



Appeal Decisions

Site visit made on 23 August 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6TH SEPTEMBER 2023

Appeal A: APP/N0410/C/21/3286199

Appeal B: APP/N0410/C/21/3286203

Land at South End Cottage, Middle Green, Wexham, Buckinghamshire SL3 6BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr J Crockett and Appeal B is made by Mrs J Crockett against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice, numbered 18/10084/ENBEOP/EN/2, was issued on 29 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land comprising the addition of the use for the stationing of storage containers and mobile structure fixed in an elevated position above some of the storage containers with metal girders and external platform and staircase ("the unauthorised use") to the existing unauthorised mixed (sui generis) use for the storage of building products/materials, plant and equipment, motor vehicles and motor vehicle parts and associated residential use which is the subject of extant enforcement notice reference 18/10084/ENBEOP/EN/1/ issued on 29 June 2019.
- The requirements of the notice are cease the use of the land for the use comprising the addition of the use for the stationing of storage containers with metal girders and external platform and staircase ("the unauthorised use"); remove from the land the six storage containers, the approximate positions of which are identified on the attached Plan labelled SC1, SC2 (and also on the photograph attached to the Plan and on Plan 2 as) SC3, SC4, SC5 and SC6; and remove from the land the elevated mobile structure, metal girders and external platform and staircase, the approximate positions of which are identified on the attached plan and photograph attached to the Plan and Plan 2 labelled as MS, X, Y and Z.
- The period for compliance with the requirements is 1 month.
- Appeals A and B are proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Appeal C: APP/N0410/C/21/3286207

Appeal D: APP/N0410/C/21/3286212

Land at South End Cottage, Middle Green, Wexham, Buckinghamshire SL3 6BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C is made by Mr J Crockett and Appeal D is made by Mrs J Crockett against an enforcement notice issued by Buckinghamshire Council.

- The enforcement notice, numbered 18/10084/ENBEOP/EN/3, was issued on 29 September 2021.
 - The breach of planning control as alleged in the notice is failure to comply with conditions 6, 7, 8 and 9, subject to which planning permission 17/01846/RVC was granted on 20 April 2018. Condition 6 of planning permission 17/01846/RVC requires that: *'the outbuilding marked as the 'Summerhouse' (Plan Ref B108-L-014 Rev A) shall be demolished in its entirety or removed from the site, and all materials resulting from the removal/demolition of the outbuilding shall be removed from the site, within 18 months from the date of this permission or by the substantial completion of occupation of the development hereby permitted, whichever is the sooner'*. Condition 7 of planning permission 17/01846/RVC requires that: *'the outbuilding marked as the 'Carport/Store' (Plan Ref B108-L-014 Rev A) shall be demolished in its entirety or removed from the site, and all materials resulting from the removal/demolition of the outbuilding shall be removed from the site, within 18 months from the date of this permission or by the substantial completion of occupation of the development hereby permitted, whichever is the sooner'*. Condition 8 of planning permission 17/01846/RVC requires that: *'the outbuilding marked as the 'portacabin and utility room' (Plan Ref B108-L-014 Rev A) shall be demolished in its entirety or removed from the site, and all materials resulting from the removal/demolition of the outbuilding shall be removed from the site, within 18 months from the date of this permission or by the substantial completion of occupation of the development hereby permitted, whichever is the sooner'*. Condition 9 of planning permission 17/01846/RVC requires that: *'The outbuilding/structure marked as the 'mobile home' (Plan Ref B108-L-014 Rev A) shall be demolished in its entirety or removed from the site, and all materials resulting from the removal/demolition of the outbuilding shall be removed from the site, within 18 months from the date of this permission or by the substantial completion of occupation of the development hereby permitted, whichever is the sooner'*.
 - The requirements of the notice are demolish and/or remove from the Land the 'summerhouse', the position of which is shown annotated on the attached Plan and remove all materials resulting from the demolition of the Summerhouse from the Land in compliance with Condition 6 of planning permission reference 17/01846/RVC; and demolish and/or remove from the Land the 'carport/store', the position of which is shown annotated on the attached Plan and remove all materials resulting from the demolition of the Carport/Store from the Land in compliance with condition 7 of the planning permission reference 17/01846/RVC; and demolish and/or remove from the Land the 'portacabin and utility room', the position of which is shown annotated on the attached Plan and remove of all materials resulting from the demolition of the portacabin and utility room from the Land in compliance with condition 8 of planning permission reference 17/01846/RVC; and demolish and/or remove from the Land the 'mobile home', the position of which is shown annotated on the attached plan and remove all materials resulting from the demolition of the mobile home from the Land in compliance with condition 9 of planning permission reference 17/01846/RVC.
 - The period for compliance with the requirements is 3 months.
 - Appeal C is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended and appeal D is proceeding on the grounds set out in section 174(2) (c), (f) and (g). Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal E: APP/N0410/C/21/32862223

Appeal F: APP/N0410/C/21/32862225

Land at South End Cottage, Middle Green, Wexham, Buckinghamshire SL3 6BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal E is made by Mr J Crockett and Appeal F is made by Mrs J Crockett against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice, numbered 18/10084/ENBEOP/EN/4, was issued on 29 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, construction of two buildings (the "Unauthorised Development").
- The requirements of the notice are demolish the Unauthorised Development comprising the two buildings, in the approximate positions shown outlined and numbered (i) and (ii) on the attached plan and remove from the land all debris and materials arising as a result of compliance with step 5.1 above.
- The period for compliance with the requirements is 2 months.
- Appeal E and Appeal F are proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 30 August 2023.

