
Appeal Decision

Site visit made on 24 February 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 12 March 2026

Appeal Ref: APP/X0415/C/23/3325136

Land at Rowan Tree Farm, Blackwell Hall Lane, Ley Hill, Buckinghamshire HP5 1UN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr J Fitzgerald of Fenton Civil Engineers Ltd against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice, numbered EN/19/0149, was issued on 23 May 2023.
 - The breach of planning control as alleged in the notice is, without planning permission:
 1. A material change of use of the Land to a (Sui Generis) mixed use comprising agriculture, civil engineering contractor's depot, residential occupation of log cabin by persons not connected to agriculture and the stationing of storage containers (the Unauthorised Use) and
 2. Operational development integral to the unauthorised use, comprising the erection of prefabricated buildings and the laying of hardstanding.
 - The requirements of the notice are:
 1. Cease the Unauthorised use of the land
 2. Remove all paraphernalia that has been brought onto the Land in connection with the Unauthorised use of the land.
 3. Cease the use of the building (in the approximate position shown hatched on plan 1) for residential occupation unconnected to agriculture.
 4. Remove the storage containers from the Land.
 5. Dismantle and remove the prefabricated buildings (in the approximate position shown stippled on plan 1) from the Land.
 6. Rip up and remove the hardstanding (in the approximate position shown hatched on the site plan) from the Land.
 7. Remove from the Land all materials and debris resulting from complying with Steps 1 to 6 of the Notice.
 - The period for compliance with the requirements is twelve months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed, and subject to variations the enforcement notice is upheld in the terms set out below in the Formal Decision

Procedural Matters

1. The National Planning Policy Framework (Framework) was revised in December 2024, including in relation to Green Belt policy. The timetable for this appeal was completed before those revisions to the Framework were made. The revisions to the Framework made in December 2024 resulted in changes that are relevant to the issues raised in this appeal, including in relation to Green Belt policy. I therefore wrote to the parties offering them the opportunity to comment on those matters.

The Enforcement Notice

2. The breach of planning control alleged in paragraph 3(1) of the notice is a material change of use of the Land to a (Sui Generis) mixed use comprising agriculture, civil engineering contractor's depot, residential occupation of log cabin by persons not connected to agriculture and the stationing of storage containers. This element of the breach of planning control is described in paragraph 3(1) of the notice as the 'Unauthorised Use'.
3. The requirement in paragraph 5(3) of the notice requires the cessation of the use of the *building* (in the approximate position shown hatched on plan 1) for residential occupation unconnected to agriculture (emphasis added). Two points flow from this.
4. Firstly, the residential occupation of the log cabin by persons not connected to agriculture forms part of the Unauthorised Use alleged in paragraph 3(1) of the notice. As such, it is already caught by the requirement at paragraph 5(1) of the notice, which is to cease the Unauthorised Use of the land. Consequently, strictly speaking the requirement at paragraph 5(3) of the notice is otiose. That said, it is not technically incorrect and consequently I see no merit in varying the notice by deleting it.
5. Secondly, it is apparent that the building in paragraph 5(3) of the notice is the log cabin referred to in paragraph 3(1) of notice, just differently described. The appellant has clearly understood this to be the case. The notice is accurate insofar as a log cabin can also be a building and, in this case, clearly is. However, it is essential that the breach of planning control alleged in a notice and the requirements to comply with the notice match as closely as possible. I will therefore vary the notice so that both refer to a log cabin, that being the more precise description.
6. There are two plans attached to the notice. The first of these is labelled Plan 1 and shows the entirety of 'Rowan Tree Farm' being enclosed by a thick black line. When read in conjunction with notice itself, I take the thick black line enclosing the site to signify the land to which the notice relates.
7. There is then a triangle of land in the southwest corner of the site shown on Plan 1 as being hatched. The significance of that hatching is not noted anywhere on Plan 1. Neither is the significance of that hatching noted anywhere in the notice itself.
8. However, the requirement at paragraph 5(6) of the notice is to rip up and remove the hardstanding in the approximate position shown hatched on the *site plan* from the Land (emphasis added). By a process of deduction and elimination, the triangle of land in the southwest corner of the site shown on Plan 1 as shaded by lines can only relate to the hardstanding that is alleged in paragraph 3(2) of the notice. Whilst Plan 1 could be clearer in this respect, the appellant has clearly understood what was intended. I am therefore satisfied that I can vary the requirement in paragraph 5(6) of the notice to specify this.
9. The second plan attached to the notice is not numbered. Neither is it given any title. It does, however, highlight two buildings. One of these is depicted with hatching. The other is depicted with stippling.
10. By a process of deduction and elimination, the building shown hatched is the log cabin and can only relate to the requirement at paragraph 5(3) of the

notice. Similarly, the building shown stippled can only be the prefabricated buildings and relate to the requirement at paragraph 5(5) of the notice, albeit that requirement incorrectly ascribes the building shown stippled to Plan 1. Again, the appellant has clearly understood what was intended and consequently I see no merit in requesting an amended plan. I will, however, vary the requirement in paragraph 5(5) of the notice to make this clearer.

