Appeal Decision

Site visit made on 8 May 2025

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 24 November 2025

Appeal Ref: APP/W1525/C/23/3321748
Land south of Hobbits Hole, South Hanningfield Road, Rettendon CM3 8HD

- 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 "1990 Act").
- The appeal is made by Lee Glover[1] on behalf of LHJ Properties Limited against an enforcement notice issued by the Chelmsford City Council.
- The enforcement notice was issued on 6 April 2023.
- The breach of planning control as alleged is the change of use of the land for sale and storage of motor vehicles with associated development, comprising the construction of a hard surface, concrete pad, fencing and the siting of a portacabin and storage containers.
- The requirements of the enforcement notice are to:
  i. Cease use of the land for the sale and storage of motor vehicles.
  ii. Remove from the land all motor vehicles, storage containers and portacabin.
  iii. Break-up and/or scrape clear from the earth the hard surface that has been constructed.
  iv. Demolish the fencing and gate.
  v. Remove from the land all debris and materials resulting from the works carried out in steps (i) – (v), and
  vi. restore the land to its pre-development condition before the unauthorised works commenced.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (e), (c), (d), (a), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal succeeds in part on ground (f) and (g) only but otherwise fails and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Ground (e)

1. In pursuing an appeal on this ground, the appellant needs to show, on the balance of probability, that copies of the issued notice were not served as required by s172 of the 1990 Act. Essentially, the claim is the notice, as issued, contravened part 2, section 5, sub-paragraph (5)[2], because it did not include a full explanatory note explaining the time limits, all the grounds of appeal and when an appeal must be made. That said, the appellant company has been professionally represented by an agent who submitted an appeal prior to the effective date. The agent may have found the issued notice's explanatory note wanting, but it clearly refers to several official websites where one can easily find relevant information about appealing enforcement notices. The fact the appellant has been able to make a valid appeal and thereby suffered no injustice or prejudice due to an incomplete explanatory note means that this ground of appeal has no prospect of success.

Ground (c)

2. A lawful development certificate (LDC)[3] for an existing car sales use relates to areas A and B, but it only certifies that use as lawful at the date of the LDC application. In comparison to

[1] The relevant occupier or person with the interest in the land must appeal, a director of a company has no right of appeal on the Company's behalf. From the written submissions, it seems to me the relevant occupier is Lee Glover who paid the deemed application fee on behalf of LHJ Properties Ltd.
[2] See The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 as amended.
[3] Council ref LDC 11/00917/CLEUD.

the area covered by the current enforcement notice, which is outlined in red on the site plan attached to the issued notice, covers a wide parcel of land. Additionally, the scope of the matters alleged is substantially different, because it relates to the sale and storage of motor vehicles with associated development, comprising the construction of a hard surface, concrete pad, fencing and the siting of a portacabin and storage containers. There is no doubt in my mind that the alleged use is significant different in character to the certified car sales of area A and B, because the former is different in nature and scale. I am satisfied that the alleged breach of planning controls is materially different and constitutes development for the purposes of s55(1) of the 1990 Act.

3. The bundle includes photographic evidence of various portable style structures located within the area covered by the notice. The appellant's claim is these are temporary structures. However, there is no firm evidence to show the structures have moved around the site since their erection nor is there any evidence that they can be easily moved without the use of specialist plant or machinery. Although size is one factor to consider when assessing if these constitute buildings, the written representations show that the structures are fixed to the ground through their own weight. In my judgment, they are permanent and constitute buildings for the purposes of planning controls.

4. The placing of the structures referred to in the notice probably involved significant building operations, plant and machinery. The work is of a nature usually requiring degree of pre-planning and the use of heavy plant and machinery. As a matter of fact and degree, the erection of these structures amounts to a building operation falling within the scope of s55(1) of the 1990 Act and they support and are part and parcel of the material change in the use of the land. They do not benefit from permitted development rights set out in article 3, schedule 2, part 4 class A to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

5. In a similar vein, arguing that the hardstanding is permitted development by virtue of permitted development rights is equally wrong. First, part 1 class F to the GPDO relates to hard surfaces incidental to the enjoyment of the dwellinghouse and not the use of land for the sale and storage of motorised vehicles. Finally, part 6 class B is relevant only if the land is comprised in an agricultural unit where the specified development is reasonably necessary for purposes of agriculture within the unit, which does not apply in this case.