Decisions

Appeal A: APP/N0410/C/21/3286199

1. It is directed that the enforcement notice be varied by deleting all of the words in paragraph 5.2 and replacing them with '*remove from the land six storage containers, the approximate positions of which are identified on plans attached to the notice and labelled SC1, SC2, SC3, SC4, SC5 and SC6*'. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/N0410/C/21/3286203

2. It is directed that the enforcement notice be varied by deleting all of the words in paragraph 5.2 and replacing them with '*remove from the land six storage containers, the approximate positions of which are identified on plans attached to the notice and labelled SC1, SC2, SC3, SC4, SC5 and SC6*'. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal C: APP/N0410/C/21/3286207

3. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D: APP/N0410/C/21/3286212

4. The appeal is dismissed and the enforcement notice is upheld.

Appeal E: APP/N0410/C/21/32862223

5. The appeal is dismissed and the enforcement notice is upheld.

Appeal F: APP/N0410/C/21/32862225

6. The appeal is dismissed and the enforcement notice is upheld.

Reasons

Relevant planning history

7. Planning permission was granted in 2012¹ for a replacement dwellinghouse on the site and this was subject to conditions requiring that all outbuildings be removed prior to commencement of the development. Following this an application was made under section 73 of the Act² where it was permitted that, of the outbuildings on the site, the building known as 'The Coachhouse' located immediately behind the dwellinghouse could be temporarily retained for storage during the building works, the outbuilding known as 'The Workshop' be permanently retained subject to part of it being demolished prior to commencement of development, and the removal of all other outbuildings including the timber outbuilding known as 'The Summerhouse' prior to the commencement of development.
8. On 20 April 2018, a further section 73 planning application³ was approved by the local planning authority which in effect sought to vary conditions 6 and 7 of planning permission 12/01335/FUL and conditions 6, 7, 8 and 9 of permission 13/00460/VC. The wording of the approved and varied conditions are in the relevant banner heading of this appeal decision, but in summary planning permission was granted for a replacement dwelling subject to the demolition and removal from the land of the 'Summerhouse', 'Carport/Store', 'Portacabin and utility room' and 'mobile home', as shown in plan Ref B1018-L-014 Rev A, within 18 months of 20 April 2018 (i.e. by 20 October 2019), or by the substantial completion or occupation of the development permitted, whichever was the sooner.
9. There is no dispute between the parties that the original dwellinghouse was demolished between about April 2015 and August 2016 and that this represented the lawful commencement of development of the approved dwellinghouse on the site.
10. The appeals before me relate to three separate enforcement notices as outlined in the banner headings above. However, the evidence is that a separate enforcement notice⁴, which was not appealed, became effective on 9 August 2019. This notice relates to '*the material change of use of the Land to a mixed (sui generis) use for the storage of building products/materials, plant and equipment, motor vehicles and motor vehicle parts and associated residential use*'. The notice requires residential use to cease in connection with the unauthorised use within six months of the effective date, and to cease the use of the land for the storage of building materials, products, plant and

¹ 12/01335/FUL

² 13/00460/VC

³ 17/01846/RVC

⁴ 18/10084/ENBEOP/EN/1

equipment, motor vehicles and motor vehicles parts (including removal from the land) within three months of the effective date.

11. The evidence indicates that the requirements of the aforementioned notice were not met. The evidence is that a prosecution hearing subsequently took place on 8 December 2021 and the appellants pleaded guilty. The local planning authority comment in their appeal statement that *'in the sentencing hearing the appellant made it clear to the court that he had not financial means of being able to construct the dwelling. The appellant claimed that all their savings had been used to pay the legal fees in relation to the first notice which left them with no money to continue to build'*.

