Appeal Decisions

Site visit made on 18 December 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal A Ref: APP/N5090/C/23/3330636
Appeal B Ref: APP/N5090/C/23/3330301
Yard at The Spinney, 22 Hendon Wood Lane, London, NW7 4HR

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended, (the 1990 Act).
- Appeal A is made by Mr GMP Fitzgerald against an enforcement notice issued by the Council of the London Borough of Barnet.
- Appeal B is made by Miss Lindsay Havens of JW Waste Management Ltd T/A Woodsie's Waste.
- The notice was issued on 24 August 2023.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land (shown edged in blue on attached Aerial Image 01) to a waste/recycling transfer and sorting yard and the erection of a structure (shown edged in yellow on attached Aerial Image 01) and permanent stationing of a shipping container (shown edged in green on attached Aerial Image 01) incidental to the making of the change of use.
- The requirements of the notice are to:
    1) Cease the use of the land shown edged in blue on attached Aerial Image 01 as a waste/recycling, transfer and sorting yard.
    2) Restore the land back to the state in which it was prior to the breach of planning control by:
        a) Demolishing the structure shown edged in yellow on attached Aerial Image 01.
        b) Removing from the land the shipping container shown edged in green on attached Aerial image 01.
        c) Restoring the fence along the edge of the original yard, shown in red on attached Drawing No1. Fencing to not exceed two metres in height as measured from ground level.
    3) Permanently remove all constituent materials, resulting from the works in 2.a) above from the land.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on grounds (b), (c), (d), (e), (f) and (g). Since, no fee was paid within the specified period, the ground (a) appeal has lapsed.

Summary of Decisions: The appeals are dismissed, and the enforcement notice is upheld in the terms set out below in the Formal Decisions.

Applications for costs

1. Applications for costs have been made by (1) Mr GMP Fitzgerald and (2) Miss Lindsay Havens of JW Waste Management Ltd T/A Woodsie's Waste against the Council of the London Borough of Barnet. The applications are the subject of a separate Decision.

Preliminary Matters

2. The appeals were submitted separately, however, both parties have requested that their respective grounds of appeal and related evidence is incorporated and

considered in its totality. I have, therefore, determined the appeals together in one decision letter.

3. The appellants argue that the notice is a nullity because it fails to comply with the requirements of s173(10) of the 1990 Act and Regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations).

4. S173(10) provides that "an enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174". Regulation 5 also requires every copy of an enforcement notice to be accompanied by an explanatory note.

5. By way of explanation, a notice is null if it is 'defective on its face', normally by missing some vital element that it 'shall' include under s173. A fundamental error in the notice renders it a nullity. There is, in effect, no enforcement notice as such; and there is nothing to be corrected or subject to any ground of appeal set out under s174(2). On the other hand, a notice is invalid if it is flawed in some way, but not so defective as to be a nullity. An invalid notice can be corrected/varied by an Inspector under s176 of the 1990 Act provided the correction or variation will not cause injustice to the appellant or the local planning authority.

6. The Council has provided a copy of the enforcement notice. This included an Annex which set out that there is a right to appeal against the notice and the date by which any appeal must be received by the Secretary of State. It refers to an information sheet from the Planning Inspectorate, which was included, and explains the appeal process and procedures. On this basis, I am satisfied that the Council has met the requirements of s173(10) and Regulation 5. In any event, the appellants have been able to make valid appeals and they have suffered no injustice or prejudice.

7. It is further argued that the Council did not have the requisite power to issue the notice, and additional arguments about expediency are made. The proper course in such cases is to challenge the issue of the notice by way of judicial review. The Courts have held that whether the local planning authority had the required delegations in place when the enforcement notice was issued does not fall within the scope of what can amount to a nullity argument[1]. Any challenge as to whether it was 'expedient' for the local planning authority to issue the notice must be pursued by way of judicial review.

8. The appellant refers to a case *R v Brent London Borough Council ex parte Gunning* [1985] QB 839, but this has not been provided and the explanation of its relevance is very limited.

9. Overall, I am satisfied that the notice is not a nullity or otherwise invalid.

The ground (e) appeals

10. Ground (e) is that copies of the notice were not served as required by s172 of the 1990 Act.

[1] *Britannia Assets (UK) Ltd v SSCLG* [2011] EWHC 1980 (Admin); *Beg & Others v Luton BC* [2017] EWHC 3435 (Admin).