11. Section 176(1) of the 1990 Act provides that an Inspector may correct and/or vary the terms of the enforcement notice under s176(1)(b), where the Inspector is satisfied that doing so will cause no injustice to the appellant or the local planning authority. I am satisfied that correcting and varying the notice as set out above will not cause injustice.

The planning unit

12. Where, as in this case, the breach of planning control alleged constitutes a material change of land, it is first essential to define and understand the planning unit in which that material change of use is said to have occurred.
13. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
14. It is necessary to apply the principles established in *Burdle* to the facts of this case.
15. As indicated above, the first of the two plans attached to the notice (labelled Plan 1) shows the entirety of 'Rowan Tree Farm'¹ being enclosed by a thick black line. I take the thick black line enclosing the site as equating to the land occupied by the appellant and therefore to the unit of occupation.
16. An aerial photograph dated May 2018 embedded within the Council's Enforcement Notice Report shows the northern part of the site occupied by a series of buildings within what appears to be an area of hardstanding. Immediately adjacent to that is the 'log cabin' referred to in the breach of planning control at paragraph 3.1 of the notice, to the south of which appears to be the curtilage of the building. This area is not physically separated, apart from perhaps some delineation of the curtilage to the log cabin. Nevertheless, the log cabin is evidently accessed from the same area of hard surface as the other buildings.

¹ I take the appellant's point that the land is no longer used as a farm and I use this description for convenience here.

17. In the aerial photograph dated May 2018, the area broadly equivalent to the triangle of land shown on Plan 1 as being hatched appears to be grassed or covered by vegetation of some description. This area appears to be physically separate from the buildings and hard surface to the northeast, albeit there appears to be a gate providing access between the two.
18. It therefore seems to me that, as a matter of fact and degree, the area of land to which the enforcement notice relates formed a single unit of occupation prior to the breach of planning control taking place. The planning history of the site records that planning permission was granted in 1996 for the change of use from agriculture to a mixed use for agricultural and ground maintenance contractors (Council Ref: CH/1996/0483/FA), and subsequently for the retention of a timber structure for residential use by an agricultural worker (Council Ref: CH/2008/0222/FA). I deduce from this that the lawful use of the unit of occupation was for a mixed use for agriculture and for ground maintenance contractors.
19. I therefore consider that, as a matter of fact and degree, prior to the breach of planning control taking place the area of land to which the enforcement notice relates formed a single planning unit in a mixed use for agriculture and for ground maintenance contractors.

The appeal on ground (b)

20. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred. This ground of appeal is expressed in the past tense: i.e. that the matters have occurred. It is therefore not necessary for those matters to have been taking place on the date that the enforcement notice was served or, indeed, at the time of my site visit. It is sufficient that they have occurred at some point.
21. This ground of appeal is only briefly stated on the appeal form and, unlike the other grounds of appeal, is not expanded upon in the appellant's Statement of Case. The totality of the appellant's case on this ground of appeal is that the use of the land is not a *Sui Generis* use as alleged by the notice and that the log cabin is not occupied by persons not connected to agriculture.
22. The appellant does, however, submit in relation to the appeal on ground (a) that the description of the alleged breach of planning control is factually incorrect. I have treated that as constituting an appeal on ground (b).
23. The appellant explains that the use of the site by Fenton Civil Engineering Ltd mainly incorporates open-air storage, internal storage, distribution and off-site 'transfer' of materials and specialist mechanical equipment. The appellant goes on to explain that the materials and machinery used to facilitate the previous mixed use of agricultural and ground maintenance contractors have been retained as part of the current use. The appellant contends that the use falls within Use Class B8 (Storage and Distribution) of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO).
24. However, the appellant's description of the use and categorisation of it as falling within Use Class B8 of the UCO is not supported by the evidence. The

appellant provides copies of invoices from customers of 'Fenton Plant Hire Ltd'². These invoices are for various engineering operations. For example, invoice FPH20/054 dated 2 July 2020 is for: excavate 10,000m³ of muck; form sub-base 200mm 6FS; 80mm of 20mm DBM 300 Tonne; 40mm 10mm wearing course 160 Tonne; pre-cast concerted clamp walls 250 Lm; and all associated works. Similarly, invoice FPH20/038 dated 5 March 2020 is for the supply and installation of 700 linear metres of 16 bar pressure 150mm diameter pipe and to re-instate with as dug material.