Appeals A & B

The Notice

12. The appellants make the claim that the notice is a nullity as it is not clear what is alleged to have taken place in terms of the material change of use of the land and, furthermore, the *'stationing of storage containers and a mobile structure is not a use of land in planning terms'*. The appellants are clearly aware of notice 18/10084/ENBEOP/EN/1 (EN/1 Notice) which has taken effect as they have recently been actively involved in a prosecution hearing where they pleaded guilty.
13. I find that the notice does make is clear to the appellants what they have done wrong. The EN/1 Notice, which was not appealed and has taken effect, stated that the appeal site was being used without planning permission on the basis of a material change of use of the land to a *'mixed use (sui generis) use for the storage of building products/materials, plant and equipment, motor vehicles and motor vehicle parts and associated residential use'*. Reference to this mixed use in the breach of planning control that is the subject of the notice for appeals A & B adds clarity for the appellants in terms of knowing what they have done wrong.
14. The evidence is that the storage containers and mobile structure that are the subject of these appeals was not included in the EN/1 Notice. As a matter of fact and degree, I find that the containers and mobile structure do amount to a use of land and they have fundamentally changed the character of the appeal site.
15. I conclude that the notice does properly and fairly inform the appellants what they have done wrong and what they must do to remedy the breach of planning control. The notice is not, therefore, invalid or a nullity as claimed by the appellant.
16. Requirement 5.2 of the notice states *'remove from the land six storage containers, the approximate positions of which are identified on the attached plan labelled SC1, SC2, (and also on the photograph attached to the Plan and on Plan 2 as) SC3, SC4, SC5 and SC6'*. In the interests of precision, I am, satisfied that all of the words in paragraph 5.2 of the notice can be deleted, without injustice being caused to the main parties, and replaced with *'remove from the land six storage containers, the approximate positions of which are identified on plans attached to the notice and labelled SC1, SC2, SC3, SC4, SC5 and SC6'*. I shall accordingly vary the notice.

Ground (b) appeals

17. The appeals on ground (b) are made on the basis that the matters comprising the alleged breach of planning control have not occurred.
18. The ground (b) appeals are made by the appellants on the basis that when the notice was issued the storage containers and mobile structure were not a use of land. However, I find, as a matter of fact and degree, that they do not amount to operational development. In my judgment they can be moved with ease and there is no evidence from the appellant that they were ever intended to be positioned on the land on a permanent basis.
19. The appellants also make the claim that they are being used in association with the construction of an approved dwellinghouse on the site for which permitted development rights exist. This is a matter for the ground (c) appeal below.
20. I conclude that the evidence supports the view that when the notice was issued the matters comprising the breach of planning control had occurred. Therefore, the ground (b) appeals fail.

Ground (c) appeals

21. The appeals made on ground (c) are that the matters alleged do not constitute a breach of planning control.
22. The claim made by the appellants is that the containers and mobile structure are being used in connection with the construction of the approved dwelling on the site. They claim that they are permitted development and hence lawful owing to Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) which permits *'the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land'*.
23. However, the evidence is that while the appellant did demolish the original dwellinghouse on the site in about 2015 or 2016, no physical works have taken place on the site to build the approved property. A period of several years of inactivity is substantial and it cannot reasonably be said that when the notice was issued, the containers or mobile structure were required temporarily in connection with operations being carried out on the land.
24. While there is no dispute between the parties that there is an extant planning permission on the site for a dwellinghouse, the appellant has not provided me with any compelling evidence to indicate that they intend to build the house in the near future. Indeed, the local planning authority comment that the appellants have recently stated at a prosecution hearing that they do not have the *'financial means of being able to construct the dwelling'*. For these reasons, I do not find that the breach of planning control is permitted development by virtue of Class A of Part 4 of Schedule 2 of the GPDO.
25. At final comments stage, the appellants state that on 24 January 2022 and 7 February 2022 there was respectively the delivery of 20 piling cages. This post-dates the issued notice. It is necessary that I determine these appeals based on the situation and evidence that existed when the notice was issued. In any

event, the placed order for these cages pre-dated the court judgement relating to the prosecution into non-compliance with enforcement notice 18/10084/ENBEOP/EN/1. The Council's evidence, which has not been disputed by the appellant, states that at this prosecution hearing the appellants indicated that they no longer had funds to build the approved dwellinghouse. Furthermore, the provision of the said cages does not in itself equate to the construction of the dwellinghouse and, in these circumstances, it does not persuade me that there is reasonable evidence of an intent to construct the dwellinghouse in the near future.

26. Even if I were wrong in terms of the above, the appellant has not actually indicated, with sufficient detail, why the six containers and elevated mobile structure would actually be '*required*' for a temporary period. The onus is on the appellants to make their ground (c) appeals. I do not find that there is enough justification in terms of why so many containers and a mobile structure of the scale and numbers provided on site were '*required*', for a temporary period, when the notice was issued.
27. In this case, the evidence is that the original dwellinghouse has been demolished. The original residential use of the site has now gone along with any permitted development rights that may have existed in respect of such a use. In respect of the planning permission for a dwellinghouse on the site, permitted development rights would only bite upon implementation of the planning permission (i.e., substantial completion/use). That has not taken place, and, in any event, it is noteworthy that in approving planning permission on the site for a dwellinghouse, specified permitted development rights were removed from the property. Therefore, even if I were to consider the breach of planning control to constitute buildings, rather than uses of land, permitted development rights do not exist now or in the future in respect of residential use of the site.
28. For the above reasons, I conclude that the ground (c) appeals fail.