11. The appellants have failed to specify why it is considered that the requirements of s172(2) have not been met. I have been provided with a copy of the notice, as issued, along with a list of persons served and a signed certificate of service. There is no argument that the notice was not served on every owner and/or occupier and/or a person having an interest in the land. Instead, the nullity arguments are reiterated, which are dealt with above.

12. I understand that a previous notice relating to the same breach at the site was withdrawn following confirmation by the Inspector that the appeal would be succeeding on ground (e)[2]. The Council says the concerns identified by the Inspector have been addressed. There is no evidence to the contrary.

13. There is a further claim about where the onus of proof lies in relation to ground (e) and the case of *Nelsovil*[3] is cited. I disagree with Appellant A's interpretation of the case, and I disagree that the commentary highlighted translates to a requirement that the burden of proof rests with the Council. In any event, the Council has provided sufficient evidence in relation to its service of the notice in accordance with s172.

14. Moreover, s176(5) provides that where a person required to be served with a copy of the notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced. The appellants received correct copies of the notice and made valid appeals, hence, they were not substantially prejudiced.

15. The ground (e) appeals must fail, therefore.

The ground (b) appeals

16. To succeed on ground (b), the appellants must show on the balance of probabilities that the matters alleged have not occurred as a matter of fact.

17. It is claimed that the land is not in use as a waste/recycling, transfer and sorting yard as alleged but, instead, is in use as a storage yard with a number of "roll-on, roll-off containers" or bins to assist the temporary storage of building materials and other incidental items.

18. It is explained that Appellant A is the freehold owner of the yard, which is occupied by a waste collection business (Appellant B). The site is used to deposit waste collected from businesses or residential occupiers. The activities involve the unloading of goods by the site operator or the contractor who regularly collects and replaces the bins on the site, which are then moved to a licensed waste transfer station. It is argued that the waste is not mixed, separated or sorted but is stored for disposal elsewhere, and there is no specialised waste operation machinery. It is said that vehicle movements are limited to the site operator's three vans, which make daily visits, and the contractor's vehicle that collects and replaces the bins.

19. The Council has provided photographs from a site visit, which show skips filled with what appears to be builders' waste, a container with what looks to be building waste, piled timber, piles of rubble and garden waste. There is some scaffolding on top of another container, and a photograph supplied by Appellant A shows a further small amount of scaffolding within the yard, along with plastic waste,

[2] Appeal ref: APP/N5090/C/23/3320821.
[3] *Nelsovil v MHLG* [1962] 1 WLR 404.

cylinders and timber. The Council's photographs also show a mechanical digger at the site. The evidence shows that waste is brought to the site, sorted by type, put into receptables and then removed for final disposal elsewhere.

20. A storage use implies activity where material is brought to the site and deposited there. It is likely that such stored material would remain on the site for relatively long periods, although it may be removed temporarily and returned. In contrast, the activities taking place at the appeal site involve the temporary deposit of waste that is then put into the appropriate bin or container before removal by a contractor. The sorting and recycling of waste, which on the appellants' own evidence is the main activity taking place on the site, cannot be considered a storage use.

21. The appellant quotes from caselaw, where it is indicated that the Courts held "the deposit of waste into receptacles, pending collection for final disposal at some other location, amounts to storage rather than disposal of refuse"[4]. The transcripts have not been provided so I am unable to assess the relevancy or the full balance of considerations that informed the judgments. However, it seems that the comparison was being made with "the disposal of refuse", which is not what is alleged in this case. Crucially, it has not been shown that no waste/recycling, transfer and sorting takes place at the site.

22. To conclude on this ground of appeal, I find that the appellants have not shown on the balance of probabilities that the matters alleged have not occurred as a matter of fact. The ground (b) appeals fail, therefore.

The ground (c) appeals

23. To succeed on ground (c), the appellants must show on the balance of probabilities, that the matters alleged do not constitute a breach of planning control. Under s57(1) of the 1990 Act, planning permission is required for development. S55(1) provides that the making of any material change in the use of any buildings or other land is development for the purposes of the 1990 Act and related legislation.

24. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

25. It is claimed that the use of the site for the matters alleged are a continuation of its lawful use pursuant to a lawful development certificate (LDC) that was granted on 22 August 2018 for the "use of site as a scaffold yard" (ref 16/7228/191). It is argued that the LDC allows an unrestricted B8 - storage use[5] and the waste element at the site is incidental to that storage use. Caselaw is cited which Appellant A says acknowledges the handing and transfer of waste ancillary to a primary use of storage or distribution may fall within Class B8[6].

26. S191(6) of the 1990 Act provides that the lawfulness of any use, for which an LDC is in force under s191 'shall be conclusively presumed'. Thus, the use described in

[4] *Jenkins v SSECLG* [1998] EWHC Admin 239; endorsed in *Russells Hall Hospital v SSCLG* [2012] EWHC 1448 (Admin).
[5] This refers to the Town and Country Planning (use Classes) Order 1987.
[6] *Newark and Sherwood DC v SSE & Dover DC* [1996] 72 P and CR 101; *Hallam Land Management Ltd v SSCLG* [2018] EWCA Civ 1808; *Fox Brothers v SSCLG* [2014] EWHC 542; *R (Cotswold DC) v SSGLG* [2015] EWHC 1943.

an LDC issued under s191 is shown to have been protected from enforcement action on the date of the application, and it will remain so unless and until there is a material change in circumstances.

27. I have not been provided with a copy of the plan accompanying the LDC, however, the Council's evidence includes a 'Google Earth Pro' image, dated 8 April 2017, showing the yard. The approximate area of the lawful scaffold yard is outlined in red. It is apparent that the site area has been extended and a building has been demolished. Only part of the site subject to the notice is covered by the LDC. Consequently, the lawfulness conferred by the certificate cannot apply to the site enforced against.

28. It is suggested that the land outside of that covered by the LDC has gained immunity for B8 purposes due to the passage of time. There is no evidence before me to justify this. A previous appeal[7], which was allowed on ground (d), also concerned a smaller site.

29. In addition, I have found that the main activity taking place on the site involves the deposit and sorting of waste, ready for removal and disposal elsewhere. This involves bringing waste material to the site by van, which is unloaded. The material is then sorted and put into the appropriate container. The containers remain on the site for relatively short periods before being taken away by a contractor. These are replaced with empty containers that are again filled prior to removal.

30. The previous lawful use as a scaffold yard would have involved the storage of scaffolding poles and related equipment. This would have been kept on the site, removed for use elsewhere for temporary periods and then returned. It is not apparent that there were bins or moveable containers on the site, nor would there have been piles of rubble or timber as is the case with the current use. It is likely that the vehicle movements in association with the use would have been fewer.

31. Overall, I find as a matter of fact and degree, that the use as a waste/recycling transfer and sorting yard, as alleged, has resulted in a significant difference in the character of the use of the land, such that it amounts to a material change of use for which planning permission is required. Even if I were persuaded that the use should be considered a B8 use, it would not benefit from the provisions of the LDC as the site area is significantly larger and includes land previously used as residential and/or parking. This would comprise a change of use which would be highly likely to be material.

32. Appellant A maintains that the shipping container is not development as it is a movable structure and operates in the same way as the roll-on, roll-off containers, despite being larger.

33. The Courts[8] have established that there are three primary factors that are decisive of what was a building. These are size, permanence and physical attachment. The container is constructed of steel and, although, not physically attached to the land, it could be considered immoveable due to its weight. Crucially, despite assertions to the contrary, there is no evidence that the container has moved since it was sited. It is used as office facilities and as storage. I find as a matter of fact and

[7] Appeal Ref APP/N5090/C/16/3147995 dated 24 March 2017.
[8] *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by CoA in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102.

degree that the container is properly described as a building, for which there is no planning permission.

34. Furthermore, the notice describes the container as being incidental to the change of use. A notice that is directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be 'permitted' development or immune from enforcement, so that the land is restored to its condition before the change of use took place[9]. Consequently, the notice could require the removal of the container even if the appellant's arguments on this matter were accepted.

35. For the reasons set out above, the ground (c) appeals must fail.

The ground (d) appeals

36. This ground of appeal concerns the structure described in the allegation, which is argued to be immune from enforcement action. To succeed on the ground (d) appeals, the appellants must show on the balance of probabilities that the structure (shown edged in yellow on Aerial Image 01) was substantially completed four or more years prior to the issue of the notice.