6. Drawing all the above points together, I find that the appellant has not discharged the onus on this legal ground of appeal. This is because the matters alleged constitute a breach of planning controls because express planning permission is required and it has not been obtained. Ground (c) must fail.

Ground (d)

7. For the appeal to succeed on this ground, the evidence should show that the alleged use was instituted on or before 6 April 2013, the relevant date, and continued thereafter for a period of 10 years without significant interruption.

8. No cogent case has been put forward in support of the contention that the alleged matters are lawful due to the passage of time. Clearly, the aerial images, which cover 2006 to 2023, supports the Council in that the unauthorised use in earnest began within the immunity period given the scale of vehicles sales and storage activity between 2014 and 2016. The evidence shows that the areas used for vehicle sales dramatically increased in size. At the date of the notice's issue, a much wider parcel of land had been incorporated and used for sale and storage of motor vehicles. The latter was clearly facilitated by associated development

including the construction of a hard surface, concrete pad, fencing and the siting of a portacabin and storage containers.

9. The so-called Murfitt principle is derived from *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598. A notice directed at a material change of use can require the removal of ancillary operational development within the 10-year immunity period even if the 4-year limit has passed if the works were intended to facilitate the unlawful use. This principle was reviewed by the Court of Appeal in *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467. The enforcement notice was challenged on grounds that it could not lawfully require the removal of operational development as such development was immune from enforcement action because of the expiry of the relevant time. It was held that the Murfitt principle only applies where the operational development is deemed "ancillary" to the change of use. Where operational development has brought about the change of use then the Murfitt principle cannot apply.

10. The Council concede that the perimeter fence along the eastern boundary appears to have been in situ more than 10 years. However, as I have already said elsewhere, the portable containers or structures are permanent and substantive and amount to buildings for planning purposes. They are fixed to the ground and do not have a fleeting character. The laying of hard standing to create parking areas is probably ancillary as is the erection of means of enclosure. When the nature of the vehicle sale and storage activity is taken together with associated operational development, in my judgment the operational development targeted by the issued notice is ancillary or subordinate and falls within scope. They are not fundamental to, or causative of, the change of use of the land on which they stand. In other words, had the unauthorised use not expanded to cover the entire land identified in the site plan attached to the issued notice, the associated operational development would not exist. I find that a separate 4-year time limit does not apply to the operational development.

11. For all the above reasons, although the fence along the easter boundary is immune from enforcement action due to the passage of time, I find that the alleged use is not time barred because the evidence presented does not clearly show it began on or before the relevant date and continued thereafter for a period of 10 years without significant interruption. Should I reach ground (f), I will return to the fence. However, overall, ground (d) fails.

Ground (a) and the deemed application

12. The terms of the deemed application are directly derived from the allegation. Planning permission is sought for change of use of the land for sale and storage of motor vehicles with associated development, comprising the construction of a hard surface, concrete pad, fencing and the siting of a portacabin and storage containers.

13. Relevant local and national planning policy in force at the time of my decision must be considered. Local planning policies referred to in the reasons for issuing the notice are found in the Chelmsford Local Plan (LP) 2020. It is probably under review, and the Council will have regard to updated national planning policy found in National Planning Policy Framework 2024 ("the NPPF") and the Planning Practice Guidance. Having considered the LP policies relevant to the determination of this ground (a) appeal, they are broadly consistent with the main Green Belt policy aims set out in the NPPF.

14. The main issues are: 1) Whether the development constitutes inappropriate development in the Green Belt. 2) The effect on openness and purposes of the Green Belt, and 3) whether other considerations clearly outweigh the harm to the Green Belt and any other harm so as to amount to very special circumstances.

Inappropriateness

15. Clearly, the alleged development does not fall within the exception categories set out in NPPF154 sub-section a) to g). For example, no cogent reasons have been advanced to show the associated development, comprising the construction of a hard surface, concrete pad, fencing and the siting of a portacabin and storage containers required for agriculture, forestry, the provision of appropriate facilities in connection with a use of land, nor the extension, alteration or replacement of a building. Sub-paragraph h) explains that other forms of development such as a material change in the use of land might not be inappropriate development provided it preserves openness and does not conflict with the purposes of including land within it. I will return to this later given the implications of grey belt policy.