Ground (d) appeals

29. An appeal on 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. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
30. The appellants make the claim that the container marked 'SC1' on the plan attached to the notice has been on the land for more than ten years and so is immune from enforcement action. However, appendix 4 of the Council's statement of case includes a number of aerial photographs with dates that are not disputed by the appellants. These aerial photographs do not support the appellant's claim that the container marked 'SC1' has been on the land for more than ten years. On the evidence before me, and on the balance of probability, I therefore conclude that the container marked 'SC1' is not immune from enforcement action due to the passage of time. Therefore, the ground (d) appeals fail.

Ground (f) appeals

31. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
32. The appellant claims that the steps in the notice are excessive in so far as requiring the removal of containers containing materials which are being used and are to be used as part of the construction of a residential dwellinghouse on the site. However, I have already concluded that there is not sufficient evidence before me to indicate that when the notice was issued the containers were being used or were going to be used in connection with the construction of a dwellinghouse on the site.
33. The purpose of the notice is to remedy the breach of planning control. Therefore, steps required by the notice to include ceasing the use and removal of the containers and elevated mobile structure do not exceed what is necessary to remedy the breach of planning control. Therefore, I conclude that the ground (f) appeals fail.

Ground (g) appeals

34. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.
35. The appellant makes the claim that the reason for delay in constructing the approved dwellinghouse on the site has been due the Covid-19 pandemic lockdown periods, as one appellant underwent a surgical procedure in 2020, and as scaffolding was erected on the site for a period of time from April 2021 in connection with work to the neighbour's property pursuant to an injunction. The original dwelling on the site was demolished several years ago and so the aforementioned matters do not reasonably justify why no works have actually been undertaken to physically build the approved dwellinghouse on the site within what is a very significant period of time.
36. Notwithstanding the above, the appellants' comments are not actually pertinent to the consideration of the ground (g) appeals. The appellants provide no actual reason as to why it would not be possible to remove the containers and elevated mobile structure within one month. The request for 18 months rather than 1 month is not reasonably substantiated, and, in any event, such a compliance period would be tantamount to the grant of temporary planning permission.
37. For the above reasons, I conclude that the compliance period in the notice is reasonable and therefore the ground (g) appeals fail.

Appeals C & D

Ground (a) appeal and the deemed planning application (appeal C only)

38. An appeal made on ground (a) of s174 of the Act is that planning permission ought to be granted in respect of the breaches of planning control which may be constituted by the matters stated in the notices.

Main Issue

39. The appeal site falls within land designated as Metropolitan Green Belt. Therefore, the main issues are:

- whether or not the breach of planning control is inappropriate development in the Green Belt including its effect on openness,
- the effect of the breach of planning control on character and appearance of the area,
- the effect of the breach of planning control on setting of the adjacent listed building,
- the effect of the unauthorised development on the living conditions of the occupiers of neighbouring properties in respect of outlook and privacy, and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Whether inappropriate development in the Green Belt

40. Planning permission was approved in 2012 for a replacement dwellinghouse on the site. I have been provided with copies of the approved drawings, decision notice and officer report. In considering whether to approve planning permission for a larger replacement dwellinghouse on the site the local planning authority reasoned in its officer report that without the removal of the outbuildings *'the combination of these structures would result in inappropriate development within the Green Belt and an overdevelopment of the site and therefore if planning permission is to be forthcoming the outbuildings would need to be conditioned to be removed prior to the replacement dwelling being constructed'*.
41. The appellants ground (a) appeal is that they would like to retain the outbuildings / mobile home for a temporary period while the approved dwellinghouse is being constructed. However, this development has now been in situ for a considerable amount of time. Despite the original dwellinghouse being demolished on the site in about 2015/16, the approved replacement dwellinghouse has not been built on the site. In effect, temporary planning permission for the retention of the outbuildings has already been permitted by virtue of the conditions imposed in respect of planning permission 17/01846/RVC which enabled the retention of the appeal development for 18 months from 20 April 2018.
42. The appellants essentially request a further temporary planning permission for the outbuildings (including mobile home). However, this is without reasonable and persuasive justification from the appellants in terms of necessity in conjunction with the potential construction of a dwellinghouse on the site. Indeed, there is no compelling evidence before me that there is a realistic prospect of the approved dwellinghouse being constructed on the site any time soon for the reasons outlined elsewhere in my appeal decisions. In this context, it is noteworthy that the Planning Practice Guidance states that *'it will rarely be*

justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently’.

