
Appeal Decision

Hearing Held on 6 and 7 November 2024

Site visit made on 7 November 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 November 2024

Appeal Ref: APP/M0655/C/23/3334469

Land adjacent to 4 Beech Farm, Heath Lane, Croft, Warrington WA3 7DT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Warren Lee against an enforcement notice issued by Warrington Borough Council.
- The enforcement notice, numbered ENF/20/08321, was issued on 2 November 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land to a workshop and storage yard (for caravans, machinery, equipment, play equipment, vehicles, storage containers, and other paraphernalia), with associated fencing, hedge, gates, hardstanding, stables and covered area.
- The requirements of the notice are:
 - a) Cease the use land as a workshop and storage yard.
 - b) Remove from the land and not return all caravans, machinery, equipment, play equipment, vehicles, storage containers, and other paraphernalia, as well as fencing, hedge (adjacent the unauthorised fence), gates, hardstanding, stables and covered area.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 fall to be considered.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with corrections and variations

Procedural and Preliminary Matters

1. The appeal was initially submitted on grounds set out in section 174(2) (a), (b), (d) and (f) of the Town and Country Planning Act 1990 (the 1990 Act).
2. On my initial reading of the evidence, the appellant's contention that the use taking place on the site is ancillary or incidental to use of the 4 Beech Farm should properly be considered as an appeal on ground (c): namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The Council raised no objection to this and the appeal on ground (c) was discussed at the Hearing.
3. No appeal was initially made on ground (g): namely that the period for compliance specified in the notice falls short of what should reasonably be

allowed. At the Hearing, the possibility arose that a planning application might be submitted for the retention/relocation of the covered area in the event that the appeal was dismissed. In that scenario, the period of compliance of two months stated in the notice would clearly not be sufficient for that application to be submitted and determined before the notice took effect. Without prejudice to any decision that it may ultimately make should such an application be submitted, the Council raised no objection to the inclusion of an appeal on ground (g).

4. Since the enforcement notice was issued, the Council has adopted the Warrington Local Plan (the Local Plan). At the time the enforcement notice was issued, the development plan for the area comprised the Warrington Local Plan Core Strategy (Core Strategy), policies from which are cited in reasons for issuing the notice. The Core Strategy was superseded when the Local Plan was adopted. I have determined this appeal having regards to the policies in the Local Plan.
5. The appellant, Mr Warren Lee, lives permanently at the property known as 4 Beech Farm but has a gypsy heritage. He operates a business as a tree surgeon. He retains his gypsy heritage by, amongst other things, restoring and exhibiting traditional caravans, which he takes to various fairs and steam rallies. Bearing in mind Mr Lee's gypsy heritage, I have had regard to my responsibilities under the Public Sector Equality Duty (PSED) in determining this appeal. It was, however, agreed at the Hearing that the issues raised by this appeal do not fall to be considered against the policies set out in the Planning Policy for Traveller Sites (PPTS).

The Enforcement Notice

6. The appellant contends that, whilst not a nullity, the enforcement notice is defective in several respects and could not be corrected without causing injustice. In particular, the appellant considers that the area to which the notice relates, as shown on the plan attached to the notice, is excessive.
7. The appellant's concerns in relation to the red line depicted on the plan attached to the notice are entirely unfounded. The breach of planning control alleged in the notice falls within the area edged in red on that plan. That land is within the ownership of the appellant. A local planning authority is entitled to anticipate changes to defeat the operation of the notice by enforcing against a larger area than that in which the breach of planning control has been identified. The issue of the notice has no effect on the lawful use of the land beyond that on which the breach of planning control is actually taking place.
8. Nevertheless, the Council has produced a revised plan that shows the area to which the enforcement notice relates edged in red, within which is a smaller area edged in blue. The latter corresponds to an area to the rear of a garage erected with the benefit of planning permission in or around 2007 and which was hard surfaced at the same time (albeit within the benefit of planning permission). I will substitute that plan for the plan originally attached to the enforcement notice.
9. The next of these defects is the postcode for the appeal property. This was incorrectly stated in the notice as 'WA3 7DJ'. The correct postcode is 'WA3 7DT'. The location of the appeal site is clearly shown on the plan attached to the notice. It is also apparent that the appellant has understood that the notice relates to his property. I will therefore correct the notice in this respect.