25. Those invoices do not describe a storage and distribution use falling within Use Class B8 of the UCO: they describe civil engineering operations and the supply of materials for those operations. It is a use that correlates exactly with the breach of planning control alleged in the notice, namely a civil engineering contractor's depot.
26. The previous Inspector also found on the evidence before him that, as a matter of fact and degree, the use carried out by Fenton Civil Engineers Ltd might more accurately be described as a civil contractor's depot than a use falling within the B8 Use Class (APP/X0415/C/21/3278328). Ultimately, the Inspector concluded that the enforcement notice did not specify with sufficient clarity the breach of planning control that was alleged and quashed the notice. Nevertheless, the Inspector's conclusions in relation to the character of the use carried out by Fenton Civil Engineers Ltd reinforces my own conclusions. I therefore see no reason to correct the current notice in that respect.
27. It is, however, necessary to consider whether some of the other activities cited in the breach of planning control alleged in the notice also form a primary use of the planning unit, or whether they can be considered ancillary to the appellant's business. Principal amongst these is the alleged residential occupation of log cabin by persons not connected to agriculture.
28. The appellant explains that the timber dwelling is only occupied for the purposes of providing on site security for the wider site. No evidence has been provided to support that. For example, no tenancy agreements have been provided linking the occupiers with Fenton Civil Engineers Ltd. Nor have any extracts from the employees' contracts been provided to show that the accommodation is provided Fenton Civil Engineers Ltd as part of their terms of employment. In the absence of that evidence, there is nothing before me to show a link between the occupation of the log cabin and the use of the site. More importantly, the appellant has not demonstrated through evidence that the log cabin is being occupied by persons employed in agriculture, that being the lawful use granted by planning permission CH/2008/0222/FA.
29. I noted at my site visit that the log cabin provides a living area, a fully equipped kitchen, two bedrooms and a bathroom. It therefore affords to those who use it all the facilities required for day-to-day private domestic existence. In that sense, it is capable of being a self-contained dwelling. Consequently, I am satisfied on the evidence before me that the description of the breach of planning control alleged in the notice is accurate, namely the residential occupation of log cabin by persons not connected to agriculture. Again, I see no reason to correct the notice in this respect.

² I note that the invoices are not from Fenton Civil Engineers Ltd, the appellants in this case. However, the address for Fenton Plant Hire Ltd on the invoice is given as the appeal site. I am therefore satisfied that they are effectively the same company.

30. The previous Inspector understood that the role of the occupiers of the log cabin was to ensure site security and that as such the residential use was not unrelated in terms of function to the depot use. I do not know what evidence was before the Inspector to support that conclusion but there is no evidence before me that enables a similar conclusion to be reached. Nevertheless, the previous Inspector found that the parts of the site that are in residential use could not be clearly defined. This included an area to the north of the log cabin, as well as the access, parking and turning areas. The Inspector found that these areas were highly likely to be also used for purposes associated with depot activity. The Inspector found that there was no part of the site that was physically as well as functionally separate from the rest. This led the Inspector to conclude that the unit of occupation comprised a single planning unit in a mixed use.
31. The appellant's evidence on this ground is silent in relation to the use of the site for agriculture and for the stationing of storage containers. At my site visit, there were some storage containers stationed on the land. There was also a trailer with hay bales stacked on it, which is consistent with an agricultural use. I am therefore satisfied that the breach of planning control alleged in the notice is accurate in these respects.
32. There is no evidence before me to show that the residential use of the log cabin is linked to the use of the site as a civil engineering contractor's depot. Nevertheless, as a matter of fact, the log cabin can only be accessed from the main site entrance. That entrance is controlled by gates that are routinely locked shut. Although the log cabin has an area immediately to the south that could be regarded as forming the curtilage of that dwelling.
33. The wider site is partially sub-divided by fencing and gates, but nonetheless there is interconnectivity across the whole of the site. Consequently, there is no permanent (as distinct from openable) physical separation between it and the main part of depot, including where the storage containers are stationed and the trailer stacked with hay bales was parked at the time of my site visit. Consequently, as a matter of fact and degree, I conclude that the whole of the land to which the notice relates forms a single planning unit, the use of which is a mixed use comprising mixed use comprising agriculture, civil engineering contractor's depot, residential occupation of log cabin by persons not connected to agriculture and the stationing of storage containers.
34. The appellant criticizes the use of the term *Sui Generis* in the breach of planning control that is alleged. However, a *Sui Generis* use is generally accepted as being a use that does not fall neatly into any of the Use Classes set out in the UCO. The breach of planning control as alleged in the notice is a material change of use of the Land to a mixed use comprising agriculture, civil engineering contractor's depot, residential occupation of log cabin by persons not connected to agriculture and the stationing of storage containers. That is a use that does not fall within any Use Class in the UCO. It is a *Sui Generis* use.
35. I conclude that, on the balance of probability, the matters stated in the notice have occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (d)

36. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning

control that may be constituted by those matters. The test in this regard is the balance of probability, and the burden of proof is on the appellant. The appellant's appeal on ground (d) only relates to the operational development on the site.

