



Appeal Decision

Inquiry held on 24 & 25 February 2025

Site visit made on 25 February 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal Ref: APP/N0410/C/24/3353820

Land at 246 Swallow Street, Iver, Buckinghamshire SLO OHT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr James Smith against an enforcement notice issued by Buckinghamshire Council - South Area (South Bucks).
- The notice was issued on 27 September 2024.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development comprising the following:
 - a) the erection of three buildings;
 - b) the erection of a fence;
 - c) the creation of hard surfaced areas; and
 - d) the siting of secure storage containers.
- The requirements of the notice are to:
 - 1. Demolish and remove from the Land the three buildings labelled A, B and C on the attached aerial photograph and as shown by the attached photographs labelled A, B and C.
 - 2. Take down and remove from the Land the fence as shown in the approximate position by the dashed line on the attached Plan 1 and by the attached photographs labelled D.
 - 3. Break up and remove from the Land the hard surface areas as shown in approximate positions hatched in black on the attached Plan 2 from the Land.
 - 4. Remove from the Land the secure storage containers as shown outlined by a black line on the attached aerial photograph and by the attached photographs labelled E.
 - 5. Restore the Land to the condition it was in prior to the commencement of the unauthorised development and re-seed with grass.
 - 6. Remove from the Land all materials, debris, plant and equipment associated with steps 1 to 5 above.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. 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.

Preliminary Matters

2. The appeal site comprises an area of land to the rear of 246 Swallow Street. The enforcement notice alleges, amongst other things, the erection of three buildings. Those buildings include Building A, which I shall refer to as 'the Games Room', Building B, which I shall refer to as 'the Barn' and Building C, which I shall refer to as 'the Kennels'.

3. It is suggested that a separate appeal against a refusal to issue a certificate of existing lawful use will also be submitted. However, no appeal has been received to date. The appellant suggests the Council's reason for refusing the lawful development certificate was factually incorrect. However, this is not what is before me. Where an enforcement notice appeal succeeds on ground (c) or (d), I am empowered by section 177(1)(c) to determine whether, on the date of which the appeal was made, any existing use, operations or failure to comply with any condition or limitation was lawful and if so, issue a lawful development certificate under section 191 of the Act. The appellant requests that I use my powers to grant a lawful development certificate (LDC) under section 177(1)(c) under section 191 of the Act. I shall therefore consider whether it would be appropriate to do so in this case.
4. The Government published the National Planning Policy Framework on 12 December 2024 (the Framework). This version of the Framework was amended on 7 February 2025 to correct cross-references from footnotes 7 and 8, and amend the end of the first sentence of paragraph 155 to make its intent clear. The parties have been given the opportunity to comment on the implications of the Framework through the Inquiry.
5. I have been provided with a Statement of Common Ground (SoCG). During the Inquiry, the Council confirmed that it agrees to paras 1-4a) of the SoCG but that it does not agree to para 4b), that the development has limited, if any, detrimental impact on the Green Belt.
6. A Case Management Conference (CMC) was held on 17 January 2025. The purpose of the CMC was to discuss the presentation of the evidence so that the Inquiry could be conducted efficiently and effectively. The merits of the case were not discussed. Notes of the CMC have been produced and provided to the parties.
7. Evidence was given under affirmation during the Inquiry, with respect to the appeal under ground (d). The Council requested that the appellant's witnesses were excluded until they gave their evidence, and that the appellant gave their evidence first. The appellant's advocate raised concern with this approach as they were concerned that some witnesses may wish to leave. To ensure the appellant was not prejudiced by this approach, I agreed with the parties to conduct the site visit on the second day of the Inquiry, instead of after opening statements, as suggested at the CMC. This enabled all of the appellant's witnesses to give their evidence.
8. During the Inquiry, the appellant raised concern that the Council's witness was not excluded and was able to hear the evidence given by the appellant's witnesses. However, the purpose of excluding the appellant's witnesses was to ensure that the evidence they gave was not influenced by what previous witnesses had said. Since the witnesses were giving evidence of fact, whereas the Council's witness was asked to comment on the evidence provided by the witnesses and offer their professional planning judgement, I see no unfairness in this regard. Significantly, the appellant's advocate was unable to identify any particular prejudice as of result of this way of proceeding.

Ground (c)

9. An appeal under ground (c) is made on the basis that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control.

The appellant acknowledges that the fence was greater than 2m tall at the date of the enforcement notice, but states that it has since been reduced to 2m and, as such became permitted by Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).