10. The underlying basis of the appellant's complaint is that the notice was issued without adequate prior investigation, and does not take account of his personal circumstances and way of life. This complaint is also wholly without foundation. The Council served a Planning Contravention Notice (PCN) on the appellant. The completed PCN informed, in part, the breach of planning control that is alleged in the notice. The Council made at least one site visit, and took photographs of the site. The Council also reviewed the aerial photographs and other evidence relating to the site. In my view, that is more than sufficient to inform the decision whether it was expedient to issue the Enforcement Notice. Indeed, I fail to see what more the Council could have done by way of investigation prior to issuing the notice.
11. The appellant's point, it appears to me, is that the Council may have not issued the enforcement notice had it learned more about the appellant's way of life beforehand. However, there is no evidence before me to suggest that the Council would not have issued the enforcement notice had it engaged in those discussions. The Council heard the evidence at the Hearing and had the benefit of viewing the site with the added explanations provided by the appellant. It was entirely open to the Council to withdraw the notice on the strength of that new evidence. But it did not do so.
12. If anything, hearing and seeing that evidence appears only served to have reinforced the Council's opinion. I therefore have no reason to believe that the Council's view on the expediency of issuing the notice would have been different had it been aware of that information beforehand.
13. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land to a workshop and storage yard (for caravans, machinery, equipment, play equipment, vehicles, storage containers, and other paraphernalia), with associated fencing, hedge, gates, hardstanding, stables and covered area.
14. The focus of the appellant's complaint is on the word 'workshop'. The Oxford English Dictionary defines a 'workshop' as a room or building in which goods are manufactured or repaired. The word 'workshop' does not, to my mind, connote a use of land.
15. Nevertheless, on any plain reading, it is clear that the inclusion of the word 'workshop' in the breach of planning control alleged is intended to convey that the activity of manufacture, repair or maintenance of various things takes place on the land. It was evident from the presence of tools, equipment and various substances (such as oil) that these activities probably do take place on the land. This could include, for example, the repair/restoration/maintenance of the vintage commercial vehicle and traditional caravan by the appellant.
16. It appears to me that the primary use of the land that is alleged in the notice is a 'storage yard' to which other activities such as the repair, restoration and maintenance of various items would be ancillary. The notice could be amended to more accurately reflect the breach of planning control that is alleged. At the Hearing, I suggested that the word 'workshop' could be deleted and replaced with the phrase "together with the repair and maintenance of vehicles and equipment ancillary to that use". Neither the appellant nor the Council objected to wording. There would also then need to be an attendant amendment to the requirements of the notice.

17. In paragraph 3 of the notice, the items described as being in association with the alleged material change of use include 'storage containers'. It was confirmed at the Hearing that the storage containers facilitate the storage of other items on the land, rather than being stored there in their own right. The notice should therefore more properly alleged the 'stationing of storage containers on the land'.
18. The notice includes 'play equipment' amongst the items stored on the storage yard. This play equipment is located on the amenity area serving the residential development as a whole and not within the storage yard itself. Consequently, this play equipment could not be considered ancillary or incidental to the use of the storage yard. I will therefore delete it from the notice.
19. The notice also refers in paragraph 3 to a hedge as being in association with the alleged material change of use. However, the planting of a hedge is not development for purposes of section 55(1) of the 1990 Act. Consequently, this must be deleted from breach of planning control that is alleged. But it does not automatically follow that the hedge needs to be deleted from the requirements of the notice. That is a matter which will be considered in relation to the appeal on ground (f).
20. The requirement at 5(b) of the notice includes the phrase 'and not return'. Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the phrase 'and not return' is unnecessary and inappropriate. I shall therefore delete it.
21. I am satisfied that I can correct and vary the notice in all these respects without causing injustice.

The Planning Unit

22. With any appeal against an enforcement notice alleging a material change in the use of land, it is first necessary to identify the relevant planning unit. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

It is necessary to apply the principles established in *Burdle* to the facts of this case.

23. The lawful planning use of the land subject to the notice is amenity land, being part of the residential development granted on appeal in February 2005 (APP/M0655/A/04/1153366). Although available for use for all residents of Beech Close, the amenity land is owned by the appellant. It may therefore be considered as being a single unit of occupation in *Burdle* terms. This parcel of land was both functionally and physically self-contained, being separated from the residential dwellings, private gardens and communal parking areas by a series of fences. Consequently, as a matter of fact and degree, the planning unit prior to the breach of planning control alleged in the notice comprised the amenity area to the residential development known as Beech Close.
24. At some point in or around 2020, part of the amenity land associated with the residential development of Beech Close as a whole was enclosed by the erection of fence. At the time of my site visit, some of the panels of the garden fence to 4 Beech Close had been removed, thereby providing interconnectivity between that property and the area enclosed in or around 2020. Nevertheless, the main entrance to that land, and the only entrance capable of being used by vehicles, is provided by the gate installed at the same time as the fence. Consequently, as a matter of fact and degree, the area enclosed in or around 2020 is physically self-contained and separate.
25. The breach of planning control alleged in the notice takes place wholly within the land enclosed by the fence. It is a different use to that of the amenity area for Beech Close. Consequently, the area enclosed by the fence erected in or around 2020 is functionally separate.
26. I recognise that the area enclosed by the fence is within the same unit of occupation as the amenity area for Beech Close, both being owned by Mr Lee. Nevertheless, for the reasons set out above, I conclude that as a matter of fact and degree the breach of planning control that has occurred has resulted in the creation of a new planning unit in this smaller area.