37. The time limits for taking enforcement action are set out in section 171B of the 1990 Act, as amended by The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). In most cases, development becomes immune from enforcement if no action is taken within four years of *substantial completion* for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024.
38. In this case, although the Council served a previous enforcement notice dated 24 May 2021 in respect of the same site, the breach of planning control was different to that alleged in the notice subject to this appeal. Consequently, the provisions in section 171B(4)(b) of the 1990 Act do not apply³. I must therefore take the date of 23 May 2023 as being the 'relevant date': i.e. the operational development subject to the notice would need to have been substantially complete on a date four years prior to 23 May 2023 in order to have become immune from enforcement action. That date being 23 May 2019.
39. The appellant maintains that the operational development alleged in the notice has been in place in excess of four years. In support of the position, the appellant produces a Summary of Account for a Portakabin prepared on 16 April 2019 and a Tax Invoice for a quantity of concrete dated 2 March 2019. Both of those documents relate to transactions that took place more than four before the enforcement notice was issued.
40. However, that evidence on its own does not establish a link with the prefabricated buildings (hereafter 'portacabins') alleged in the notice. It could relate to any other portacabin stationed on any site. Furthermore, the evidence does not show that the portacabin subject of the Summary of Account was on site and substantially complete by 23 May 2019: that is only one month after the date of the Summary of Account. Furthermore, there is no evidence before me of the portacabin being delivered to the site or dated photographs of the portacabin in situ on the site on or prior to the relevant date.
41. Similarly, there is no evidence before me that the concrete ordered in March 2019 was used to create the hardstanding subject to the notice. There is no evidence of the concrete being delivered to the site and no evidence that the laying of the hardstanding was substantially complete by 23 May 2019. Again, that is only a couple of months after the date of the Tax Invoice.
42. An aerial photograph dated March 2020 does show both the portacabin and the hardstanding to be in place by that time. However, that is some 10 months after the relevant date for present purposes.
43. In an appeal on ground (d), the burden of proof is on the appellant. The appellant has not discharged that burden in this case. Consequently, I conclude that on the balance of probability the Council was in a position to take enforcement action in respect of the breach of planning control alleged in the notice. Accordingly, the appeal on ground (d) fails.

³ This is known as the "second bite" provision.

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

44. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
45. The appeal site is within the Green Belt. The Council has stated three substantive reasons for issuing the enforcement notice, from which the main issues raised are:
- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt
 - the effect, if any, on the character and appearance of the area, including whether the development conserves or enhances the Chilterns National Landscape, and
 - if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the development is inappropriate development in the Green Belt

46. Paragraph 154(h)(v) of the Framework indicates that a material change in the use of land is not inappropriate in Green Belt provided it preserves the openness of Green Belt and does not conflict with the purposes of including land in Green Belt.
47. In this case, the use of the site as a civil engineering contractor's depot manifests itself in several different ways. However, before considering the impact (if any) of those on the openness of Green Belt, it is first necessary to set the context in which that consideration must be made.
48. The Council accepts that following the grant of planning permission CH/1996/0483/FA part of the appeal site constitutes 'previously developed land' (PDL)⁴. In summary, Annex 2 of the Framework defines PDL as land which has been lawfully developed and is or was occupied by a permanent structure and any fixed infrastructure associated with it, including the curtilage of the developed land. Two points arise.
49. Firstly, the aerial photograph dated May 2018 embedded within the Council's Enforcement Notice Report shows the area broadly equivalent to the triangle of land shown on Plan 1 attached to the notice to be grassed or covered by vegetation of some description prior to the notice being issued. That part of the site cannot be PDL.
50. Secondly, Annex 2 of the Framework defines 'Grey Belt' as constituting, in summary, 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 (of the Framework). The definition at Annex 2 of the Framework then goes to confirm that 'Grey Belt' excludes

⁴ That planning permission was for a development including alterations to existing agricultural building and change of use from agriculture to mixed use for agricultural and ground maintenance contractors.

land where the application of policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for restricting development.

51. The appeal site is within the Chilterns National Landscape. The policies referred to in footnote 7 to the Framework include those relating to National Landscapes. Paragraph 189 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty within National Landscapes, which have the highest status of protection in relation to those issues, and that the scale and extent of development these designated areas should be limited. On that basis, footnote 7 of the Framework disapplies the concept of 'Grey Belt' insofar as it relates to the appeal site. Consequently, the site does not constitute 'Grey Belt' for the purposes of paragraph 155 of the Framework.

Effect on openness

52. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement and that openness can have both a spatial aspect as well as a visual aspect. It is settled case law that it is relevant to take into account visual perception as a factor which may reduce the spatial harm from the effect of a development on the openness of the Green Belt. I therefore firstly set out my perception of the wider site and its surroundings in terms of its openness before assessing the impact on openness, if any, of the operational development that is alleged.
53. The appeal site sits on slightly raised ground within an area of mostly open countryside, with open fields to the south, east/north-east and to the west. To the east of the appeal site, there is a parcel of land currently being used for the storage of vehicles. There are other sporadic uses taking place to the east of that but the distance between those uses ensures that a sense of openness is retained. To the west, the appeal site is bordered by an extensive area of woodland. There is a smaller area of woodland to the immediate east of the appeal. Overall, the area surrounding the appeal site exhibits a general sense of openness, albeit views of the appeal site are not possible from the west of the site. Moreover, even though views into the site from outside of it are limited, the whole of the site is itself within the Green Belt.

Use as a civil engineering contractor's depot

54. The use of the site as a civil engineering contractor's depot results in a variety of vehicles and trailers being stored/parked on the site when not being used and/or hired out. These include diggers, excavators, fork-lift type trucks and tractors. Some of these vehicles are substantial pieces of equipment, often painted in gaudy colours. In spatial terms, these vehicles have a limited impact on the openness of the Green Belt. However, by reasons of their size, height and appearance, these vehicles and trailers collectively have a significant impact on the openness of the Green Belt in visual terms.

The hardstanding

55. In spatial terms, the hardstanding has only a limited effect on the openness of the Green Belt. Nevertheless, by reasons of its extent and appearance (including the materials used in its construction), the hardstanding significantly harms the openness of the Green Belt in visual terms.