16. Grey belt land includes previously developed land (PDL) and/or any other land that does not, in either case, strongly contribute to criterion (a), (b), or (d), which are found in NPPF143 and make up purposes of designating land in the Green Belt. Part of the land to which the notice relates is subject to an LDC and can be regarded as PDL, but that does not make the whole site PDL. It cannot meet the definition because much of the enforced site was characteristic as being undeveloped, agricultural or in a nil use. Be that as it may and given the location and position of the land, the site does not make a strong contribution to either checking unrestricted sprawl, preventing neighbouring towns from merging nor does it function to preserve the setting and special character of historic towns.

17. NPPF155 explains that the development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where sub-paragraph a) to d) are met. I consider that the development can be reasonably described as “other development” but sub-paragraph d) is irrelevant. It seems to me that the development utilises grey belt land and the limited scale does not, to my mind, fundamentally undermine the purposes, taken together, of the remaining Green Belt across the LP area. However, there is no demonstrable unmet need for this kind of development. Additionally, given the site’s rural location, I do not consider the development is in a sustainable location thus this kind of development does not provide opportunities to maximise sustainable transport solutions. For these reasons, NPPF155 is breached.

18. Returning to NPPF143 sub-paragraph h)(v), while part of the enforced land was already used for car sales, the vast expanse of the unauthorised use replaced largely open and undeveloped land, and the development has a spatial and visual effect given the site’s location. The access and hardstanding facilitate open-air parking of motorised vehicles making it likely that the site will be used more intensively for that purpose. In my opinion, the openness of the Green Belt is thus harmed more than it might otherwise be. Furthermore, even without parked vehicles, the nature and extent of the hard surfaces harm the open aspect of the Green Belt because of their siting. The visual harm is localised and the fence along the eastern boundary is time barred. Nevertheless, the change of use and associated development has turned otherwise mainly undeveloped land into an area permanently covered with materials of a type and nature that are incongruous in this spacious setting.

19. The scheme intrudes into this part of the Green Belt, which is characterised by mainly open and undeveloped parcels of land. The scheme conflicts with the objective of safeguarding the countryside from encroachment and I find that to be a serious planning objection.

20. Drawing all the above points together, in my planning judgment, the alleged development utilises grey belt land. However, it is at odds with NPPF154 a) to h), and NPPF155. That same finding is also applicable to part of the alleged development, namely, the associated operational development. I therefore conclude that the alleged development constitutes

inappropriate development in the Green Belt. There is conflict with LP policies SPS1, SPS11, DM6 and DM10.

Other considerations

21. The following arguments, underlined and evaluated, are advanced in favour of the development.

22. The LDC certifies part of the land can be used for car sales, some portable buildings are also linked to that operation, and that is a valid fall-back as is the use of area A (shown on a the block plans) and there is extensive planning history, which is identified by both appeal parties. The fence can be removed and re-erected under permitted development rights, and the eastern boundary has existed more than 10 years: however, the existence of the eastern boundary fence does not justify visually harmful land-use. The scale of development is unacceptable in this rural location and, in comparison to the existing use LDC, car sales is limited to certain sections of the site. As I have already said elsewhere, the notice relates to much wider land and the vast expanse of hard surfacing is out of keeping with the character of the locality.

23. Relinquish the car sale use of area A, which is illustrated in the proposed block plan, and a storage building, which is permitted under application 12/01059/FUL and lawfully commenced under application 13/01827/CLOPUD, will not be built. However, I do not consider this alternative scheme forms part of the matters alleged and even if it did planning conditions alone are insufficient to bring about such an outcome. The appellant says they could not produce a suitably worded binding unilateral undertaking, but granting planning permission on this basis is beyond the scope of this ground (a) appeal.

24. The vehicle sales and storage activity is a business which has economic and social benefits be that as it may, there is environmental harm. In any event, limited evidence of the kind of economic and social benefits is before me.

25. Conditions or a planning obligation could control the vehicle sales and storage activity, but there is no planning obligation for my consideration. In any event, the nature and scale of the development is such planning conditions cannot control things like a significant increase in comings and goings.