10. Part 2, Class A of the GPDO permits the erection of a fence up to 2 metres in height (subject to certain limitations). However, the GPDO does not grant retrospective planning permission. In order to benefit from the planning permission granted by the GPDO, the development undertaken would need to have been permitted by the GPDO in force when the development was begun. Since it was not disputed that this is not the case, the appeal under ground (c), with respect to the fence, must fail.
11. The appellant suggests the hard surface extension on plan 2 is a non material de minus [sic] extension to an existing commercial yard and equestrian facility which is considered to be permitted development.
12. The hard surfaced areas which the notice attacks cover a substantial area. The appellant advised during the inquiry that they installed the southern area in around June 2021, laying a membrane sheet, so as not to contaminate the soil, with hardcore and road planings on top. The appellant confirmed that 5 or 6 people assisted and that the works took a few days. The hard surface around and to the west of the Games Room is stated to have been done in much the same way, with 20ml pea shingle raked out on top. In my view, the laying of the hard surface areas constituted an engineering operation and are therefore development for the purposes of the Act.
13. The appellant suggests in their statement of case that the storage containers ought to be approved on account of the established use of the land. Although the appellant has not advanced this matter under ground (c), this appears to be an argument that the storage containers are not buildings for the purposes of the Act and that no material change of use has occurred. The Council has addressed this through its submissions and during the Inquiry and so I shall deal with this under ground (c).
14. The Council has drawn my attention to appeal decisions APP/C1950/C/19/3223023 and APP/R3650/X/24/3343155, which both considered the siting of containers. Both inspectors set out the tests which should be considered, including size, permanence and physical attachment. Whether something is a building for the purposes of the Act and therefore constitutes operational development is a matter of fact and degree.
15. While it is likely the storage containers were brought to the appeal site in one piece, from the evidence it seems likely that they have remained in the same place since being sited there. The storage containers are connected with wires and so are unlikely to move and are of sufficient size and have a quality of permanence. In my view, the storage containers are buildings for the purposes of the Act and, since planning permission has not been granted for them, they constitute a breach of planning control.
16. Thus, for the reasons given above, the appeal under ground (c) must fail.

Ground (d)

17. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
18. In their planning statement submitted in support of an application under section 191 for a certificate of lawful use, the appellant refers to the Levelling Up and Regeneration Act 2023 (the LURA), which changed the time limits for taking enforcement action set out section 171B of the Act. However, these changes are subject to transitional provisions, meaning that the 10 year immunity period applies to operational development where substantial completion took place on or after 25 April 2024. Where substantial completion took place before 25 April 2024, the relevant immunity period for operational development is 4 years.
19. The enforcement notice was issued on 27 September 2024, so the appellant would need to show that the buildings and works were substantially completed on or before 27 September 2020. The main thrust of the appellant's case that the work started on 17 April 2020 and that the Games Room, the Barn and the Kennels were finished by 23 April 2020.
20. The phrase substantially completed is generally held to mean a fully detailed building of a certain character. In *Sage v SSETR & Maidstone BC* [2003] UKHL 22; [2003] JPL 1299, the alleged building had no gazing, guttering, ground floor, access to the first floor, service fittings or internal finishes. A building could not be regarded as substantially completed for the purposes of s171B(1) even if outstanding works affected only the interior.
21. The appellant states that they commenced work on the foundations for the three buildings on 20 August 2015. The appellant advises they retained the services of Mr Barn Wolstenholme, a personal friend of the appellant, whom together with, they undertook the setting out, excavation and pouring of the concrete foundations with ready mixed concrete purchased by the appellant.
22. The appellant has provided photographs, dated 21 August 2015, which show a cement mixer at the site and what appear to be foundations being constructed within the site in the general area of the Games Room. The images were taken from a mobile phone with 5G, suggesting they have been transferred from an older phone. Nevertheless, Mr Wolstenholme, gave evidence to the Inquiry, confirming his evidence that the works were carried out in August 2015 and that the buildings had been constructed on the foundations laid at that time.
23. The appellant suggests that in 2016 Mr Testa wanted to expand his business to create an outdoor showroom and that as part of their agreement, it was agreed that Mr Testa would cover the area with road planings to avoid the whole area becoming soggy and muddy. However, concrete slabs are not visible in any of the photographs provided by Mr Testa.
24. While it is possible that road planings covered the slabs, during my visit and indeed from the photographs, the slabs sit proud of the road planings. Had the concrete slabs which are currently *in situ* been present, I would expect them to have been visible to some extent in the photographs. Furthermore, where

the land is laid with concrete, there would have been no need for the surface to be laid with road planings to avoid it becoming soggy and muddy. Indeed, Mr Testa states in his witness statement that 'the surface wasn't hardstanding'.