37. The Council has provided a 'Google Earth Pro' image dated 5 April 2020. It is clear that the structure was not in situ at that date, and it must have been erected sometime later. The notice was issued on 24 August 2023 and so the structure would not have acquired immunity from enforcement action.

38. The appellant has not provided any substantive evidence to demonstrate the container has acquired lawfulness or that it would benefit from any 'permitted' development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

39. The ground (d) appeals fail, therefore.

Appeal A on ground (a) appeal and the deemed planning application

Main Issues

40. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the making of a material change of use of the land to a waste/recycling transfer and sorting yard, the erection of a structure and the permanent stationing of a shipping container incidental to the making of the change of use.

41. The main issues are:

- Whether the development is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (December 2024) (the Framework) and relevant development plan policies.
- The effect on the openness of the Green Belt.
- The effect of the development on the character and appearance of the area.

[9] *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630, *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784.

- The effect of the development on the living conditions of adjoining occupiers, with regard to noise and disturbance.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Whether the development is inappropriate development in the Green Belt

42. The appeal site is located within the Green Belt. It forms part of a wider site that includes a mix of residential units. There are further residential properties to the north, a playing field to the east and open fields or woodland to the south.

43. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Framework continues that, when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness (other than development on previously developed or grey belt land, where development is not inappropriate).

44. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

45. Paragraph 155 of the Framework states that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where: (a) the development would utilise grey belt land and would not fundamentally undermine the purposes of the remaining Green Belt across the area of the plan; (b) there is a demonstrable unmet need for the type of development proposed; and (c) the development would be in a sustainable location. ‘Grey belt’ land is defined as land in the Green Belt comprising previously developed land and/or any other land that does not strongly contribute to any of the purposes (a), (b) or (d) in paragraph 143.

46. The appeal site includes an area which has been lawfully developed as a scaffold yard. The remainder was previously occupied by a building and an area of hardstanding. As such, it may be considered to be grey belt land. However, I must also consider the five Green Belt purposes. The site lies alongside the B552, Hendon Wood Lane, which is a relatively narrow lane with no footways, aside from those alongside the site and adjoining houses. It is bordered by hedgerows and mature trees. Despite the small group of houses close to the site, the area has a largely open and semi-rural character and appearance.

47. The site forms a transition between the houses to the north and the open fields and woodland beyond. I consider that development for the matters alleged amounts to encroachment into the Green Belt, which would fundamentally undermine the purposes of the remaining Green Belt land when taken together.

48. In addition, the nature of the unauthorised use generates vehicle movements by van or lorry. The site is outside of any defined built up area and it cannot be considered to be in a sustainable location. While there is likely to be an unmet

need for the development, there is no reason why it needs to be located in the Green Belt as opposed to on an industrial estate, for example. That would be more likely to be located closer to the sources of waste thus minimising vehicular movements.

49. I conclude, therefore, that the development would amount to inappropriate development in the Green Belt.

The effect on openness

50. In terms of the effect on openness, it is accepted that openness has a spatial aspect as well as a visual aspect and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case[10]. Openness does not imply freedom from any form of development. The impact of development on openness is not necessarily related to its size but also its purpose[11]. Furthermore, the visual qualities of the land may be an aspect of the planning judgement in applying this broad policy concept.

51. The site lies to the rear of other built development that fronts onto Hendon Wood Lane. Nonetheless, it is possible to obtain views towards the site from the access drive. It is also likely to be visible from the adjoining playing fields, particularly in the winter months when there would be less screening from the trees and hedges along the rear boundary. There are also views from adjoining residential properties.

52. The unauthorised use has an adverse visual effect on openness due to its nature and the size of the site. The waste containers and piles of waste material are not readily associated with a rural or semi-rural location and would more easily be associated with an industrial estate. The visual effects are compounded by the operational development also enforced against, which is relatively sizeable and prominent.

53. The use of the site as a waste/recycling, transfer and sorting yard plus the erection of a structure and the siting of a shipping container also has an adverse effect on the spatial aspect of openness. The waste storage containers are present on the site on a more or less permanent basis because the full containers are replaced immediately when one is removed. In addition, the larger shipping container is permanently sited, and it will adversely affect openness, as will the built structure. The piles of timber and other material contribute to the overall reduction in openness.