The portacabins

56. The portacabins collectively form a substantial group of these structures with an extensive collective footprint. The portacabins are single storey in height and finished in a light grey colour.
57. Views of these structures from outside the site are completely obstructed by the building on the land occupied by Terra Firma Ground Investigations, the boundary fence and the adjoining woodland. Nevertheless, from within the site, by reason of their height, footprint and appearance, the portacabins have a significant effect on the openness of the Green Belt in spatial terms. For the same reasons, the portacabins have a significant effect on the openness of the Green Belt in visual terms.

The use of the log cabin

58. The log cabin is an existing building, granted planning permission solely for persons occupied in agriculture. The use of the log cabin by persons not employed in agriculture does not impact on the openness of the Green Belt in either spatial or visual terms.

Openness - cumulative impact

59. The Oxford English Dictionary defines 'preserve' as maintaining something in its original state. It follows that any impact or harm to the openness of the Green Belt, however slight, would not maintain its openness.
60. In this case, both individually and the cumulatively, the use and operational development associated with the use of the appeal site as a civil engineering contractor's depot significantly harm the openness of the Green Belt. It follows that the operational development associated with the material change in the use of land alleged in the notice does not preserve the openness of Green Belt.

The purposes of including land in Green Belt

61. Paragraph 143 of the Framework sets out the five purposes of Green Belt, one of which is to assist in safeguarding the countryside from encroachment. There are existing buildings on the site, including the log cabin and former farm buildings. The salient point, however, is that the area broadly equivalent to the triangle of land shown on Plan 1 attached to the notice was previously grassed or covered by vegetation of some description prior to the notice being issued. The covering of this land with hard surfacing, together with the use as a civil engineering contractor's depot and the associated stationing of the portacabins, encroaches into the countryside.
62. Although not visible from outside of the appeal site, that development adds to the total of development (operational and use) on the appeal site. To that albeit limited extent, the use as a as a civil engineering contractor's depot does not safeguard the countryside from encroachment. It is relevant that paragraph 143 of the Framework refers to the purpose of the Green to *assist* in safeguarding the countryside from encroachment (emphasis added). It follows that even a limited incursion of built development into the countryside, as in this case, would not achieve that objective.
63. I conclude that by reason of the use of the site and the built development associated with it the material change of use alleged in the notice fails to

preserve the openness of Green Belt and conflicts with the purposes of including land in Green Belt. I therefore conclude that the breach of planning control alleged in the notice constitutes inappropriate development in Green Belt for the purposes of Paragraph 154 of the Framework.

64. Paragraph 153 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. That paragraph goes on to indicate that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Character and appearance

65. The appeal site sits within the Chilterns National Landscape. Notwithstanding the relative proximity to the settlements of Botley and Ley Hill, the area surrounding the appeal site is overtly rural in character. The landscape in which the appeal site sits comprises a mixture of open fields and areas of woodland, some of which are relatively expansive. The latter includes the area of woodland to the north of the appeal site. Within this landscape, built development is typically sparse and, where it does occur, tends to comprise isolated dwellings and farm buildings.
66. One notable exception to the general character of the surrounding area is the building and associated compound immediately to the south of the site occupied by Terra Firma Ground Investigations. The main building is a substantial structure of industrial scale and appearance, the visual impact of which is exacerbated by the materials and vehicles stored in the associated compound.
67. In addition to the building occupied by Terra Firma Ground Investigations, there are a number of other structures/uses to the south and east of the appeal site that impact on the character and appearance of the area. These include some chalet-type buildings directly opposite the appeal site and the storage of vehicles on sites further to the east. I have taken all of these buildings/uses into account in my consideration of the character of the surrounding landscape but not knowing the full planning history of the buildings/uses (i.e. if they are lawful in planning terms) reduces the weight that I can attach to the contribution they make to the character and appearance of the area.
68. I am also mindful that, prior to the breach of planning control taking place, the area broadly equivalent to the triangle of land shown on Plan 1 attached to the notice was previously grassed or covered by vegetation of some description. My assessment of the impact of the development, if any, on the character and appearance of the area must be informed by that as the starting point.
69. The use taking place on the appeal site is the very antithesis of the high-quality landscape of the Chilterns National Landscape as a whole, including the area surrounding the appeal site. The proliferation of parked/stored vehicles, including many large vehicles, brightly coloured vehicles that are commercial in character, is visually intrusive and incongruous in this overtly rural landscape. This is only exacerbated by the extensive area of hardstanding. I recognise that areas of hardstanding may also be found in the context of agricultural uses and farm buildings but the area of hardstanding in this case may be

distinguished from those by its extent and the use to which it is put. Furthermore, by reason of its footprint and appearance, the group of portacabins is wholly incongruous in this rural location.