25. In an aerial photograph, dated 8 October 2015, there is some discolouration of the land where the Games Room has subsequently been placed. However, such discolouration is not evident where the concrete slabs for the barn or the kennels would have been, suggesting the slabs for the Barn and the Kennels had not been laid by that date. While I accept that photographs provide a snapshot in time, when taken together, this in my view undermines the appellant's suggestion that the concrete pads for the Barn and the Kennels were completed in August 2015.
26. The appellant advises that they could not finish progressing the works and needed time to save funds to finish building the structures. The appellant suggests it was in or around Spring of 2020 that they decided to go ahead with the work of completing buildings A, B and C and that their friend, Mr Walls introduced them to Mr McDonagh, the Managing Director of Wroxton Group. To keep costs down, the appellant states that they wanted to supply the materials, and that Wroxton Group quoted on a labour only basis, paying £20,000, i.e., 50% of the fee by bank transfer.
27. The appellant states that they sourced the materials from Owen Fabrications Ltd, liaising with Mr James Doherty, the director. The invoice is stated to have been paid prior to the commencement of the construction works and an invoice, dated 16 April 2020, is provided in support of this, which details 'Supplied 'flat pack' barn (steels, cladding, shutters, doors) and associated fittings for flat roof barn rear of 246 Swallow Street'. Materials are quoted at £8,750 and labour is quoted at £5,750, with an invoice total of £14,500.
28. A payment of £7,250, dated 5 March 2020 and a payment of £7,250, dated 16 April 2020 to Mr James Doherty are shown on bank statements provided by the appellant. It is suggested that these payments were made for the Barn, however, both payments were made to Mr Doherty rather than Owen Fabrications Ltd and the first payment was made well over a month before the invoice was issued.
29. From the evidence, it seems the appellant paid for both Wroxton to construct the building and Owen Fabrications. During cross examination, the appellant suggested the charge for labour on the Owen Fabrications invoice was a 'typo'. However, the amounts paid by the appellant to Mr Doherty correlate with the total shown on the invoice. The amount paid for labour was not insignificant.
30. It was suggested during the Inquiry that this is the first time the appellant has noticed this charge, however, the appellant is clearly financially astute, having negotiated lower labour costs with Wroxton Group. Had the charge for labour been a 'typo', I would have expected the appellant to have raised it with Owen Fabrications Ltd at the time and would not expect the full amount to have been paid.
31. As pointed out by the Council, Owen Fabrications Ltd is a VAT registered company. The invoice does not show a VAT number, nor does it display VAT separately. I would expect these details to be provided on an invoice provided by a VAT registered company. Moreover, there is no record that part payment

of £7,250 was made on 5 March via bank transfer. I would also expect this to be reflected in the invoice.

32. There is no evidence to suggest that a contract was signed between Wroxton Group and the money paid was direct to one of its employees, albeit a director. While the appellant may prefer dealing in cash, I find this highly unusual, particularly given the sums of cash involved and the number of employees that Wroxton Group would have needed to pay to carry out the works. This is a company who, at the time of its appointment, appears to have had no long standing business relationship with the appellant.
33. The appellant suggested during the Inquiry that they paid £20,000 to Mr McDonagh in cash, either the day before or the day after the work started (though the appellant could not remember exactly when the payment was made, nor were they able to explain where they obtained £20,000 in cash from, other than to say it was from 'the business') and then paid Mr McDonagh £20,000 via bank transfer on 27 April 2020, after the works were completed.
34. An employee of Wroxton Group, Alan Walley, has submitted a witness statement, which advises they attended site the day before work started on 16 April 2020 to receive delivery of all the materials being supplied by Mr Smith. During the Inquiry Mr Walley advised that they arrived at 7:30am on 16 April 2020 and that the construction materials were already there. This is the same date identified on the invoice from Owen Fabrications Ltd, which it states needed to be paid within 30 days from the date of the invoice.
35. However, significant quantities of building materials are not evident in an aerial photograph, dated 15 April 2020¹. I find it highly improbable that the materials required to construct the Games Room, the Barn, and the Kennels would all be delivered after the photograph was taken on 15 April 2020 but before 07:30am on 16 April 2020.
36. Furthermore, the ground does not appear to have been prepared to reveal the concrete slabs and foundations, which it is asserted were constructed in 2015 (notwithstanding my concerns about the appellant's assertions in respect of the concrete slabs set out above). Instead, vehicles, caravans, cars and lorries are all parked where, within less than two days, construction of 3 buildings is alleged to have commenced.

The Games Room

37. A statutory declaration, signed by the Director of Wroxton Group Ltd, states that Wroxton Group was employed to construct the three buildings. With respect to the Games Room, it is stated that the structure took a total of 4 days and that when Wroxton had finished, the building required the second fix carpentry and decorating only. I find the suggested time taken to construct and complete this type of building to be unusually quick.
38. The appellant states in a statutory declaration dated 6 June 2024, that the games room was constructed on the 17 April 2020 and was substantially completed on the 23 April 2020. It is stated that the only items remaining were the internal decorating and floor coverings, which the appellant

¹ Notwithstanding the suggestion to Mr Murray during cross examination that an unidentifiable square shape next to a lorry could have been building materials. This square shape is also visible in aerial photographs in previous years.

completed sometime after. However, this contradicts the appellant's evidence to the Inquiry, which is that the kitchen and bathroom were installed 'some time' after the 23 April 2020.