54. The appellant claims the use requires no buildings or structures and, therefore, cannot impact on openness. This is not correct. It is also argued that the development comprises limited infilling relevant to an established use. However, as explained, the site area is substantially greater, which amounts to encroachment.

55. The previous use of the site was as a storage yard for scaffolding. This use occupied a smaller area than that now enforced against, and the effect of the unauthorised use on openness is greater than the lawful use. However, I acknowledge that the land can be described as previously developed land, and it

[10] *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466; *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* [2020] UKSC.
[11] *Europa Oil and Gas Ltd v SSCLG* [2013] EWHC 2643 (Admin).

adjoins other built development. Consequently, I afford the harmful effect on openness moderate weight.

Character and Appearance

56. The site is within a part of the countryside that is characterised by open fields interspersed with built development. There is residential development in the immediate vicinity, and I consider the character of the area to be semi-rural. The site itself is set back behind other development, and is screened by fencing, nonetheless, it is visible from the lane and adjoining land.

57. As explained, the use of the site and the operational development is not readily associated with its semi-rural location. As such, I find that the development has an adverse effect on the character and appearance of the area. However, I accept that there are limited public views of the site itself and the impact is reduced by intervening buildings and fencing. I give this harm limited weight, therefore.

Living Conditions

58. The site lies close to residential development. The unauthorised use is highly likely to generate noise and disturbance from the waste sorting activities, the deposit of materials and the vehicle movements. Although the appellant denies any processing takes place, it is accepted that waste is sorted on the site. Any sorting, particularly builders' waste, would be likely to result in levels of noise that would not be acceptable in close proximity to residential uses.

59. A lack of complaint about noise and disturbance does not indicate that this has not occurred or would not occur if planning permission were granted.

60. I conclude that the unauthorised use would be likely to have an adverse effect on the living conditions of adjoining occupiers, with regard to noise and disturbance. This harm is considered to carry moderate weight.

Other considerations

61. The appellant indicates that there is a valid fallback position resulting from the lawful use of the land as a scaffold yard. However, the lawful use covered a smaller area than that enforced against. In addition, the previous use would likely have had less of an impact. This consideration carries limited weight, therefore.

62. It is also argued that the structure replaces similar built development in that part of the site. I understand that a previous single storey building was demolished pursuant to the requirements of an earlier enforcement notice. On the evidence before me, it appears that the previous building was smaller in scale but, in any event, it was not lawful. This carries limited weight.

63. It is stated that the company has not been able to find a suitable alternative site and upholding the notice would lead to personal hardship for the site operators and employees. However, there is no evidence to justify the claim that alternative sites are not available, and this consideration carries limited weight.

64. It is argued that the recycling of waste is a sustainable activity which should be supported. In addition, the company says it provides a service that supports the Council in its strategic waste management objectives. However, it is not apparent that the use requires a countryside location or that any such benefits could not be

achieved if the site were operated elsewhere. It is not clear how much of the waste material is recycled in any event.

65. It is suggested that the Council does not claim harm to air quality or habitat protection. However, a lack of harm is a neutral consideration and does not weigh in favour of the development.

66. Finally, it is indicated that there would be economic benefits. These are not quantified, and I cannot attach any weight to this consideration.

Alternative schemes

67. As an alternative, the appellant is seeking a temporary planning permission for three years. While this would enable the Council to monitor activities on the site, the development would still amount to harm which would be ongoing for a relatively long period of time. A three-year temporary permission would not overcome my concerns, therefore.

68. It is also suggested that the site area could be reduced but no plan or details have been submitted. The Council has not been able to comment on any such scheme. Furthermore, without details I would not be able to vary the notice with the required level of accuracy.

69. The appellant refers to a planning obligation under s106 of the 1990 Act to formalise remedial measures. No such document has been submitted, and I am unable to consider hypothetical obligations.

70. It is also suggested that I could require the submission of and approval of a 'simplified planning application'. I have powers to grant planning permission for whole or part of the matters alleged. This does not extend to the tacit approval for a different scheme.

Conditions

71. I have considered whether planning conditions could be imposed to make the development acceptable in planning terms. However, any conditions that would be required to overcome the harm to the character and appearance of the area or the harm to living conditions would impose significant restrictions on the operations, which would be unreasonable. Moreover, this would not overcome the objection in principle resulting from the location of the development within the Green Belt.