26. Personal circumstances and human rights: The rights under Article 8 of the European Convention on Human Rights[4] must be taken into consideration. This includes interference with private and family life. While there are concerns about the the effect of upholding the notice, this ground (a) appeal relates to commercial activity and operational development. Interference must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8.

27. In this location, the inappropriate nature of the development represents a grave planning policy objection. There is a need for restrictive policies to be applied to such areas, and this restriction is an appropriate proportional response to that need. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether refusal would have a disproportionate effect on the appellant in my overall conclusions.

[4] The ECHR protections have been codified into UK law by the Human Rights Act 1998.

Planning balance

28. Substantial weight is given to the inappropriate nature of the development in the Green Belt and harm to openness. The development conflicts with at least one purpose of designating land inside the Green Belt, which is a serious planning objection. There is conflict with Green Belt protection policies cited above.

29. On the other side, I attach significant weight to the previous use of part of the land for car sales and the possible cessation of area A’s use as well as the revoking of a part implemented planning permission. However, to bring about this kind of scheme requires agreement and none has been submitted for my consideration. I attach minimal weight to the perceived economic and social benefits, and limited weight to the arguments that a fence could be erected under permitted development rights because the scale of the car sale and storage activity is, in comparison, unacceptable and the fencing supports that use albeit the barrier along the eastern boundary is immune. Very limited weight is attached to implications on human rights or business disruption given the conflict with policy and the environmental harm caused by the unauthorised development.

30. In my planning judgment, the advanced considerations in support of the appeal, whether taken individually or cumulatively, do not, on balance, clearly outweigh the conflict with planning policies designed to protect the Green Belt so as to justify the grant of a planning permission on the basis of very special circumstances. In all the circumstances, it is not disproportionate to refuse planning permission.

Ground (f)

31. The purpose is to restore the land to its condition before the breach occurred, which falls within s173(4)(a). The appellant says the steps required should seek to remedy the breach by giving effect to the alternative scheme. Effectively, to cease the area to the north but I have already considered the merits of that argument elsewhere. Varying the notice as suggested by the agent would result in under-enforcement and not remedy the breach of material change of use to car sale and storage. Such variation could have far-reaching and unintended consequences in terms of land use. In any event, the alternative scheme cannot be brought about by varying the steps required by the notice without introducing considerable degree of uncertainty in the notice.

32. The requirement to cease the sale and storage of motor vehicles use, and remove all motor vehicles, storage containers and portacabin, does not prevent agricultural machinery, plant or vehicles from being kept as they would be used in connection with a lawful use of the land. Similarly, the removal of operational development including portable buildings that sustained the vehicle sale and storage activity is not excessive and falls within the scope of the notice.

33. As the fence along the eastern boundary is immune due to the passage of time, I intend to vary the requirements, so this element is removed from section 5 sub-paragraph (4).

34. For all the above reasons, I find that the steps required achieve the purpose of remedying the breach of planning control and are not excessive nor are they disproportionate. No lesser step will achieve that purpose. As I am varying the requirements, technically, there is success on ground (f) to this limited extent.

Ground (g)

35. The appellant says that the period of compliance is too short: a reasonable period being nine months, which would allow them to prepare an alternative planning application. It has already been some time nevertheless this ground of appeal has been relied on. In my assessment,

eight months from the date of my decision is reasonable time to comply with the requirements given the need to cease the unauthorised use and remove associated development. Ground (g) succeeds to this limited extent.

Overall conclusions

36. For all the above reasons and having considered all other matters raised, I conclude that the appeal on ground (e), (c) and (d) fail. I further conclude that ground (a) fails and planning permission is refused on the deemed application. I will slightly vary the requirements and period of compliance and so grounds (f) and (g) succeed to that limited extent.

Formal decision

37. It is directed that the enforcement notice be varied in section 5, what you are required to do, sub-paragraph (4), deleting the following text "demolish the fencing and gate" and substitute therefor by the following text: "Demolish the fencing and gate except the fence along the eastern boundary".

38. It is directed that the enforcement notice be varied by deleting "6 months" in section 6, period of compliance, and the substitution therefor by the following text: "eight months".

39. Subject to the variations, the appeal is dismissed, and the 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.

A V Ghafoor

INSPECTOR