39. The appellant confirmed during the Inquiry that Wroxton Group did not fit the bathroom, boiler or the kitchen and advised that they were fitted 'shortly after' by a friend and the appellant's father in law (who fitted the kitchen). However, the appellant did not appear to recall exactly when the kitchen or bathroom were fitted. I find the appellant's evidence in this regard ambiguous.
40. It is not clear to me from the evidence when the Games Room was substantially completed and the appellant has provided no documentary evidence, such as receipts or invoices, to show when the kitchen or bathroom were purchased or fitted. Even if the appellant paid for the cooker in cash, for example, I would still expect a receipt to have been provided.
41. Although the appellant has provided photographs of the footings being dug in 2015 for the building, no photographs have been provided of the Games Room, either during its construction or following its completion in April 2020. I find it curious that the appellant took so many photographs of the footings being dug for the Games Room in 2015 (and indeed kept them, so that they could be submitted to the Inquiry) but did not take a single photograph of the buildings actually being constructed, nor after their completion.
42. The appellant suggested during the Inquiry that photographs of the Games Room in use have not been provided (despite being available) because the photographs included their daughters. However, it would have been possible to crop or redact the photographs so that individuals cannot be seen. This, in my view, is not a credible reason for not providing photographs.
43. I find it highly improbable that the Games Room was substantially completed when the appellant suggests it was. Furthermore, the appellant has not shown, on the balance of probabilities, that the building operations to the Games Room, both internally and externally, were completed by 27 September 2020.

The Barn

44. The Barn comprises a substantial steel building, with a pitched roof and roller shutter doors, sat on a concrete slab. The appellant provided a statutory declaration, dated 6 June 2024, which states the Barn was installed on April 17 2020 and its installation and build was finished on April 20 2020. It is stated that the barn has been used for the purposes of storage in connection with a business since it was completed, and that this use has not ceased or been altered since that day and continues at the point of the application.
45. A Planning Contravention Notice (PCN) was issued on 27 August 2024 and a reply provided, on the appellant's behalf, on 5 September 2024. In response to questions as to what the barn is used for², the appellant states it is used for storage, B8 for their business and that they store tree surgery equipment in it. However, this contradicts the appellant's witness statement, dated 10 February 2025, which suggests the building has been used by Greens Team Limited.

² Questions 35 to 37 of the PCN

46. During the Inquiry, the appellant suggested that the response to the PCN was incorrect and that they had not seen the responses that their agent provided but answered a few questions over the telephone. However, when asked under cross examination whether these were the appellant's answers the appellant stated 'briefly, yeah'. Furthermore, the appellant confirms that they were told of the penalties associated with giving information which is false or misleading in any way.
47. Justin Richards, of Greens Team, has provided a witness statement which states that they visited the site in or around August 2020 and viewed the Barn (Building B). Mr Richards states they were a bit concerned that it would meet their requirements, and that Mr Smith agreed that the roof would be changed from a flat roof to a pitched roof. Greens Team entered into a tenancy agreement to rent the property for 3 years, which has since been renewed. Mr Richards stated that after they moved in, they put up a false wall to provide an area to have a cup of tea and put toilets in.
48. The Council has provided a Rightmove listing dated December 2022, which shows the Barn with limited contents, save for some building materials (wood and windows) and some machinery. Through one of the roller shutter doors, pallets of bricks and other building materials can be seen, suggesting that works on the Games Room had either not been completed or had only recently been completed. Given that the barn in the photograph has a pitched roof (which the appellant states was only completed in December 2020), this to my mind calls into question the completion date of April 2020 for the Games Room.
49. Terry Hunt provided a witness statement and gave evidence to the Inquiry. Mr Hunt advised that they were sub-contracted by Mr Doherty of Owens Fabrications Ltd to convert the roof of a steel barn. During cross examination Mr Hunt advised that the operation took around 3 days and that there were 3 staff in total. They used a cherry picker and telehandler and removed the roof and two sides, leaving the back and front in-situ. The work involved multiple pieces of cladding to each side and from my inspection of the site, is likely to have involved significant structural components of the shed.
50. As found in *Oates v SSCLG* [2018] EWCA Civ 2229, 'a building constructed partly of new materials and partly of usable elements of previous structures on the site, after other elements of those previous structures have been removed through demolition, may in fact be a "new" building; or it may not...in principle, the retention of some of the fabric of an original building or buildings within the building that has been, or is being erected, does not preclude a finding by the decision-maker, as a matter of fact and degree, that the resulting building is, physically, a "new" building, and that the original building has ceased to exist'.
51. During the Inquiry, the appellant drew my attention to *Jenson & Anor v Faux* [2011] EWCA 423, which considered whether a new dwelling had been provided. However, since this case concerned the Defective Premises Act 1972, I do not find it to be particularly helpful or instructive in this case. Furthermore, as set out above, whether a new building has been constructed is a judgement for the decision maker. Even if I were to accept that the building had been constructed by September 2020, the effect of the works, in

my view, are likely to have been so extensive as to have created a new building.