Curtilage

27. Curtilage is not a use of land, and neither does it necessarily correspond with the planning unit. What constitutes the curtilage of a building has been considered by the courts on numerous occasions, but the judgment in *Challenge Fencing Ltd. v SSHCLG* [2019] EWHC 553 (Admin) rehearsed the most significant court judgments in relation to this issue.
28. In *Challenge Fencing*, the court identified the key propositions relating to the identification of a curtilage. These included:
- i) The extent of the curtilage of a building is a question of fact and degree
 - ii) The three Stephenson factors must be taken into account; a) Physical layout; b) The ownership past and present; c) The use or function of the land or buildings, past and present.
 - iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration
 - iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration, but it is not a legal requirement that the claimed curtilage should be ancillary

- v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant
 - vi) The relevant date on which to determine the extent of the curtilage is the date of the application, but will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself.
29. Applying these key propositions to the facts of this case, I firstly note that the layout plan submitted with that application for the residential development in 2005 shows that each house had its own defined garden. The remaining open space is described as an amenity area and is physically separate from the private garden areas. It therefore appears to me that when constructed, as a matter of fact and degree, the residential curtilage of each dwelling was the defined garden area.
30. There is no dispute that the appellant owns the land on which the breach of planning control is alleged to have occurred. This land previously formed part of the amenity land for the development of Beech Farm as a whole. The area over which the breach of planning control is alleged to have taken place is considerably in excess of 100% larger than the private garden space to 4 Beech Farm, and even more so than the dwelling itself. The land does now form one enclosure, sections of the boundary fence to 4 Beech Close having been removed. Nonetheless, by reason of its juxtaposition with 4 Beech Close, the land is not intimately associated with that dwelling.
31. At the time the enforcement notice was issued, the land was not being used as a private garden. It was therefore being used for a different purpose than the original curtilage of the property. Some aspects of that use could be considered ancillary to the use of 4 Beech Close as a dwelling, but the majority of the land was being used in connection with appellant's business or as amenity land for the development as a whole.
32. Consequently, as a matter of fact and degree, I conclude that on the date the enforcement notice was issued the land to which the enforcement notice relates could not be considered to fall within the curtilage of 4 Beech Close.

The appeal on ground (b)

33. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
34. The breach of planning control alleged in the notice is effectively in two parts: a workshop and a storage yard.
35. In terms of the alleged use as a storage yard, the evidence before me (not least the completed PCN) includes photographs of vehicles parked on the land. Amongst these vehicles are a recovery vehicle, vans, a motor home, older 'vintage' vehicles, machinery, horse trailer and numerous commercial trailers. There is no evidence before me to suggest that these vehicles and trailers were on the land for any other purpose than being stored there.

36. I acknowledge that some of these vehicles are used by the appellant in connection with his business. As I understood his evidence, Mr Lee sometimes (but not always) takes one or more of the vehicles to a particular job. The appellant might also take one or pieces of equipment to that particular job (for example, the stump grinder, lawn mower and various chainsaws). When not in use on a particular job, these vehicles and equipment are stored on the land.
37. The vintage vehicle and the traditional caravan are used by Mr Lee when travelling to various shows and fairs. When not being used for that purpose, they are stored on the land. At the site visit, Mr Lee explained that the vintage vehicle had not moved since it was taken to a steam rally some three months previously. Throughout that period, the vintage vehicle and traditional caravan were stored on the land.
38. Similarly, Mr Lee has acquired a motorhome which he takes when going on holiday. When not being used for that purpose, the motorhome is stored on the land. The motorhome has replaced a touring caravan that Mr Lee used previously. At the time of my site visit, that touring caravan was being offered for sale and is being stored on the land pending its eventual sale.
39. There is a commercial vehicle on the land which is currently not useable due to being involved in an accident. It is being stored on the land pending repair. That same vehicle is shown in photographs provided with the PCN response. Across the land are several other vehicles, including a fork-lift truck, at least two mowers and digger, some on a trailer. All of these are being stored on the site. In the context of the appeal on ground (b), it matters not what those vehicles/trailers are used for. The alleged breach of planning control is the material change of use to a storage yard. What is important is that the vehicles and trailers are being stored on the land.
40. There is a green-coloured 'unit' stationed on the east boundary of the land. This unit is used by Mr Lee to securely store his chainsaws and other equipment used in connection with his business, as well as sundry items such as oil and various cans. Indeed, as Mr Lee explained it, this unit is necessary to securely store expensive pieces of equipment overnight. There is a second unit adjacent to the covered area in which are stored various domestic items, such as Christmas decorations.
41. Within the covered area, and adjacent to it, there is all sorts of 'paraphernalia' associated with the appellant's business and hobbies. There is a small tractor which, I understand, belongs to the appellant's daughter and which on occasion is used by her to mow the land owned by Mr Lee. Amongst other things, there is a traditional 'knife-sharpening' cart. When not in use, these items are stored under the covered area.
42. I acknowledge that the use taking place within the enclosed area does not fall neatly into any one description. It could not, for example, be described as a 'contractors' yard' because although the majority of the yard is used in connection with the appellant's business, part of the yard is used for the storage of personal and/or domestic items. Furthermore, there is no photographic or documentary evidence to show that these vehicles were on the land for the purpose of being repaired, restored, maintained or cleaned. The yard could therefore not be described as 'vehicle repair yard', 'maintenance yard' or similar use.