43. Owing to the position, number and scale of the outbuildings/mobile home that are the subject of this appeal, I find that they collectively cause harm to the openness of the Green Belt in their own right. There is an extant planning permission in place for the erection of a dwellinghouse on the site. I agree with the local planning authority, when it determined the 2012 planning application for a replacement dwellinghouse on the site, that if this was built there would be very significant cumulative harm caused to the openness of the Green Belt unless the appeal development was removed from the site. At this time, the removal of the appeal development was required by way of a pre-commencement of development condition.
44. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings is inappropriate development in the Green Belt, other than where there are identified exceptions. The development does not accord with any of the exceptions in paragraph 149 a) to g) of the Framework. Given the scale and quantum of development involved, it is not ‘limited’ infilling in a village. Even if I were to consider it to be the partial redevelopment of previously developed land, the land has been cleared of the former buildings and to this extent it is more open. If one were to consider the mobile home as a use of land as distinct from a building, I do not find that it would accord with paragraph 150 (e) of the Framework. This is because it is necessary that I consider the breach of planning control in its entirety or as whole. In this regard, the mobile home in conjunction with the other outbuildings does not preserve the openness of the Green Belt.
45. I find that whether the outbuildings/mobile home are considered in isolation, or in conjunction with the development of the approved dwellinghouse, they have a greater impact on the openness of the Green Belt than the existing lawful development on the site. Therefore, I conclude that allowing the development to be retained on the land, even on a temporary basis, amounts to inappropriate development in the Green Belt and hence there would be conflict with the Green Belt requirements of the Framework and policy GB1 of the South Bucks District Local Plan 1999 (LP). Inappropriate development in the Green Belt, is, by definition, harmful to the Green Belt and given paragraph 148 of the Framework this is a matter to which I afford substantial adverse weight in the planning balance.

Effect on the openness of the Green Belt

46. In spatial terms the outbuildings (including mobile home) cause some harm to the openness of the Green Belt. The evidence is that they are unauthorised and hence the land would be more open if they had not been built. The outbuildings (including mobile home) are not visible from longer distances. The adverse effect on the openness of the Green Belt is essentially a localised one in visual and spatial terms.

47. I conclude that this development has a limited adverse effect on the openness of the Green Belt. The harm to openness would be more significant if the replacement dwellinghouse was ever built.

Effect on the character and appearance of the area

48. Owing to the scattered position, use of materials and design of the outbuildings and mobile home, they do not reflect the more traditional properties that exist in the immediate area. They fail to suitably reflect the local context in design terms and hence adverse harm has been caused to the character and appearance of the area. I conclude that the retention of the outbuildings and mobile home, for a further temporary period, would cause unacceptable harm to the character and appearance of the area. Therefore, it would not accord with the design, character and appearance requirements of policy EP3 of the LP and chapter 12 of the Framework.

Effect on the setting of the adjacent listed building

49. The outbuildings and mobile home are in very close proximity to a Grade II listed building known as 'The Manor House' to the north and 'The Grange' which is a non-designated heritage asset. These buildings are architecturally grand and imposing and set within spacious grounds. The outbuildings and mobile home on the appeal site cause some harm to the significance of these designated and non-designated heritage assets in so far that they do not suitably respect the design, appearance and character of these nearby properties. Furthermore, owing to their scattered position on the site they have the effect of departing from the otherwise more open land that exists around The Manor House and The Grange.
50. I find that the retention of the outbuildings and mobile home, even on a temporary basis, would therefore cause harm to the setting of these neighbouring buildings. In the context of paragraph 202 of the Framework, the harm caused would be less than substantial. However, there are no identified public benefits arising from the temporary retention of the appeal development as a whole sufficient to outweigh the harm caused to the designated and non-designated heritage assets.
51. I conclude that the temporary retention of the appeal development would not preserve the setting of the designated and non-designated heritage assets and hence harm would be caused to the significance of these buildings. Therefore, the development does not accord with the conservation requirements of Core Policy 8 of the South Bucks Development Framework Core Strategy DPD 2011 and the Framework.

Effect on the living conditions of the occupiers of neighbouring residential properties in respect of outlook and privacy

52. While the Council raise concern about other unauthorised development on the site causing harm to the living conditions of the occupiers of neighbouring properties, including the storage containers, raised mobile structure, platform and steps, this development is not part of the consideration of this appeal (i.e., it is the subject of a different notice).
53. The outbuildings and mobile home are not in themselves of a height or in a position where any material harm has been caused to the living conditions of

the occupiers of neighbouring residential properties in terms of outlook or privacy. They do not have a dominant impact when seen from neighbouring properties and gardens and there has been no material loss of privacy.

54. I therefore conclude that the temporary retention of the outbuildings and mobile home would not cause any significant harm to the living conditions of the occupiers of neighbouring properties in respect of outlook and privacy. In this regard, I do not find that there is conflict with the amenity requirements of policy EP3 of the LP and paragraph 130(f) of the Framework.