52. The Council has provided me with a series of Google Street View images. In an image dated June 2023, taken overlooking black metal railings the roof of the Barn and part of the front, including roller shutter doors, can be seen. However, in a Google Street View image taken from a similar angle, dated October 2020, the Barn cannot be seen at all.
53. The appellant suggests this is because the roof line of the building has been changed from flat to pitched. However, even if the roof has been changed, the front of the building, including its roller shutter doors, are likely to have been visible, as the front of the building is visible in the 2023 image. This to my mind is compelling evidence that the barn was not substantially completed by 27 September 2020.

The Kennels building

54. The Kennels building is a wooden structure, built on a concrete pad. Within a photograph, dated 27 January 2023, the Kennels building is clearly visible, with the concrete pad sitting well above the level of the surrounding yard. As pointed out by the Council, concrete takes time to cure. For the appellant's timeline to be likely, the concrete would have had to have been laid prior to 17 April 2020, when construction works began.
55. However, as set out above, a concrete pad is not visible within the aerial photograph dated 8 October 2015, despite this being prior to Mr Testa asking the appellant if they could lay some road planings in 2016. Furthermore, no concrete pad is visible within the photographs provided by Mr Testa. Although it is suggested that road planings would have covered the concrete pads by this point, given the difference in level between the yard area and the concrete pad, I would have expected some of the pad to be visible.

Hard surfacing

56. Within the appellant's witness statement, they state that the surrounding hard surfacing was substantially completed in April 2020. However, aerial photographs provided by the Council dated 30 March 2021 show the areas substantially laid with grass. During the Inquiry, the appellant accepted that the hard surfacing attacked by the notice was laid some time after September 2020.

Storage containers and fencing

57. The appellant's case with respect to the storage containers is that they ought to be approved on account of the established use of the land. However, as set out above, I have found the storage containers are buildings. In order to succeed in the ground (d), the appellant would need to show that the storage containers were erected on or before 27 September 2020.
58. During the Inquiry, the appellant accepted that the storage containers were sited within the appeal site after September 2020. The storage containers are therefore not immune from enforcement action and the appeal under ground (d) must fail in this respect.

59. The fencing is not visible in the aerial photograph dated 30 March 2021 and there is no suggestion that the fencing was erected on or before 27 September 2020.

Conclusion

60. While I acknowledge that steel frame buildings can often be erected relatively swiftly, I find the fact that three buildings, particularly the Games Room, which is constructed using brick, were completed within such a limited timeframe unlikely. As set out above, the appellant's evidence with respect to substantial completion of the Games Room is imprecise and ambiguous and with respect to the Barn, it seems likely that, even if a building had been constructed prior to December 2020 (when the appellant states the pitch of the roof was altered), the works were so significant as to have resulted in the construction of a new building.
61. The appellant's case regarding the three buildings relies heavily on the appellant's testimony, as well as the testimony of the individuals who gave evidence to the Inquiry. However, I cannot reconcile the evidence regarding the concrete pads with the photographic evidence, or the evidence of Mr Testa. Furthermore, I find the evidence regarding the construction of the buildings unconvincing, with photographic evidence provided by the Council which undermines the appellant's evidence.
62. I find the appellant's suggestion that the Barn is not visible in Google Streetview images dated October 2020 due to a change in the pitch of the roof unconvincing: the building would, in my view, still have been visible in the October 2020 Google Streetview image provided by the Council. The angle from which the photographs were taken is sufficiently similar that, had the building been constructed at that point I would expect to have seen it.
63. Given the length of time between the works being carried out and the giving of evidence, reliance on memory alone may not be reliable. Indeed, the Council has drawn my attention to the cases of *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) and *Barrow v Merrett* [2021] EWHC 792 (QB) which both considered the reliability of memory in the heat of litigation and found it can be influenced by factors other than the original experience of the events.
64. Mr Walley and Mr Walls, for example, both recalled the dates they were on site by reference to birthdays. However, neither witness referred to the Covid-19 pandemic or lockdown³, which is likely to be particularly memorable for most people in the country at the time, nor did either seem to feel the need to refer to a diary entry to assist them in recalling times and dates. These are individuals who are most likely involved in numerous construction jobs each year and so, while they may recall doing the job, I would expect them to need to refer to a diary entry of some sort to assist them in recalling precise dates and durations.
65. I find the appellant's evidence inconsistent and in some cases demonstrably wrong⁴ and so I place very limited weight on it. While I acknowledge that a number of witnesses have given evidence to the Inquiry in support of the

³ Notwithstanding that construction sites were able to remain open.