Conclusion

72. Overall, I find that the development would be inappropriate development in the Green Belt. The resulting harm carries substantial weight. In addition, there would be moderate harm to openness, limited harm to the character and appearance of the area and moderate harm to the living conditions of nearby occupiers. I find that the totality of the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

73. The development would not accord with Policy DM15 of the Council's Local Plan Development Management Policies (2012), which seeks to protect the Green Belt from inappropriate development; Policy DM04 of the Development Management Policies and Policy 5 of the North London Waste Plan (2022), which seek to

protect residential amenity; and Policies DM01 of the Development Management Policies and CS5 of the Council's Core Strategy (2012), which seek to ensure development preserves or enhances local character and appearance. Consequently, it would be contrary to the development plan as a whole.

74. The ground (a) appeal fails, therefore.

The ground (f) appeals

75. S173(4) of the 1990 Act sets out the two purposes of an enforcement notice (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury to amenity caused by the breach. The requirements are to cease the unauthorised use, demolish or remove the operational development and restore the land to its previous condition. The purpose is to remedy the breach of planning control. What must be considered is whether the steps required exceed what is necessary to achieve that purpose.

76. The requirements of the notice must not purport to stop a developer from doing something they are entitled to do without planning permission by relying on existing lawful use rights, including right of reversion under s57(4) of the 1990 Act, rights under the GPDO, and the right to carry out anything exempted from the definition of development under s55(2) of the 1990 Act. This is the 'Mansi' principle or doctrine, so-called from the High Court decision[12].

77. It is argued that the notice cannot curtail the open storage of building materials at the site, which are lawful. However, the LDC certifies the lawful use of the site as a scaffold yard, which only relates to part of the appeal site and is a different use to that enforced against. As such, the development cannot benefit from the lawful use rights. The notice would not transgress the Mansi principle.

78. Appellant A refers to other caselaw to justify this ground of appeal[13]. Again, transcripts are not provided but the extracts quoted all reinforce the Mansi principle set out above. The notice does not seek to prevent the operation of any lawful use rights in accordance with the established principle.

79. The appellants offer what is described as lesser steps, which I have considered above as part of the ground (a) appeal.

80. I find that the steps required are necessary to remedy the breach of planning control and achieve the statutory purpose behind the notice. Consequently, the ground (f) appeals fail.

The ground (g) appeals

81. The ground (g) appeals are that the period for compliance with the requirements fall short of what should reasonably be allowed.

82. The appellant (GMP Fitzgerald) has granted a four-year licence to J W Waste Management Ltd, which expires on 1 March 2027, subject to a severance clause which allows termination on 1 March 2026 (para 4.1.3 of copy of Licence to Occupy dated 1 March 2023). The appellants are seeking a compliance period of

[12] *Mansi v Elstree RDC* [1963] 16 P&CR 153.
[13] *Midtown v City of London Corporation* [2005] EWHC 1398 (Admin); *Hartley v SoS* [1997] 2 PLR 72; *Kingsgate v Camden* [1998] PLCR 80; *Mummery LJ in Palmer v Herefordshire Council* [2016] EWCA Civ 1061, *R v Wicks* [1998] PLCR 500; *Lambeth LBC v SoS* [2002] EWHC 1216 (Admin).

3.25 years, to allow the contract to expire. It is also argued that the compliance period of four months is not long enough to allow the business time to relocate, which will cause financial hardship for several families.

83. I accept that a lease or licence to occupy may justify an extension to the compliance period in certain circumstances. However, the time period sought does not account for the severance clause. Furthermore, the breach of planning control which I have found to be taking place may well negate the licence. I am not satisfied that the existence of the licence is sufficient justification for a significant extension to the compliance period. This would be akin to a temporary planning permission, which I have already found would not be acceptable due to the harm resulting from the development.

84. I have taken account of the personal circumstances and the effect on employees. However, there is no evidence to justify the claim that alternative sites are not available. Overall, I find the compliance period to be proportionate and reasonable in the circumstances.

85. The ground (g) appeals fail, therefore.

Conclusion

86. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act.

Formal Decisions

87. The appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act.

D Moore

Inspector