70. I also recognise that the area of hardstanding and the use to which it is put is not widely visible from outside the site, being largely screened from view by the adjoining woodland and the building occupied by Terra Firma Ground Investigations. The same applies to the group of portacabins. Nevertheless, paragraph 187(b) of the Framework states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Logic and other policies in the Framework both dictate that this guidance must apply with even greater force within National Landscapes. Consequently, even though breach of planning control is not widely visible from outside of the site, it still unacceptably harms the intrinsic character and beauty of the Chilterns National Landscape.
71. In reaching that conclusion, I have taken into account the impact on the character of the Chilterns National Landscape of the building occupied by Terra Firma Ground Investigations. By reason of its height, scale and industrial appearance, there can be no doubt that this building significantly detracts from the character and appearance of the Chilterns National Landscape. Moreover, the building is clearly visible from a public footpath nearby.
72. However, I have not been provided with any details of the planning history of that site/building that might explain how that building/use came to be in that location. There may be sound reasons of which I am unaware to justify the presence of that building in this location. I have no reason to believe that the building/use is unlawful in planning terms but not knowing the full planning history of the site/building reduces the weight that I can attach to the contribution it makes to the character and appearance of the area. Furthermore, the harmful impact resulting from the breach of planning control subject to the notice is in addition to the harm caused by the building occupied by Terra Firma Ground Investigations, not instead of it. I therefore consider that the presence of the building occupied by Terra Firma Ground Investigations does not justify the harm to the landscape and scenic beauty of the Chilterns National Landscape caused by the use of the appeal site as a civil engineering contractor's depot.
73. I conclude that the use of the appeal site as a civil engineering contractor's depot significantly harms the character and appearance of the area and fails to conserve or enhance the Chilterns National Landscape. I therefore conclude that the development is contrary to Policies GC1 and LSQ1 of the Chiltern District Local Plan (Local Plan) and Policy CS22 of the Core Strategy for Chiltern District (Core Strategy) which, amongst other things, require that all proposals must conserve and enhance the special landscape character and distinctiveness of the Chilterns National Landscape.
74. The use of the appeal site as a civil engineering contractor's depot also fails to accord with paragraph 189 of the Framework which states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes, which have the highest status of protection in relation to these issues. Paragraph 189 of the Framework goes on to state that the scale and extent of development within these areas should be limited, with which the development subject to the notice also fails to accord.

Other considerations

75. A representation in support of the issuing of the enforcement notice has been submitted by Latimer and Ley Hill Parish Council. In the opinion of the Parish Council, the use of the appeal site as a civil engineering contractor's depot diminishes the openness of the Green Belt in this location and is an incongruous form of development that fails to conserve or enhance the Chilterns National Landscape.
76. The appellant maintains that the presence of the building occupied by Terra Firma Ground Investigations sets a precedent, not only in terms of the principle of a B8 use but also in terms of the openness of the Green Belt. As the appellant puts it, if it is considered that this building preserves the openness of the Green Belt and the purpose of including land within it, then it must follow that the principle of development in respect of operating the civil engineering on the appeal site is acceptable. Several points arise.
77. Firstly, I do not consider that the building occupied by Terra Firma Ground Investigations does preserve the openness of the Green Belt or accord with the purpose of including land within it. Far from it. By reason of its height and scale, the building axiomatically harms the openness of the Green Belt in this location, and to a significant extent.
78. Nevertheless, the building is there. But that does not mean that the use of the appeal site as a civil engineering contractor's depot is acceptable. For the reasons set out above, use of the appeal site as a civil engineering contractor's depot significantly erodes the openness of the Green Belt in this location in its own right. That harm is significant. Moreover, it is in addition to the harm to the openness of the Green Belt caused by the building occupied by Terra Firma Ground Investigations. It therefore exacerbates that harm.
79. Secondly, I have no documentary evidence before me to show that the lawful use of that site/building is for B8 storage and distribution. The name of the company that occupies it (Terra Firma Ground Investigations) implies that it is not in a B8 use, as does the type of equipment deployed by that company. In any event, irrespective of which Use Class the use falls within⁵, it makes no difference. It is a fundamental principle of planning control that each case must be determined on its own merits. I have adopted that approach in this case and find that the use the appeal site as a civil engineering contractor's depot fails to preserve the openness of the Green Belt in its own right.
80. The appellant suggests that no more than 15 storage containers could be stored at any time and only on the part of the land shown as hatched in the enforcement notice plan. The appellant also suggests that the storage containers should be located at ground level and should not be stacked. It is not entirely clear to me whether this proposal would be part of the use the appeal site as a civil engineering contractor's depot or a separate use operating on its own.
81. I acknowledge that the limitation on the number, location and/or height of the storage containers be controlled by the imposition of a condition(s) imposed upon a planning permission. However, even the stationing of 15 unstacked storage containers on the part of the land would itself be harmful to the

⁵ Not discounting the possibility that it might be a *Sui Generis* use

openness of the Green Belt. It would also fail to conserve or enhance the landscape and scenic beauty of the Chilterns National Landscape. For those reasons, I have not considered this proposal further.