43. Consequently, as a matter of fact and degree, I consider that the land is being used as a storage yard as alleged in the notice. I am satisfied that the notice accurately describes the breach of planning control that has occurred.
44. I conclude that the breach of planning control alleged in the notice has therefore occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

45. The ground of appeal is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
46. The lawful planning use of the land subject to the notice is amenity land associated with the residential development granted planning permission in 2005. The breach of planning control that has occurred could not reasonably be said to be ancillary to that use.
47. The appellant maintains that, whilst there has and continues to be storage on parts of the site, this is wholly associated with the long-term use of the land owned, maintained and used by the appellant and his family ever since they have been living at 4 Beech Close. However, this is not supported by the evidence.
48. The question as to what may be considered ancillary or incidental to the use a dwellinghouse was considered by the High Court in *Emin v Secretary of State for the Environment* [1989] J.P.L. 909, albeit in the context of a residential outbuilding rather than a parcel of land. Nevertheless, the general principles established in *Emin* remain relevant to this case.
49. In *Emin*, the Court held that the word "incidental" connotes an element of subordination, in land use terms, in relation to the enjoyment of the dwellinghouse itself. The Court endorsed the general approach that the test to be applied was whether the uses of the proposed buildings, when considered in the context of the "planning unit", are intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse. The Court held that it was correct to consider the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse.
50. Prior to the breach of planning control alleged in the notice taking place, the planning unit was the residential amenity area to the Beech Farm development as a whole. Applying the principles in *Emin* to the facts of this case, some of the vehicles, trailers and equipment stored on the appeal site would not typically be associated with a residential dwelling. For example, a recovery vehicle or a fork-lift truck could not reasonably be considered incidental to the use as a dwellinghouse.
51. Similarly, the number and range of trailers stored on the site are more likely than not to be used by the appellant in connection with his business. It is generally accepted, for example, that the use of one room as an office can be regarded as being incidental to the use of a building as a dwellinghouse. But as a matter of fact and degree the number of vehicles, trailers and other equipment stored on the land goes beyond what may reasonably be considered ancillary or incidental to a dwellinghouse.

52. I recognise that the appellant may at times repair or restore vehicles as part of his hobby. However, looked at in the round, only a relatively small number of vehicles visible in the photographic evidence (one or two at most) would reasonably qualify as being 'vintage'. I include in this number the tractors shown in the photographs, all of which appear to be relatively modern. I therefore have some difficulty in reconciling the appearance of these machines with the appellant's claim that he restores vintage tractors.
53. As a matter of fact and degree, I found that on the date on which the enforcement notice was issued the area of land on which the use was taking place was not within the curtilage of the dwelling known as 4 Beech Farm. The corollary is that use of land is less likely to be ancillary or incidental to the use of 4 Beech Farm as a dwellinghouse.
54. I conclude that the breach of planning control alleged in the notice is not ancillary or incidental to the dwelling known as 4 Beech Farm. In *Burdle* terms, it is therefore itself a primary use of the land.
55. There is also another consideration here. The appellant described the use of the area enclosed by the fence as an 'intensification' of the previous use of the land by the appellant. I am not persuaded that this is the case. In my view, the breach of planning control alleged in the notice is of an entirely different character to the use to that which took place prior to the erection of the fence. It is a different use.
56. In any event, even if there has been an intensification of a previous use, it is settled case law that the intensification of a use may amount to a material change of use if and where that causes the character of the use to change in a fundamental way. It applies when the former and present uses can only be distinguished in terms of scale and effects related to scale.
57. In this case, the photographic evidence from around 2012 provided by the appellant reveals the ad hoc use of the area now enclosed by the fence. For example, there are photographs of a vintage vehicle that the appellant was restoring and photographs of horses on the land. This use was very limited in scale, extent and intensity.
58. By contrast, photographs taken after the land was enclosed show a much more intensive use of the land and covering a much greater area. There were by that time several vehicles on the land, together with a variety of different trailers and equipment. There are then several structures on the land, with much paraphernalia associated with the use that is then taking place. The whole use was enclosed by fencing. The increase in the scale of the use had by that time reached the point where it gave rise to such materially different planning circumstances that, as a matter of fact and degree, it resulted in a such a change in the definable character of the use that it amounted to a material change of use.
59. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:
- ...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.*

60. It follows that the breach of planning control alleged in the notice constitutes development for the purposes of the 1990 Act. Section 57 of the 1990 Act states that planning permission is required development. No planning permission, deemed or otherwise, is in place for that development.
61. I conclude that that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

62. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
63. The evidence before me indicates that the definable character of the use took place only after the land was enclosed in or around 2020. This is clearly shown by comparison of the aerial photographs taken in September 2019 and December 2023. In the photograph taken in 2019, the area now enclosed by the fence is entirely laid to grass with any structures that were present being few in number and confined to the edges of the plot. In the later photograph, several vehicles are visible, together with miscellaneous equipment and paraphernalia. The covered area is clearly visible, together with a plethora of other smaller structures. The surface has been covered in hard surfacing. The change in the definable character of the use is plainly evident from comparison between those two photographs.
64. The aerial photographs provided by the appellant for the period 2009 to 2019 actually support the Council's case, it not being until April 2020 that there is the first evidence of the material change of use taking place. A year after that, in April 2021, the aerial photograph shows the material change of use to be well established.
65. The aerial photographs demonstrate that, at the very latest, the definable change in character took place in late 2019. Other evidence indicates that more likely than not this took place from 2020 onwards, following the erection of the fence. The breach of planning control alleged in the notice had therefore only been taking place for some four years at most on the date on which the notice was issued.
66. I have considered whether the area to the rear of the garage has been used for a longer period. The hard surfacing of the area took place at the same time as the erection of the garage, in or around 2007. There is some photographic evidence to show that this area was used between 2011 and 2015. However, two points arise.
67. Firstly, there is no evidence to show that the area to the rear of the garage was used for the breach of planning control alleged in the notice: i.e. as a storage yard. The photographs show the occasional vehicle parked on this land, but none of the other matters alleged in the notice. The land does not have the character of a storage yard on those dates. To that extent, the photographs are consistent with the aerial photographs taken between 2009 and 2019,

which again show a limited use of that space with no indication that the material change of use alleged in the notice is actually taking place at that time.

68. Secondly, it was held in *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 that a use can only become lawful if it continues throughout the relevant immunity period, such that the LPA could have taken enforcement action at any time. The evidence before me covers only a short period of time, with significant gaps in the timeline. For example, the appellant has provided no photographs taken from ground level between 2015 and 2021. Even the few photographs taken in February 2021 show that the use as a storage yard was not taking place on this land at that time, the photographs showing that apart from a bundle of hay next to the stable (then occupied by a horse) the space to the rear of the garage being completely clear of any storage on that date.
69. There is, therefore, no evidence that the land to the rear of the garage has been used as a storage yard continuously for a period of ten years, such that the Council could have initiated enforcement action at any point during that period. Consequently, I see no reason to treat this smaller parcel of land any differently to the larger area that was enclosed.
70. I conclude on the balance of probability that, on which the notice was issued, the Council was in a position to take enforcement action in respect of the breach of planning control that has occurred. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

71. The ground of appeal 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.
72. Section 177(5) of the 1990 Act provides that where an appeal against an enforcement notice is brought under section 174 of that Act, the appellant shall be deemed to have made an application for planning permission *in respect of the matters stated in the enforcement notice as constituting a breach of planning control* (emphasis added). It is clear from the wording of section 177(5) of the 1990 Act that planning permission can only be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control. In this case, the breach of planning control (as I propose to correct it) is, in summary, the material change of use of the land to a storage yard together with the repair and maintenance of vehicles and equipment ancillary to that use, with associated fencing, gates, hardstanding, stables and covered area.
73. The appellant put forward what he considers to be a more representative description for the deemed planning application, specifically: *Retrospective change of use of land for a use incidental to the enjoyment of the dwelling house, along with the retention of a boundary fence, gates, hardstanding, stables and covered area*. However, that is not the breach of planning control alleged in the notice. Consequently, pursuant to section 177(5) of the 1990 Act, I am not able to consider the deemed planning application on the basis of the wording proposed by the appellant.
74. The appeal site is within the Green Belt. There is no dispute that the breach of planning control alleged in the notice is inappropriate development in the Green

Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:

- the effect on the openness of the Green Belt
- the effect on the development on the character and appearance of the area and
- 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 the development.

Effect on the openness of the Green Belt

75. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect.
76. In this case, the appeal site originally formed part of a farm. However, all built structures associated with the farm have long-since been removed following the construction of the residential development granted planning permission in 2005. It follows that the presence of the buildings and other structures that once formed part of that farm are of no relevance to the openness of the Green Belt at this time.
77. Prior to the breach of planning control taking place, the land was amenity land associated with that residential development and was largely devoid of structures. Any structures that were present were confined to the eastern boundary of the site, such that the majority of the site was open land. To the south, east and west, the site is adjoined by open fields, that extend for a considerable distance in each direction. Even taking into account the residential development of Beech Close, the area immediately surrounding the appeal site itself is predominantly open and devoid of built form.
78. In spatial terms, the material change of use of the land and the structures associated with that use, both individually and cumulatively, have a significant harmful effect on the openness of the Green Belt. This is particularly true of the covered area which, notwithstanding that it is open-fronted, by reason of its height and overall size significantly harms the openness of the Green Belt in this location. The actual use of the land, including the storage of vehicles and other paraphernalia associated with the use, has a lesser albeit noticeable harm to the openness of the Green Belt. However, in spatial terms, the fence and gate have a very limited effect on the openness of the Green Belt, as does the hardstanding.
79. In visual terms, by reason of their height and size, the structures associated with the material change of use of the land contrast markedly with the general openness of the Green Belt in this location. Due to their height, size and extent, the covered area and the fence/gate are particularly harmful in this respect. The actual use of the land, by reason of the visual 'clutter' it creates, also causes significant harm to the openness of the Green Belt in visual terms. The hardstanding, insofar as it introduces an area of built form into otherwise open land, has a moderate harm to the openness of the Green Belt in visual terms. Consequently, both individually and cumulatively, the material change