Other considerations

55. The appellant essentially states that the outbuildings and mobile home should be allowed to be retained for a further temporary period as it would, in any event, be possible to utilise Class A, Part 4 of Schedule 2 GPDO permitted development rights which allow *'the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land'*.
56. However, the evidence before me is not persuasive that the outbuildings and mobile home are required now in connection with building the approved replacement dwellinghouse on the site. Furthermore, the evidence is that the appellants are unlikely to commence actual construction works in the very near future. I am not therefore persuaded that there is a realistic prospect of the approved replacement dwellinghouse being built in the near future.
57. While it is of course possible that the replacement dwellinghouse might be built at a future point in time, this has to be weighed against the clear harm that is being caused to the Green Belt and the other identified harms, coupled with the fact that a significant number of years have now passed without physical works taking place in terms of the actual erection of a replacement dwellinghouse on the site. In this regard, I do not afford the Class A, Part 4 Schedule 2 of the GPDO permitted development right position significant weight as a 'fall back' position. Furthermore, I would add that there is no compelling evidence before me to indicate that the outbuildings, in particular, are all *'required'* to meet the Class A, Part 4 Schedule 2 of the GPDO permitted development right. It might be the case that far less temporary development would be *'required'* if a replacement dwellinghouse were ever to be built on the site.

Deemed planning application planning balance and conclusion

58. The breach of planning control constitutes inappropriate development in the Green Belt. This is a matter to which I afford substantial adverse weight. Some limited harm would be caused to the openness of the Green Belt if the development was allowed to be retained for a further temporary period. Furthermore, some adverse harm has been caused to the character and appearance of the area and this has been the case for a considerable amount of time. I do not find that any significant harm has been caused from this development in respect of the living conditions of the occupiers of neighbouring residential properties. I find that the proposal causes harm to the setting of the adjacent designated and non-designated heritage assets and hence harm has been caused to their significance. Again, this harm has now existed for a considerable amount time.

59. I conclude that the harm to the Green Belt by reason of inappropriateness, and the other identified harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development. In reaching this conclusion, I accept that in refusing the deemed planning application and upholding the enforcement notice, it would result in the loss of a home for the appellants.
60. Given the above, there would be an infringement of rights under Article 8 of the Human Rights Act (HRA). However, the collective planning harm that I have identified is of such weight that upholding the enforcement notice and refusing planning permission is a proportionate, legitimate and necessary response that would not violate those persons rights under Article 8 of the HRA. I find that the protection of the public interest cannot be achieved by means that are less interfering of their rights.

Ground (c) appeals

61. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
62. The claim made by the appellants is that the buildings are being used in connection with the construction of a dwellinghouse on the site and hence benefit from Class A, Part 4 of Schedule 2 GPDO permitted development rights which allow *'the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land'*.
63. However, the evidence is that while the appellant did demolish the original house on the site in about 2015 or 2016, no physical works have taken place on the site to build the approved dwellinghouse. A period of several years of inactivity is substantial and it cannot reasonably be said that when the notice was issued, the outbuildings were required temporarily in connection with operations being carried out on the land.
64. While there is no dispute between the parties that there is an extant planning permission on the site for a dwellinghouse, the appellants have not provided me with any compelling evidence to indicate that they intend to build the house in the near future. Indeed, the local planning authority comment that the appellants have recently stated at a prosecution hearing that they do not have the *'financial means of being able to construct the dwelling'*. For these reasons, I do not find that the breach of planning control is permitted development by virtue of Class A of Part 4 of Schedule 2 of the GPDO.
65. At final comments stage, the appellants state that on 24 January 2022 and 7 February 2022 they respectively took delivery of fabricated 20 piling cages. This post-dates the issued notice. It is necessary that I determine this appeal on the basis of the situation and evidence that existed when the notice was issued. In any event, the placed order for these cages pre-dated the court judgement relating to prosecution into non-compliance with enforcement notice 18/10084/ENBEOP/EN/1. The Council's evidence, which has not been disputed by the appellant, states that at this prosecution hearing the appellants indicated that they no longer had funds to be build the approved dwellinghouse. The provision of the said cages does not in itself equate to the

construction of the dwellinghouse and, in these circumstances, it does not indicate an intent to construct the dwellinghouse in the near future.

66. Even if I were wrong in terms of the above, the appellants have not actually indicated, with sufficient detail, why the outbuildings would be 'required' for a temporary period. The onus is on the appellants to make their ground (c) appeals and I do not find that there is enough justification in terms of why so many outbuildings were 'required', for a temporary period, when the notice was issued.
67. In this case, the evidence is that the original dwellinghouse has been demolished. The original residential use of the site has now gone along with any permitted development rights that may have existed in respect of such a use. In respect of the planning permission for a dwellinghouse on the site, permitted development rights would only bite upon implementation of the planning permission (i.e., substantial completion/use). That has not taken place, and, in any event, it is noteworthy that in approving planning permission on the site for a dwellinghouse, specified permitted development rights were removed from the property. Therefore, even if I were to consider the breach of planning control to constitute buildings, rather than uses of land, residential permitted development rights do not exist now or in the future in respect of residential use of the site.
68. For the above reasons, I conclude that the ground (c) appeals fail.

