed because such access was considered to be permitted development, although it was conveyed to Mr Palmer that a hardstanding would require planning permission.
52. Mr Palmer said in his evidence that scalplings were installed within the site sometime after the Council officer's visit because the access and hard surface were both required in connection with keeping his pigs on the land. But I have

¹¹ *Warwick DC v Secretary of State for Communities and Local Government* [2022] EWHC 2145 (Admin)

no photographic evidence to back this up, the area of hardstanding is of a considerable size far larger than what would be required for the parking and turning of a vehicle required to transport a few pigs to the eastern paddock, and appears contemporaneous in appearance with the age of the Building. For these reasons I consider that the hardstanding was more than likely laid around the time the Building was erected, and was in all likelihood integral and part and parcel of the unauthorised residential development.

53. The appellants claim that the Building's removal would be excessive because it could be used lawfully for purposes incidental to the use of The Rosary, such as the storage of cars, motorbikes and use as a gym and games rooms, and could be easily entirely re-purposed to do so. They also argue that there is a 'fallback' position in that the LDC was granted and a new LDC would still be granted today for such a building incidental to the enjoyment of The Rosary by virtue of Class E, Part 1 of the GPDO¹². However, for the reasons addressed in ground (a), no such fallback position exists.
54. The Building is of a considerable size – it has a gross external area of 188m² compared to 215m² for The Rosary (a house of two floors) itself – with a larger footprint than the main house. It is a sizeable dwelling with three bedrooms and a very large kitchen/diner. An LDC was granted by the Council because the plans included an indoor swimming pool. It would not have been granted if it did not include the swimming pool because 'the size of the space would be seen as excessive for storage purposes alone', as the Council stated in paragraph 6.12 of its report concerning the LDC application in 2016. I can understand fully why the Council came to that conclusion. There is also the residential annexe building and additional outbuildings to the west of The Rosary which are also available for storage and ancillary residential uses.
55. I acknowledge the S106 covenants with the Council that the Building (or Annexe as it is referred to and currently named) shall only be occupied by Mr Palmer or his immediate family as a residential annexe to the main dwelling (The Rosary). But that does not negate the fact that it was built and continually used up until now as a separate dwelling.
56. There is no need for this Building as a dwellinghouse or for ancillary residential accommodation. Whilst I sympathise and appreciate the need for some separation of living space between Mr Palmer and Sean, due to the latter's health condition, this could be easily achieved by Mr Palmer occupying the western annexe, which has two bedrooms and has (retrospective) planning permission for use as a residential annexe ancillary to The Rosary (PK11/0595/F dated 4 July 2011). There is no requirement for two Annexes on the wider Rosary site.
57. With regard to *Kestrel Hydro*¹³, that case confirmed what had been established earlier in *Murfitt*¹⁴, *Somak Travel Ltd*¹⁵ and *Bowring*¹⁶, namely that operational development that was part and parcel of and integral to a material change of use, could be successfully enforced against by a material change of use notice under Section 171B(3).

¹² The Town and Country Planning (General Permitted Development) (England) Order 2015

¹³ *Kestrel Hydro v Secretary of State for Communities and Local Government* [2016] EWCA Civ 784

¹⁴ *Murfitt v Secretary of State for the Environment* (1980) 40 P. & C.R. 254

¹⁵ *Somak Travel Ltd. v Secretary of State for the Environment* (1988) 55 P. & C.R. 250

¹⁶ *Bowring v Secretary of State for Communities and Local Government* [2013] J.P.L. 1417

58. I have no doubt here that the Building, the hardstanding next to it identified edged green on the notice's plan and the drainage works in connection with it are all part and parcel of and integral to the formation of the unauthorised separate residential planning unit independent of The Rosary. That is because a new residential planning unit must perforce create a new dwelling of some form: it is impossible to imagine a new residential planning unit without one. In this case the dwelling is the Building and the Land it sits on, including its parking and turning area and garden.
59. The requirements of the notice are all therefore legitimate, in the same way that they were in the *Kestrel Hydro* case. Indeed, they could and should all be required in order to restore the land to its condition before the breach took place, as per the purpose in Section 173(4)(a) of the Act. I therefore find that the requirement to demolish the building does not exceed what is necessary to remedy the breach and the appeal on ground (f) therefore fails.
60. As set out above in relation to the ground (d) appeal, it was not the appellants' case at the Inquiry that they are claiming a 4-year immunity in its own right for the Building and saying that immunity trumps the Section 171B(3) 10 years. But, also set out above, even if they were claiming such, that claim would have failed anyway because of my finding of deception. Consequently, the implications of *Kestrel Hydro* in this sense are largely superfluous, albeit they provide additional weight for concluding that the requirements of the notice are not excessive.
61. I also note Lord Justice Lindblom's conclusions to the appellant's contention that the Inspector's approach to the ground (f) in the *Kestrel Hydro* appeal was in breach of Article 1 of the First Protocol of the Human Rights Act 1998 (the HRA), the protection of property. He concluded that because it would be necessary to require that the land be restored to its condition before the breach took place, the removal of the works associated with the unauthorised change of use would not be a disproportionate interference with the landowner's rights to the protection of his property under Article 1 of the First Protocol. LJ Lindblom's conclusions apply equally to this case, for the same reasons, both in respect of the ground (a) and ground (f) appeals.
62. Article 8 of the HRA, the right to respect for private and family life, is also relevant to the grounds (a) and (f) appeals since the notice's requirements would affect the way in which Mr Palmer and his family would live in the future. Whilst I acknowledge and am very sympathetic to the family's management of Sean Palmer's health issues, I have explained above why the Building is unnecessary, especially given its clear breach of Green Belt national and local planning policies and because Mr Palmer could equally live in the existing permitted western annexe. All the requirements of the notice are therefore a proportionate response to any effect on Mr Palmer's or the family's life.

Conclusion

63. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Fagan, INSPECTOR

APPEARANCES

FOR THE APPELLANT: Christian Hawley of No 5 Chambers called:

-Mark Palmer, Appellant

-Kit Stokes, MRTPI, Stokes Morgan Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY: Horatio Waller of Francis Taylor Building called:

-Aaron Bush, BSc (Hons), Planning Enforcement Officer at the Council

DOCUMENTS submitted at the Inquiry

1. Site Visit photos of the new access to the site dated 11 June 2015.