⁴ The appellant accepted under cross examination that information given in their statutory declaration dated 6 June 2024 regarding the use of the Barn was wrong and that statements made in response to the PCN were false.

appellant's case, for the reasons given above, I have trouble reconciling their evidence with the documentary evidence provided by both the Council and the appellant. The evidence of the appellant's witnesses is contradicted by the photographic evidence provided by the Council, which in my view is to be preferred in this case and I find the limited documentary evidence provided by the appellant unconvincing and contradictory.

66. Thus, for the reasons given above, I find the appellant has not shown, on the balance of probabilities, that the buildings and works were substantially completed on or before 27 September 2020 and so the appeal under ground (d) must fail. I find it is not appropriate to use my powers under section 177(1)(c) to issue a LDC under section 191 of the Act in this case.

Ground (a)

67. An appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice. The main issues in the appeal are:
- Whether the appeal scheme would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (December 2024)(the Framework) and any relevant development plan policies;
 - If the appeal scheme is inappropriate development in the Green Belt, the effect of it on the openness of the Green Belt;
 - The effect of the appeal scheme on the character and appearance of the area;
 - The effect of the development on protected species;
 - Whether the development would deliver biodiversity net gain;
 - If the development is inappropriate development, 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 required to justify the appeal scheme.

Reasons

Whether inappropriate development in the Green Belt

68. The appeal site is located within an area which is washed over by the Green Belt. Policy GB1 of the South Bucks District Local Plan (1999)(the LP) sets out the circumstances in which planning permission will be granted in the Green Belt. The exceptions set out in policy GB1 do not include redevelopment of previously developed land. However, the policy is inconsistent with the Framework in this regard and indeed, with respect to engineering operations, which I shall come on to later.
69. Paragraph 154 of the Framework states that development in the Green Belt is inappropriate unless certain exceptions apply, including limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.

70. The appellant suggests that the appeal site should be considered previously developed land. The Framework defines previously developed land as 'Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Previously developed land excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.'
71. The appellant suggests that permissions granted in 2009 and 2016 mean that the land has been lawfully developed. The 2009 permission, reference 09/00465/FUL was granted on 16 June 2009 for the erection of two stables, store and tack room, creation of vehicular access and turning area and retention of driveway at 246 Swallow Street. The 2016 application was not an application for planning permission but an application under section 191 of the Act. The application, reference 16/00512/CLEUD, was for storage building for horse feed, hay and tack. The Council confirmed on the 26 May 2016 that the development was lawful.
72. However, no permission appears to have been granted for the use of land for car sales, or for storage and so it seems unlikely the appeal site has been lawfully developed. Mr Testa advises that at first, he stored one or two cars at the appeal site. This to my mind is unlikely to have resulted in a material change in the use of the land. Furthermore, storage of cars is likely to be materially different to a showroom where individuals come to the premises to view and purchase cars. It seems it was not until around 2016 that Mr Testa came upon the car showroom idea and a contract was entered into. Although uses can become lawful through the passage of time, it seems likely that the use of the land has materially changed in the last ten years. Consequently, it does not, in my view, meet the definition of previously developed land and so the exception at paragraph 154g) of the Framework does not apply.
73. Although not advanced by the appellant, the exception at paragraph 154h), other forms of development provided they preserve its openness and do not conflict with the purposes of including land within it, includes engineering operations. The hard surfaced areas which have been constructed cover an extensive area, projecting built development further into land which was previously grassed over and open. As a result, the hard surfaced areas, in my view, fail to preserve the openness of the Green Belt and conflict with the purpose to assist in safeguarding the countryside from encroachment.
74. Paragraph 155 of the Framework states that the development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where all the following apply; a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan; b) There is a demonstrable unmet need for the type of development

proposed; c) The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework; and d) Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below [sic].