Ground (f) appeals

69. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
70. The purpose of the notice is to remedy the breach of planning control, i.e. the breach of conditions 6, 7, 8 & 9 of planning permission 17/01846/RVC which required the removal of the outbuildings and mobile home by no later than 18 months from 20 April 2018. I have already concluded as part of the ground (c) appeals, that the evidence before me does not support the appellants claim that when the notice was issued the buildings were 'required' then or in the future in connection with the construction of a dwellinghouse on the site.
71. The appellants claim that if the buildings were demolished, they could be immediately erected for that purpose and hence should be allowed to be retained. Whether any future buildings erected on the site in connection with the possible construction of a replacement dwellinghouse would be permitted, utilising Class A of Part 4 of Schedule 2 GPDO permitted development rights, is a matter that would need to be addressed at that moment in time. It is necessary that I reach a view as to whether the steps required by the notice to be taken were excessive when the notice was issued. The evidence indicates that such steps are not excessive and that they would remedy the breach of planning control. Therefore, the ground (f) appeals fail.

Ground (g) appeals

72. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.
73. The appellants make the claim that the reason for delay in constructing the approved dwellinghouse on the site has been due the Covid-19 pandemic lockdown periods, as one appellant underwent a surgical procedure in 2020, and as scaffolding was erected on the site for a period of time from April 2021 in connection with work to the neighbours property pursuant to an injunction. The original dwelling on the site was demolished several years ago and so the aforementioned matters do not reasonably justify why no works have actually been undertaken to physically build the approved house on the site within what is a very significant period of time.
74. Notwithstanding the above, the appellants' comments are not actually pertinent to the consideration of the ground (g) appeals. The appellants provide no actual reason as to why it would not be possible to ensure compliance with conditions 6, 7, 8 and 9 of planning permission 17/01846/RVC, as approved on 20 April 2018, within three months. The request for 18 months rather than 3 months is not reasonably substantiated, and, in any event, such a compliance period would be tantamount to the grant of temporary planning permission.
75. I acknowledge that in upholding the notice, it would mean that the appellants no longer had a home on the site. However, I find that the protection of the public interest cannot be achieved by means that are less interfering of their rights under the HRA.
76. For the above reasons, I conclude that the compliance period in the notice is reasonable and therefore the ground (g) appeals fail.

Appeals E & F

Ground (b) appeals

77. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred.
78. The ground (b) appeal is made by the appellants on the basis it is unclear what building number (ii) on the plan attached to the notice relates to. The plan attached to the notice clearly identifies the building. I was able to see this building on my site visit and it suitably accords with that shown on the plan attached to the notice. Furthermore, it is noteworthy that the appellants refer to such a building as a 'shed' in paragraph 40 of their grounds of appeal document. Consequently, it cannot reasonably be said that they do not know what building the notice is directed at.
79. There is no compelling case made by the appellants that the matters comprising the alleged breach of planning control have not occurred. Therefore, the ground (b) appeals fail.

Ground (c) appeals

80. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.

81. The claim made by the appellants is that building (i) has the benefit of planning permission by reference to the permission granted under reference 12/01335/FUL as varied by decision notices reference 13/00460/RVC and reference 17/01846/RVC (condition 10). The appellants comment that building (i) has been partially demolished in accordance with condition 10.
82. The Council do not dispute that the removal of part of the workshop has taken place. However, this building has been extended to the rear. This is a large extension in the context of part of the remainder of the former workshop building to the extent that, as a matter of fact and degree, I find that, overall, a new building has been erected. While I accept that there is an internal physical separation between the extension and the original workshop building, the development is nonetheless seen as one coherent structure and hence one building. In my judgement, the development that has taken place has resulted in a substantially different building to that which was authorised by condition 10 of planning permission 17/01846/RVC.
83. The new building does not have the benefit of planning permission. The former dwellinghouse on the site has been demolished and hence associated Class E of Part 1 of Schedule 2 GPDO permitted development rights no longer exist. While the evidence is that there is an extant planning permission in place for a replacement dwellinghouse on the site, Class E of Part 1 of Schedule 2 GPDO permitted development rights relating to this approved dwellinghouse do not apply until such a dwellinghouse is substantially completed and the planning permission has been implemented. Furthermore, and as outlined elsewhere in the above appeal decisions, the appellants' evidence does not support a claim that the replacement dwellinghouse is being built, or that there is the likelihood of it being built soon. In addition, and, in any event, as part of the ground (c) appeals the appellants have not provided any persuasive or compelling evidence to demonstrate that the unauthorised building would be required in connection with Class A of Part 4 of Schedule 2 GPDO permitted development rights, even if such rights had existed at this moment in time.
84. In respect of building (ii), the appellant claims that this is not a building as it is not on a concrete base. As a matter of fact and degree, I find that it is a building. On my site visit, there was no evidence of a concrete base underneath building (ii), although I could not be certain that it was not fixed to the ground in another way. Even if it were not physically attached to the ground, there is no evidence to indicate that it has been moved or is intended to be moved around the site. In this regard, the evidence is that its siting is permanent.
85. The appellant states that it has '*fixings, tools and other building materials used for the construction of the house*'. However, the appellant does not provide any compelling evidence that when the notice was issued the building contained such fixing, tools or other building materials and, in any event, at this time the evidence does not support any claim that a dwellinghouse was being constructed on the site or that it was intended to be constructed any time soon. This building does not benefit from any permitted development rights, for the same reasons as detailed above, and requires planning permission.
86. For the above reasons, I conclude that the ground (c) appeals fail.