82. The appellant has also suggested that a temporary planning permission of 5 years be granted for the use. The Planning Practice Guidance (PPG) indicates the circumstances where a temporary permission may be appropriate. These include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.
83. In this case, the use of the site alleged in the notice is already taking place and the associated operational development is already in place. A trial period is therefore not required to assess the effect of the development on the area: I have been able to do that at my visits to the site and have already come to the view that the development is significantly harmful to the openness of the Green Belt and would neither conserve nor enhance the Chilterns National Landscape.
84. Neither is there any merit in granting a temporary planning permission in the expectation that the planning circumstances will change by the end of that period. The Framework indicates that the essential characteristics of Green Belts are their openness and their permanence. It is therefore highly unlikely that the inclusion of the appeal site within the Green Belt will change over the next five years. Similarly, the Framework attaches great weight to conserving and enhancing National Landscapes. This has been a long-standing objective of the Framework, and it is also unlikely that this would change over the next five years.
85. For these reasons, granting a temporary planning permission (of any duration) would not be appropriate and is not an option open to me.
86. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. This includes the condition suggested by the appellant that the materials stored temporarily in the open on the northern part of the site could be accommodated within the buildings within the site. However, that would still leave the vehicles/trailers, the hardstanding and the portacabins, all of which contribute significantly to the harm to the openness of the Green Belt and the Chilterns National Landscape. In my view, the harms identified are intrinsic to breach of planning control that has occurred and could not be overcome by the imposition of conditions.
87. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of the matters stated in the notice or in relation to the whole or any part of the land to which the notice relates. I have considered whether I could grant planning permission for any part of the matters stated in the notice, including the use of the appeal site as a civil engineering contractor's depot with and without the hardstanding and/or with or without the portacabins. However, given that the site is within the Green Belt and the Chilterns National Landscape, I have concluded that none of those would not be appropriate. Furthermore, those options would in all probability undermine the viability of the use. Accordingly, I have not considered these options further and for that reason have not sought the views of the parties on those options.

88. I am fully aware that the dismissal of this appeal would result in those currently residing in the log cabin in losing their homes. This would interfere with their rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
89. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant. I have found that the breach of planning control alleged in the notice fails to preserve the openness of the Green Belt and fails to conserve and enhance the landscape and scenic beauty of the Chilterns National Landscape. Both are longstanding objectives of national planning policy and of policies in the development plan for the area, such that upholding the notice is in the wider public interest. No overriding factors have been brought to my attention.
90. Having regard to the above, I am satisfied that the loss of the home(s) of those currently residing on the site is a proportionate response to the breach of planning control that has occurred, such that the interference with the rights held under the HRA by those currently occupying the log cabin is justified in this case. This then becomes a neutral factor in the overall planning balance.

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

91. In accordance with paragraph 153 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development constituted by the breach of planning control alleged in the notice, including the harm to its openness.
92. I find that the use of the appeal site as a civil engineering contractor's depot fails to conserve or enhance the landscape and scenic beauty of the Chilterns National Landscape. In accordance with paragraph 189 of the Framework, that is a matter to which I attach great weight.
93. I attach significant weight to the representation made by Latimer and Ley Hill Parish Council as representing the views of the local community about this development.
94. Against the harm identified above, I recognise that the appellant operates an established business operation that has been existence for a considerable period of time and employs numerous staff. That said, the appellant has not advanced any business case as to why the company needs to be located on the appeal site. Similarly, the appellant has not quantified the contribution, if any, made by the business to the local economy.
95. Consequently, in weighing the overall balance, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development as a whole do not exist.

96. I have already found conflict with policies in the development plan in some respects. In addition to those cited above, the Council also cites Policy GB2 of the Local Plan in the reasons for issuing the notice. Policy GB2 states that planning permission will be refused for inappropriate development in the Green Belt. In view of my conclusion that the breach of planning control alleged in the notice constitutes inappropriate development in Green Belt and that the very special circumstances necessary to justify the development do not exist, the development to which the notice relates is contrary to Policy GB2 of the Local Plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

97. I conclude that planning permission ought not to be granted for matters stated in the notice. The appeal on ground (a) will be dismissed.

The appeal on ground (f)

98. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to cease the Unauthorised Use of the land; to remove the storage containers from the Land; to dismantle and remove the portacabins from the Land; and to rip up and remove the hardstanding from the Land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

99. The appellant has advanced four lesser steps to comply with the notice, albeit for present purposes I have combined steps three and four.

100. The first of these is that the concrete top layer of the hardstanding in the southern part of the land should be ripped off and replaced with the material known as 'Grass Crete'. The appellant suggests that the impact of the hardstanding on the appearance of the Green Belt and National Landscape could be reduced by this technique. Two points flow from this.

101. Firstly, as the appellant recognises, this would constitute an engineering operation. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

102. Paragraph 57 of the 1990 Act states that planning permission is required for development. Whether the ripping out the concrete top layer of the hardstanding and replace it with 'Grass Crete' constitutes development requiring planning permission is a matter of fact and degree. However, whilst I make no formal determination on the point, I cannot discount the possibility that this engineering operation would be more than *de minimis*, in which case it would require planning permission, deemed or otherwise. There is no evidence before me that the site benefits from permitted rights in this respect provided

by the Town and Country Planning (General Permitted Development) (England) Order 2015. The corollary is that, more likely than not, the ripping out the concrete top layer of the hardstanding and replace it with 'Grass Crete' would require express planning permission.

