



Appeal Decisions

Site visit made on 13 March 2026

by **Jean Russell MA FRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2026

Appeal A: APP/N5090/X/24/3354231

22 The Spinney, Hendon Wood Lane, Barnet Gate, Barnet, London, NW7 4HR

- Appeal A is made by Mr Sean Ruddy o/b Erris Plant Hire Limited under section 195 of the Town and Country Planning Act 1990 (as amended) against the decision of the Council of the London Borough of Barnet to refuse an application for the grant a certificate of lawful use or development (LDC).
- The LDC application (ref: 24/2249/191) was dated 8 June 2024 and refused by notice dated 26 September 2024.
- The LDC application was made under sections 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 in respect of an existing use and operational development described as “use of the land for the purposes of open storage of and the building located thereon for the purposes of covered storage”.

Summary Decision: Appeal A is dismissed.

Appeal B: APP/N5090/C/24/3354904

Land in the South-West Corner of The Spinney, 22 Hendon Wood Lane, London, NW7 4HR

- Appeal B is made Mr GMP Fitzgerald under section 174 of the Town and Country Planning Act 1990 (as amended) against an enforcement notice (ENF/0944/22) issued on 20 September 2024 by the Council of the London Borough of Barnet.
- The breach of planning control as alleged in the notice is: “without planning permission, the material change of use of the land shown edged in red on...Aerial Image 01 [attached to the notice] to a storage yard and the erection of a canopy structure (shown edged in yellow on attached Aerial Image 01), and the permanent stationing of a metal storage container (shown edged in green on...Aerial Image 01) incidental to the making of the change of use.
- The requirements of the notice are to:
 1. Cease the use of the land shown edged in red on attached Aerial Image 01 as a storage yard and remove all stored items.
 2. Restore the land back to the state in which it was prior to the breach of planning control by:
 - a) Demolishing the structure shown edged in yellow on attached Aerial Image 01.
 - b) Removing from the land the metal storage container shown edged in green on attached Aerial Image 01.
 3. Permanently remove all constituent materials resulting from the works in 2.a) above from the land.
- The period for compliance with the requirements is four (4) months.
- Appeal B is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990. 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 Town and Country Planning Act 1990.

Summary Decision: Appeal B is dismissed and the enforcement notice is upheld with a variation in the terms set out in the Formal Decision below.

PRELIMINARY MATTERS

1. Erris Plant Hire Ltd (EPHL), who made Appeal A or the lawful development certificate (LDC) appeal, occupies the land subject to this appeal under licence. In that respect, EPHL succeeds Erris Basements Ltd (EBL). Mr Fitzgerald, who made Appeal B or the enforcement appeal, is the landowner.
 2. I shall mostly refer to the parties as 'Appellant A' and 'Appellant B'. They share the same agent, and both made applications for an award of costs against the Council. Those applications are determined in a separate decision letter.
 3. The appeals concern essentially the same site, except the land subject to the enforcement notice includes an additional projection to the east as shown here. The difference in area has few implications for these appeals but I shall refer to the 'LDC' or the 'enforcement site' as necessary.
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- The image is an aerial photograph of a site. A yellow boundary outlines a large rectangular area, and a red boundary outlines a slightly larger area that includes an additional projection to the east of the yellow area. The site appears to be a mix of open land and some structures.
4. In the main, I will refer to what is subject to either or both appeals as 'the land' or 'Yard no. 2'. It has a linear form with open areas to the front and back of a timber building and metal container, and it is located in the south-western corner of 22 (or 18-26) Hendon Wood Lane, otherwise known as The Spinney. The land is bound to the north by the shared access road to The Spinney, to the west by Hendon Wood Lane and to the south by woodland.
 5. The Council describes The Spinney as containing "a mix of residential units and two yards". I assume Yard no. 1 is the land subject to an LDC (ref: 16/7228/191) granted on 22 August 2018 in respect of "use...as a scaffold yard". A layout plan (no. 2A) of The Spinney dated June 2016 shows the scaffold yard at the end of the access road and thus to the northeast of Yard no. 2.
 6. The planning history of The Spinney includes an enforcement appeal decided on 11 June 2024 in relation to the use of Flat 4¹ and other enforcement appeals decided on 24 January 2025 in respect of the use of the scaffold yard for waste transfer and recycling². The Council has submitted copies of what I shall refer to as the Flat 4 and waste transfer appeals.
 7. Where questions of lawfulness are raised, as in Appeal A and grounds (e), (c) and (d) for Appeal B, the onus is on the appellants to make their cases on the balance of probabilities. Their evidence should be accepted if there is nothing to contradict their version of events or make that less than probable, and it is sufficiently precise and unambiguous. It should not be rejected simply if it is not corroborated³.

THE ENFORCEMENT NOTICE

8. Section 176(1) of the Town and Country Planning Act 1990 (TCPA90) empowers an Inspector to correct any error, defect or misdescription in an enforcement notice so long as doing so would cause no injustice to the Council or appellant. If injustice would be caused, the notice would be invalid.