Ground (d) appeals

87. The appeal on 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. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
88. The appellants make the claim that buildings (i) and (ii) referred to in the notice have been in situ for at least 4 years prior to the date of the issued notice and so are immune from enforcement action. However, this claim has not been reasonably substantiated by means of the submission of objective and persuasive evidence.
89. The appellants claim that the works to the rear of the workshop (building (i)) were completed on 21 March 2015 and assert that dated photographs show this to be the case. However, the photographs are not in themselves dated and while there is a date of 21 March 2015 shown in the corner of a computer screen, there is ambiguity and uncertainty in terms of whether that date does in fact relate to when the photographs were taken. In addition, the rear extension to the workshop does not appear to be completed in the photograph. There is no door, and the roof does not appear to be finished.
90. In any event, the four-year immunity period is not relevant in this case. As a matter of fact and degree, I find that a new building has been erected on the site. This is in breach of condition 10 of 17/01846/RVC which states that once part of the workshop building had been removed, there should be no further '*enlargement, improvement or alteration*' to the resultant workshop building. Consequently, there has been a breach of planning condition No. 10 and the relevant immunity period is ten years. The development does not accord with plans approved as part of condition 10 of 17/01846/RVC and there is no objective evidence before me to demonstrate that the breach of planning control took place more than 10 years before the notice was issued.
91. In respect of building (ii), the photograph provided from the appellant is undated. Furthermore, it does not include a date in the corner of the computer screen like the other photographs. This does not provide conclusive and unambiguous proof that building (ii) has been on the land for more than four years.
92. Therefore, on the evidence before me, and on the balance of probability, I do not find that when the notice was issued it was too late to take enforcement action in respect of the breach of planning control. Consequently, the ground (d) appeals fail.

Ground (f) appeals

93. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
94. The purpose of the notice is to remedy the breach of planning control. Therefore, the steps required by the notice to demolish the buildings and

remove all debris and materials arising from such demolition do not exceed what is necessary to remedy the breach of planning control. The appellants do not actually submit any reasoning as to why they consider the steps to be excessive.

95. Therefore, the ground (f) appeals fail.

Ground (g) appeals

96. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.

97. The appellant makes the claim that the reason for delay in constructing the approved dwellinghouse on the site has been due the Covid-19 pandemic lockdown periods, as one appellant underwent a surgical procedure in 2020, and as scaffolding was erected on the site for a period of time from April 2021 in connection with work to the neighbour's property pursuant to an injunction. The original dwelling on the site was demolished several years ago and so the aforementioned matters do not reasonably justify why no works have actually been undertaken to physically build the approved dwellinghouse on the site within what is a very significant period of time.

98. Notwithstanding the above, the appellants' comments are not actually pertinent to the consideration of the ground (g) appeals. The appellants provide no actual reason as to why it would not be possible to demolish the buildings and remove associated debris and material from the land within two months. The request for 18 months rather than 2 months is not reasonably substantiated, and, in any event, such a compliance period would be tantamount to the grant of temporary planning permission.

99. For the above reasons, I conclude that the compliance period in the notice is reasonable and therefore the ground (g) appeals fail.

Other Matters

100. It has been brought to my attention that the Council declined to determine a further application made under s.73 of the Act in terms of seeking to vary conditions that are the subject of the permission for a replacement dwellinghouse on the site. In doing this, the Council exercised its power under s.70C of the Act. The appellants have asked me to make a 'determination' in respect of this matter. This is not relevant to the determination of the enforcement appeals that are before me and hence I pass no further comment on this matter.

101. The appellants have been keen to stress their view that if I uphold the notices, it will deny them an opportunity of fulfilling a lifelong dream of self-building a home on the site. However, this need not be an inevitable consequence. Indeed, the evidence is that there is an extant planning permission in place for a dwellinghouse on the site. Upholding the notices does not in itself mean it would not be possible for the appellants to construct a dwellinghouse on the site at a future date, although if such an option were to be pursued, I would suggest, for the avoidance of doubt, close engagement with the Council in terms of what can and cannot take place on the site.

102. The above other matters do not alter or outweigh my conclusions in respect of the respective appeals.

Conclusions

Appeal A: APP/N0410/C/21/3286199

103. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Appeal B: APP/N0410/C/21/3286203

104. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Appeal C: APP/N0410/C/21/3286207

105. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal D: APP/N0410/C/21/3286212

106. For the reasons given above, I consider that the appeal should not succeed.

Appeal E: APP/N0410/C/21/32862223

107. For the reasons given above, I consider that the appeal should not succeed.

Appeal F: APP/N0410/C/21/32862225

108. For the reasons given above, I consider that the appeal should not succeed.

D Hartley

INSPECTOR