75. The appellant suggests that I should consider the appeal site to be grey belt land. Grey belt land is defined as 'land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. 'Grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.' The purposes set out in paragraph 143 are: a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; d) to preserve the setting and special character of historic towns.
76. There have been two previous appeal decisions in respect of the site, appeal reference APP/N0410/A/14/2212181 and APP/N0410/W/21/3283020. The first appeal concerned a proposed extension to an existing stable building and the second concerned the erection of a dwellinghouse. I note that in the latter decision, the Inspector found that the site was previously developed land. However, the definition of previously developed land in the Framework has since changed and my finding above is made on the basis of the current definition. Understandably, neither inspector considered whether the appeal site contributes strongly to purposes (a), (b) or (d) in paragraph 143, since such consideration is necessitated by the recent changes to the Framework.
77. During the Inquiry, the appellant drew my attention to Google Earth images dated 15 April 2020, 30 March 2020, 8 March 2022 and 8 May 2024. In particular, the appellant has drawn my attention to a site to the south of the appeal site. However, I have no substantive details regarding the site, or whether it has been lawfully developed. The appellant has not shown that appeal site does not contribute strongly to purposes (a), (b) or (d) in paragraph 143 and I have limited information before me to enable a judgement to be made.
78. The Council requested that I do not make a finding with respect to grey belt, on the basis that this matter has not been fully explored during the Inquiry and there are implications for other development. Furthermore, as pointed out by the Council, even if I were to conclude the appeal site comprised grey belt land, the Framework also requires that there is a demonstrable unmet need for the **type** of development proposed (my emphasis).
79. The appellant advises that they have young teenagers who would be out on the town if it were not for the Games Room. However, this to my mind is not a demonstrable unmet need for this **type** of development, nor has it been shown that the appellant's needs in this respect could not be met in some other way.
80. With respect to the Kennels, the appellant states that they have 4 dogs and that they have to provide a house for the dogs, for their welfare. Again, the appellant has not shown that there is a demonstrable unmet need for this **type** of development. Furthermore, the appellant has not shown that the dogs could not be housed elsewhere.

81. With respect to the Barn, I recognise that it provides an income for the appellant and provides storage space for Greens Team. However, while Mr Richards commented that they would need to find storage space elsewhere, which would be difficult, detrimental, frustrating and incur moving costs, neither Mr Richards nor the appellant advised that there is a shortage of such accommodation in the area. Indeed, Mr Richards advised that they have used cheaper barns elsewhere.
82. The appellant did not advance any particular arguments regarding the hardstanding, fencing or the storage containers with respect to need and, as with the buildings above, I consider it unlikely the appellant would be able to show that there is a demonstrable unmet need for this **type** of development.
83. Even if I were to find the appeal site comprises grey belt land therefore, the appellant has not shown that there is a demonstrable need for the development concerned and so I find that the development is inappropriate development in the Green Belt which is contrary to policy GB1 of the LP. For the avoidance of doubt, I attach limited weight to the conflict with policy GB1 of the LP due to its inconsistency with the Framework.

Openness

84. The Barn is a substantial building which is visible from the public domain, as well as neighbouring properties. The building introduces built development into a part of the site which was previously open and has both a visual and spatial impact on the Green Belt, resulting in modest harm to the openness of the Green Belt.
85. Although the Games Room and Kennels are single storey, they also introduce substantial buildings into a part of the site which was previously open. Similarly, the storage containers and fencing occupy a part of the site which would previously have been open. Although views of the Games Room, Kennels, storage containers and fencing are more limited from the public domain compared with the Barn, they are likely to be visible from neighbouring properties. Furthermore, I consider they result in a spatial impact on the Green Belt, resulting in modest harm to the openness of the Green Belt.

Character and appearance

86. The appeal site is located within a part of Swallow Street which is generally characterised by residential development which fronts onto the highway. Although built development is evident beyond the southern boundary of the site, this comprises part of an industrial estate. The appeal site, by contrast, introduces substantial buildings of varying design and style to an area which was previously free of significant built development, which is uncharacteristic of this part of Swallow Street and which harms the character and appearance of the area, contrary to policy EP3 of the LP, which seeks development which is compatible with the character of the locality in general and policy Core Policy 9 (CP9) of the South Bucks Core Strategy (February 2011)(the CS), which seeks to protect landscape character

Protected species and biodiversity

87. The appeal site is located within the South Bucks Heath and Parklands Biodiversity Opportunity Area. Policy CP9 of the CS seeks the conservation,

enhancement and net gain in local biodiversity resources within Biodiversity Opportunity Areas. During the inquiry it was accepted on behalf of the appellant that there will be biodiversity implications (of the development) but, it was suggested, that these will be limited. However, the appellant has not prepared an ecology report to advance that submission.

88. An area of modified grassland has been removed to accommodate the new buildings and hardstanding and external lighting has been erected, which has the potential to affect bats. The appeal site is located within the Amber Risk Zone of great crested newts, which indicates that there is suitable habitat for great crested newts on site or in the surrounding landscape. The Council has identified several ponds within 500m of the appeal site. The Council's Ecology officer advises the development may have impacted on protected and priority species including badger, bats, great crested newts, reptiles, nesting birds and hedgehog and, given the above, I consider that there is a reasonable likelihood that protected species have been affected by the development.
89. The appellant suggested the inclusion of a condition to secure the provision of an ecological report to address the Council's concerns with respect to biodiversity. However, Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
90. There is insufficient information before me to determine the precise effect of the development on protected species⁵, contrary to the advice within Circular 06/2005 and CP9 of the CS, which seeks to protect nature conservation interests. Furthermore, the development is likely to have reduced biodiversity within the site. No measures are proposed to address any such reduction. Furthermore, it is not clear whether there is sufficient capacity within the site to address any reduction of biodiversity within the site, contrary to policy CP9, the requirements of which are set out above.