of use of the land and the structures associated with that use have a significant harmful effect on the openness of the Green Belt in visual terms.

Character and appearance

80. The appeal site is at the interface of the residential development of the settlement of Croft and the agricultural fields to the south, east, and west.
81. To the north of the appeal site, the character is overtly residential. The appeal site is directly to the south of the residential development of Beech Close. Beyond that, and extending for some distance to the east and west, is a ribbon of residential properties fronting onto Heath Lane.
82. To the south, east and west of the appeal site are agricultural fields. The terrain is generally flat with relatively few trees, those trees that are present being generally confined to field boundaries. The character is overtly rural with, due to the absence of buildings and extensive tree cover, long-distance views over the landscape being possible.
83. The breach of planning control subject to the notice is not visible from outside of the area enclosed by the fence/gate erected in or around 2020, being screened by the laurel hedge on the outside of the fence planted by the appellant. Neither is the development within that area visible from Heath Lane, being completely screened by the vegetation along the eastern boundary of the site.
84. However, it is never prudent to rely on landscaping to screen a development that, without that landscaping, would itself be harmful to the character and appearance of the area. There is always the risk that landscaping might die back or otherwise fail over time. This would be the case here. Without that landscaping in place, by reason of its height, extent and overtly urban appearance, the fence would be harmful to the generally open and rural character of the land to the south, east and west and with which the appeal site is most associated. This open character forms part of the distinctiveness of the surrounding area and is an important component of the setting for the appeal site.
85. Moreover, the erection of the fence and its subsequent screening by the laurel hedge has created an artificial enclosure. This enclosure is the very antithesis of the generally open area to the north, east and west, as well as the open amenity area that formed part of the residential development granted planning permission in 2005. To that extent, the breach of planning control is also out of character with its surroundings.
86. I conclude that the breach of planning control unacceptably harms the character and appearance of the area. I therefore conclude that the development is contrary to Policies DC1 and DC6 of the Local Plan which, amongst other things, seeks to ensure that areas of countryside will continue to be protected from inappropriate development in accordance with their Green Belt designation, and respect, sustain and make a positive contribution to the local character and distinctiveness within the surrounding area.

Other considerations

87. The appellant operates his businesses as a tree surgeon from the appeal site. In connection with that, Mr Lee owns and uses some valuable pieces of

equipment that he needs to securely store, the other site to which he has access being remote and not providing adequate security. Mr Lee also has some larger pieces of equipment which he only uses as and when the particular need arises, some of which need to be transported to where they are needed on a trailer. These larger pieces of equipment are also of considerable value, and need to be securely stored pending use on particular jobs. The larger vehicles and trailers that Mr Lee uses for his work also need to be securely stored when not in use.

88. I accept entirely that the vehicles and equipment owned by Mr Lee and currently stored on the appeal site are essential for him to operate his business. However, on the evidence before me, or rather the lack of it, I am not persuaded that is necessary for the vehicles and equipment to be stored on the appeal site itself. I fully understand that it is convenient for Mr Lee to store his vehicle and equipment on the appeal site, and that it would be considerably less convenient if his vehicles and equipment were stored elsewhere.
89. However, there is no evidence before me that to show that, whilst no doubt less convenient, Mr Lee's business could not adequately function if his vehicles and equipment were stored elsewhere. Many businesses operate that way. Moreover, Mr Lee has provided no evidence to show that he has considered and explored what alternatives might be available to him. For example, there is no evidence that Mr Lee has commissioned a robust site search for secure storage facilities, including in terms of location, suitability, availability and cost. In the absence of that evidence, I am only able to afford this matter moderate weight.
90. It was suggested at the Hearing that the dismissal of the appeal would necessitate Mr Lee to close his business and, as a consequence, to lose his home. That assertion was not supported with any evidence and does not take into consideration what alternative courses of action would be open to Mr Lee. Accordingly, I attach little credence to that suggestion. It follows that there is no evidence to show that dismissing the appeal would interfere with Mr Lee's rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998. In particular, his rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would not be interfered with.
91. In addition to operating his business from the appeal site, Mr Lee also utilises that space to undertake his hobbies. This includes restoring traditional gypsy caravans, which he then takes to various fairs and steam rallies. I recognise that dismissing the appeal would significantly impede Mr Lee's ability to pursue his hobbies, and to that extent to pursue his traditional gypsy way of life. That is a material consideration that weighs in favour of granting planning permission.
92. A total of seven representations have been received in response to the notification of this appeal, all in support of the development that has taken place. These representations express the view that, amongst other things, the development that has taken place has improved both the Green Belt and the character of the area. These representations individually and cumulatively weigh in favour of granting planning permission for the development. However, the views expressed are not supported by any analysis or justification, and this reduces the weight that I can attach to this evidence.

93. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. Two conditions have been advanced. The first condition would require the submission of a Site Management Scheme (SMS) to include details of tree, hedge and shrub planting and details of bird and bat boxes. The second condition would require the submission of a Landscape and Environmental Management/Monitoring Plan (LEMP) to secure, amongst other things, a 10% Biodiversity Net Gain. However, in my view the harms identified are intrinsic to breach of planning control that has occurred and could not be overcome by the imposition of conditions.

Green Belt balancing exercise and conclusion on the ground (a) appeal

94. In accordance with paragraph 153 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. I further conclude that the development subject to the enforcement would have an unacceptably harmful effect on the character and appearance of the area, a matter to which I attach significant weight.
95. Against this, I attach moderate weight to the disruption to the appellant's business. I attach significant weight to the likelihood that dismissing the appeal would impede Mr Lee's ability to pursue his traditional gypsy way of life. I attach moderate weight to the representations in support of the development.
96. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.
97. For the reasons set out above, the breach of planning control alleged in the notice is also contrary to policies in the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

Alternative development

98. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to *any part of the land* to which the notice relates (my emphasis). It was suggested at the Hearing that I could, in the alternative to granting planning permission for all of the matters stated in the notice, grant planning permission only in relation to the area edged in blue on the revised plan.
99. This proposal arose from the appellant's contention that the breach of planning control is an extension of his use of the residential property at 4 Beech Close. In that context, I recognise that the area edged in blue could in isolation be considered to fall within the curtilage of that dwelling, given that it sits directly to the rear of the garage and directly adjoins the rear garden to that property.
100. However, it is clear from the wording of section 177(1)(a) of the 1990 Act that planning permission can only be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control. In this case, the material change of use alleged in the notice is not ancillary or

incidental to the dwellinghouse at 4 Beech Close. Moreover, even on only a relatively small scale, the use has the potential to cause harm to the openness of the Green Belt as well as the character and appearance of the area by reason of spatial bulk and/or visual clutter. For that reason, it would not be appropriate to grant planning permission in relation to just that part of the land shown edged in blue on the revised plan.

Conclusion on the appeal on ground (a) and the deemed planning application

101. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice, in whole or in part.

The appeal on ground (f)

102. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to vary them) include to cease the use land as a storage yard, and to remove from the land all caravans, machinery, equipment, vehicles, storage containers, and other paraphernalia, as well as fencing, hedge, gates, hardstanding, stables and covered area. The purpose of the notice must therefore be to remedy the breach of planning control.
103. The appellant argues that, if the 2.4m high fence and gates were reduced to a height of 2m, they would become permitted development under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). As such, the appellant considers that the requirements of the notice are excessive in seeking the total removal of the fence and gates.
104. However, it was held in *R (oao Watts) v SSETR & Hammersmith and Fulham LBC* [2002] JPL 1473 that permitted development rights under the GPDO cannot be claimed retrospectively by the removal of an element so as to return the residual development to the permitted tolerance. It follows from *Watts* that the reduction of the fence and gate to a height of 2m would not make the fence and gate permitted development under the GPDO. Moreover, reducing the height of the fence and gates would not achieve the purpose of the notice.
105. The question arose at the Hearing whether the notice could require the removal of the hedge in front of the fence and gates. The planting of that hedge would not have constituted development for the purposes of section 55(1) of the 1990 Act. Indeed, for that reason I shall delete the hedge from the breach of planning control alleged in the notice.
106. It was held in *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate that material change of use, the enforcement notice may require that the 'ancillary' or 'incidental' works are

removed in order that the site is restored to its previous condition and the breach of planning control is remedied.