103. Secondly, whilst section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of the matters stated in the notice, the ripping out the concrete top layer of the hardstanding and replacing it with 'Grass Crete' would be an entirely new engineering operation. It follows that ripping out the concrete top layer of the hardstanding and replacing it with 'Grass Crete' does not form part of the matters stated in the notice.
104. Consequently, I am not in a position to grant planning permission for it under the deemed application arising out of ground (a), irrespective of any benefits that might result from doing so. Neither is it open to me treat it as a 'lesser step' than the requirement of the notice to remove the hardstanding. I have therefore not considered the matter further.
105. The second suggestion put forward by the appellant is that a temporary planning permission of approximately 5 years be granted for the use from the date of the appeal decision. I have already considered that in the context of the appeal on ground (a) above.
106. The appellant also suggests that no more than 15 storage containers should be stored at any time and only on the part of the land shown as hatched in the enforcement notice plan. The appellant also suggests that the storage containers should be located at ground level and should not be stacked. Again, this is a matter that I have already considered in the context of the appeal on ground (a) above.
107. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

108. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is twelve months. The appellant seeks a period of compliance of eighteen months.
109. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, the starting point is that the operational development subject to the enforcement notice does cause the harm that I have identified above.
110. The appellant submits that a longer period for compliance is necessary to enable the business to seek suitable alternative premises for the relocation of the use and to ensure the continued employment of their staff. The appellant considers that this is particularly important given the backdrop of the current pressures on the national economy.

111. The appellant also points out the enforcement notice pertains to a property with multiple structures and an established business operation that has been in existence for a considerable duration with no harm to the neighbouring properties. In the appellant's view, achieving full compliance with the enforcement notice entails a complex process ensuring the safe demolition of buildings, etc. Given the multifaceted nature of these tasks, the appellant considers that the 12-month compliance period specified in the notice is overly restrictive and could lead to hasty decisions that may not ensure full and proper compliance. The additional time sought would also enable the appellant to engage with the Council's planning service to seek a resolution to any matters identified and subsequently implement any approved scheme that may be granted.
112. There is absolutely no evidence to support the above contentions. For example, the appellant has provided no evidence to substantiate the contention that achieving full compliance with the enforcement notice would entail a complex process involving specialist contractors and/or specialist equipment (given, also, the appellant's line of business). Neither has the appellant provided quotes or statements from suitably qualified contractors to show that the operational development could not be removed in its entirety within the period of twelve months specified in the notice due to other commitments and/or a lack of availability.
113. The appellant has not provided any evidence of a site search having been undertaken that revealed a shortage of alternative premises to which the business could move in the event that the enforcement notice was upheld. Moreover, the appellant has provided no evidence to show that complying with the enforcement notice would force the business to vacate the site. Indeed, it is part of the appellant's case on this ground of appeal that the appellant has operated from the site for many years and, on the appellant's own case, before the development subject to the notice was carried out.
114. I appreciate that the additional time sought might be required to enable the appellant to engage with the Council's planning service to arrive at a suitable scheme for the continued operation of the site and to subsequently implement any approved scheme⁶. However, that is not the primary purpose of an appeal on ground (g) particularly, as in this case, when I am not aware of any definitive (or, for that matter, even tentative) proposals for the continued operation of the site and/or of ongoing discussions with the Council in that respect.
115. The primary purpose of an appeal on this ground of appeal is to ensure that the period for compliance with the requirements of the notice is reasonable. No more and no less. In the absence of a definitive proposal for the continued operation of the site, or even an acknowledgement from the Council that it would be prepared to entertain such a proposal, I do not perceive the potential engagement with the Council's planning service to be a sound reason for extending the period of compliance in this case.
116. Against that, the protection of the Green Belt is a long-standing objective of national planning policy and is an objective to which the Framework attaches considerable importance. The protection of the Green Belt is also a key

⁶ This comment is made entirely without prejudice to any decision that the Council may ultimately make in relation to the potential use of and development on the site.

objective of policies in the development plan for the area. Similarly, the Framework attached great weight to conservation and enhancement of National Landscapes. The preservation and enhancement of the Chilterns National Landscape is also one of the key objectives of policies in the development plan for the area. It follows from the above that expeditious compliance with the enforcement notice would be in the public interest, as evidenced by the representation made by Latimer and Ley Hill Parish Council.

117. There is also a procedural point to be considered. The period of eighteen months sought by the appellant is tantamount to a temporary planning permission. I have already found that a temporary permission for the development subject to the notice would not accord with either of the two circumstances indicated in the PPG where a temporary permission may be appropriate. It follows that extending the period of compliance to eighteen months would similarly not be an appropriate response.

118. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am, therefore, not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period of compliance of twelve months stated in the notice is a proportionate response to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Formal Decision

120. It is directed that the notice is varied by:

- in paragraph 5(3) of the notice, deleting the word 'building' and substituting there the words 'log cabin' and by deleting the words in parenthesis and substituting there the words '(in the approximate position shown cross hatched on the untitled plan attached to the notice)'
- in paragraph 5(5) of the notice, deleting the words in parenthesis and substituting there the words '(in the approximate position shown stippled on the untitled plan attached to the notice)'
- in paragraph 5(6) of the notice, deleting the words in parenthesis and substituting there the words '(in the approximate position indicated by the triangle of land in the southwest corner of the site shown hatched on Plan 1)'

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

Paul Freer
INSPECTOR