Other considerations

91. The Games Room provides additional space which the appellant and their family can use, and the Kennels provide shelter for the appellant's dogs. However, as set out above, it has not been shown that the appellant's needs could not be met in some other way. I therefore afford these benefits very limited weight.
92. The Barn provides storage space for Greens Team and provides an income for the appellant. However, as set out above, it has not been shown that the storage needs of Greens Team could not be met elsewhere and so I afford this matter limited weight.
93. Part 2, Class A of the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Were I to uphold the appeal, once the appellant had complied with the requirements of the notice, they would be able to erect a fence up to 2m in height within the appeal site. However, the fencing delineates between the different activities within the site. Were I to uphold the notice, it seems

⁵ And having regard to my duties under Regulations 9(1) and 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended)

unlikely the appellant would choose to re-erect the fence, since there would no longer be a need to delineate between the different activities/users of the site. Thus, there is not a greater than theoretical possibility that the development might take place and so I afford this matter very limited weight.

Planning Balance and Ground (a) Conclusion

94. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
95. The buildings, fence, hard surfaced areas and storage containers are inappropriate development in the terms set out in the Framework and have led to modest harm to the openness of the Green Belt. I have also found that the buildings, fence, hard surfaced areas and storage containers harm the character and appearance of the area and that there is harm to protected species and biodiversity within the site.
96. I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the buildings, fence, hard surfaced areas and storage containers conflicts with the Framework and with policies and the development plan taken as a whole.
97. Thus, for the reasons given above, I conclude that the appeal under ground (a) should be dismissed.

Ground (f)

98. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
99. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., 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. Since the notice requires the demolition and removal of the three buildings, the removal of the fence, the breaking up and removal of the hard surface areas, the removal of the storage containers and that the land be restored to its condition it was in prior to the unauthorised development, it is clear its purpose is to remedy the breach.
100. The appellant withdrew their ground (f) appeal during the Inquiry. Nevertheless, I raised with the parties whether the planning permission granted by Part 2, Class A of the GPDO was an obvious alternative which could be achieved with less cost and disruption. However, as set out above, I consider it unlikely that the appellant would choose to exercise their permitted development rights in this way: the fence acts to delineate different parts of the site. The appellant suggested that retaining the fencing would make

economic sense. However, were the enforcement notice to be upheld, I see no reason why the appellant would choose to erect the fencing in this location.

101. As set out above, I have found that the fence harms the openness of the Green Belt. Requiring removal of the fence would remedy the breach of planning control and so I find that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control and the appeal under ground (f) fails.

Ground (g)

102. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant suggests that at least 18 months would be required to fully comply with the notice and that six months would be extremely onerous for all of the business activities currently operating from the land to wind down and decant before the buildings could be demolished, removed from site and the land re-seeded.
103. The appellant suggested during the Inquiry that notices would need to be served, alternative premises found and that there would be 'substantial economic loss'. However, during the Inquiry both Mr Testa and Mr Richards confirmed that they have other sites. The contract with Greens Team contains a break clause where the local planning authority serves a valid enforcement notice, as does the agreement with Mr Testa (though this has long since expired).
104. In my view, the period given by the notice would give the appellant sufficient time to give their tenants notice, to remove the structures specified and to restore the land. Given the harms I have identified above, I consider the period given is reasonable and proportionate in the circumstances. Consequently, the appeal under ground (g) fails.

Conclusion

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

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Samual Okoronkwo Counsel instructed directly by the appellant

They called:

James Smith

Barn Wolstenholme

Ryan James Walls

Alan Walley

Terry Hunt

Jamie Testa

Justin Richards of Greens Team

FOR THE LOCAL PLANNING AUTHORITY:

Michael Rhimes Counsel instructed by Laura Lee Briggs

They called:

Jonathan Murray Enforcement Officer

Stephanie Penny Ground (a) only

DOCUMENTS

Document 1: Paginated bundle contents

Document 2: Aerial photographs of the appeal site

Document 3: Opening of the local planning authority

Document 4: Closing of the local planning authority

Document 5: *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560
(Comm)

Document 6: *Barrow v Merrett* [2021] EWHC 792 (QB)

Document 7: *Paton v Secretary of State for Levelling Up, Housing and
Communities* [2025] EWHC 245 (Admin)

Document 8: *Oates v Secretary of State for Communities and Local Government*
[2018] EWCA Civ 2229