107. The application of the so-called “Murfitt principle” was considered by the Court of Appeal in *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467. In *Caldwell*, the Court of Appeal reviewed relevant case law and held that the Murfitt principle did not apply in circumstances where the operational development is itself the source of or fundamental to the relevant change of use. In particular, the principle does not extend to works that are more than merely ancillary or secondary and are instead fundamental to or causative of the change of use itself.
108. The appellant explained that the hedge was planted to soften the appearance of the fence and gate, with the added benefit of encouraging wildlife. In *Caldwell* terms, the planting of the hedge was therefore not fundamental to the material change of use attached by the notice, but is more properly considered as be ancillary or incidental to it.
109. As discussed at the Hearing, it is also settled case law¹ that an enforcement notice can require the removal of works which did not amount to ‘development’ at all, but had facilitated an unauthorised material change of use. That particular case involved the removal of an internal staircase linking two floors of a travel agency, which had obvious benefits to the functioning of that use. On that basis, the court held that the internal staircase was integral to or part and parcel of the material change of use.
110. In this case, the hedge could not properly be said to have facilitated the material change of use alleged in the notice: that would have taken place with or without the planting of the hedge. Nonetheless, the hedge is part and parcel of the breach of planning control that has occurred, having been planted for the express purpose of screening the fence that encloses the material change of use alleged in the notice. In *Caldwell* terms, it is ancillary or secondary to that material change of use. On that basis, applying the principles established in *Murfitt* and as interpreted in *Caldwell* to the facts in this case, I am satisfied that the enforcement notice can require the removal of the hedge.
111. In support of its position, the Council referred to a recent appeal position in which the Inspector found that the removal of a laurel hedge was not excessive insofar as it facilitated the unauthorised use and that the Murfitt principle therefore applied (APP/M0655/C/23/3319286). On the facts of the case before me, I have taken a different view as to whether the hedge facilitated the breach of planning control that is alleged. Nevertheless, the finding of that Inspector is consistent with my own view that the Murfitt principle permits the removal of ‘works’ that do not constitute development for the purposes of section 55(1) of the 1990 Act.
112. For the avoidance of any doubt, given my conclusions under ground (d) above, the requirement in the notice to remove the hardsurfacing includes the area to the rear of the garage (as shown edged in blue on the revised enforcement notice plan). I recognise that this hard surface was laid in or around 2007 and has therefore been in place in excess of four years, such that in other circumstances it would now be immune from enforcement action by reason of section 171B(1) of the 1990 Act. However, insofar that this area of

¹ *Somak Travel v SSE & Brent LBC* [1987] JPL 630

hard surface has facilitated the material change of use alleged in the notice, I am satisfied that the Murfitt principle extends to this area of hardsurfacing.

113. I conclude that the requirements of the notice do not exceed what is necessary to achieve the purpose of the notice. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

114. The appellant now seeks a compliance period of six months in order that a planning application might be submitted for the retention/relocation of the covered area. The Council anticipates that it would be able to determine that application within this time period provided, of course, that the application was submitted promptly. I am satisfied that this would be a proportionate response to the breach of planning control that has taken place. I will vary the notice accordingly.

115. The appeal on ground (g) succeeds to that extent.

Conclusion

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

Formal Decision

117. It is directed that the enforcement notice is corrected by:
- in paragraph 2 of the notice, deleting the postcode "WA3 7DJ" and substituting there "WA3 7DT"
 - in paragraph 3 of the notice, deleting the words "workshop and" and, after the words in parentheses, adding the words "together with the repair and maintenance of vehicles and equipment ancillary to that use"
 - in paragraph 3 of the notice, deleting the words "storage containers" and substituting there the words "the stationing of storage containers on the land"
 - in paragraph 3 of the notice, deleting the words "play equipment"
 - in paragraph 3 of the notice, deleting the word "hedge"
 - deleting the plan attached to the notice and replacing it with the plan attached to this Decision.
118. It is directed that the enforcement notice is varied by:
- in paragraph 5(a) of the notice, deleting the words "workshop and" and after the words "storage yard" adding the words "and cease the repair and maintenance of vehicles and equipment ancillary to that use and cease the stationing of storage containers on the land"
 - in paragraph 5(b) of the notice, deleting the words "and not return"
 - in paragraph 5(b) of the notice, deleting the words "play equipment"

- in paragraph 6 of the notice, deleting the words “two months” and substituting there the words “six months”

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

Paul Freer
INSPECTOR

APPEARANCES

For the appellant:

Mr Warren Lee

Appellant

Mr Travis Lee

Mr Mike Carr

MAT Design Limited

For the Local Planning Authority:

Mr Jason Lewis

Principal Officer Environmental
Enforcement

Ms Sandra Beckett

Senior Enforcement Officer

Interested Persons (site visit only)

Councillor Valerie Allen

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Site layout plan for the development at Beech Farm, Heath Lane, Warrington.
- 2/ Landscape plan for the development at Beech Farm, Heath Lane, Warrington.
- 3/ Application plans for garage at 4 Beech Close submitted as part of planning application 2006/09113
- 4/ Extracts from appeal decision APP/M0655/A/04/1153366 in relation to the erection of 4 detached houses with associated parking and landscaping at Beech Farm, Heath Lane, Warrington.
- 5/ Copy of appeal decision APP/M0655/C/23/3319286 relating to a site at Well Lane, Lower Stretton, Warrington WA4 4PA

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1/ Amended enforcement notice plan
- 2/ List of conditions



Plan

This is the plan referred to in my decision dated: 18 November 2024

by Paul Freer BA(Hons) LLM PhD MRTPI

Land at: 4 Beech Farm, Heath Lane, Croft, Warrington WA3 7DT

Reference: APP/M0655/C/23/3334469

Scale: not to scale