¹ Appeal ref: APP/N5090/C/23/3314429. Mr Fitzgerald was the appellant in this case.

² Appeal refs: APP/N5090/C/23/3330636 and 3330301. Mr Fitzgerald was Appellant A in these cases.

³ *Gabbittas v Secretary of State for the Environment & Newham LBC* [1985] JPL 630

9. If a notice omits a vital element that it “shall include” under s173 of the TCPA90 and/or is “hopelessly ambiguous and uncertain”, it will be a nullity⁴. A null notice is one so defective on its face that it does not amount to an “enforcement notice” in law at all. There is nothing that can be corrected and therefore no question as to whether corrections would cause injustice. Appellant B argues that the appealed notice is invalid or null on two grounds.

The Alleged “Canopy Structure”

10. Appellant B claims that the notice is “void for uncertainty” because it “inaccurately describes the timber structure” on Yard no. 2 as a “canopy”. The only timber structure here liable to have been “erected” as alleged spans the full width and perhaps a third of the depth of the land. It comprises a flat roof supported by rafters and posts set in concrete to an 18 inch (45cm) depth. The roof is also supported by timber panel walls, but the front and rear elevations are partly open, presumably for ease of movement into or through the building.
11. The dictionary definition of “canopy”, in an architectural context, is “a projection or shelter that resembles a roof”⁵. The timber structure meets that definition; it provides a basic cover for the materials stored inside. That finding is perfectly compatible with the appellants’ submissions that the structure is a building which has no significant structural defects and is capable to lasting for 30 years with proper maintenance. A canopy is not necessarily “lightweight” or “domestic scale”⁶.
12. Appellant B patently understands which building is being enforced against. The term “canopy structure” does not render the notice hopelessly ambiguous or uncertain, or therefore null. It also does not invalidate the notice, because it does not amount to an error, defect or misdescription. I shall refer to the “canopy structure” and “timber building” interchangeably in respect of both appeals.

The Explanatory Note

13. Appellant B suggests the notice is invalid because it was served without an explanatory note. This is effectively a nullity claim because the requirement that every copy of an enforcement notice served shall be accompanied by an explanatory note is set out under s173(10) of the TCPA90 and Regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. In short, an explanatory note must include:
- (a) A copy or summary of specified sections of the TCPA90 with information that there is a right of appeal to the Secretary of State against the notice, how and when the appeal must be made, the grounds on which the appeal may be brought and the fee payable for the deemed planning application.
 - (b) Notification that an appellant must submit a written statement specifying their grounds of appeal and the facts relied upon in support of those grounds.
 - (c) A list of the names and addresses of the persons upon whom a copy of the notice was served.

⁴ *Miller-Mead v Ministry of Housing, Communities and Local Government* [1963] 2 WLR 225

⁵ Oxford English Dictionary

⁶ Appeal refs: APP/N5090/D/17/3188044 and /D/24/3350605 concerned canopies at dwellinghouses.

14. Appellant B refers to the purported judgment of the House of Lords in the case of *R (Jeyeanthan) v Hammersmith and Fulham LBC* [2000] 1 WLR 354, where Lords Woolf and Hoffman held, respectively, that “the requirement to include the explanatory note is an important safeguard” and “strict compliance with the [statutory] requirements is essential”.
15. However, the submitted transcript of a court case involving *Jeyeanthan* actually sets out the judgment of the Court of Appeal on an immigration matter. It is not clear to me that the House of Lords judgment on enforcement notices as cited by Appellant B exists. Even if it does, the selected “quotes” do not include words to the effect that an enforcement notice issued without an explanatory note must be null. I am aware of no legal authority to support that claim.
16. The appealed notice was served without an attachment headed “explanatory note” but with a cover letter instead. It set out that there is a right of appeal against the notice, how and when the appeal must be made, the grounds on which the appeal may be brought under s174, the fee payable for any deemed planning application and notification of the requirement for a “facts and grounds” written statement. The notice was also issued with a list of the names and addresses of those served.
17. The cover letter failed to comply with Regulation 5 in one respect; other than s174, it did not summarise the specified sections of the TCPA90. The Council’s failure to provide that information was unwise, but it does not lead me to find the notice null or, for that matter, invalid. In the purported words of Lord Woolf, the recipients of the notice were “informed, in plain language, of their rights and obligations under the notice” by the cover letter.
18. That Appellant B managed to make an appeal and refer to several of the specified sections in their evidence adds weight to my conclusion that the notice did omit any vital element required under s173. Like my colleague Inspectors who decided the waste transfer and Flat 4 appeals, I conclude that the Appeal B notice is not null or invalid on the basis that there is no attached explanatory note as such.

APPEAL B ON GROUND (E)

19. Ground (e) is that copies of the enforcement notice were not served as required by s172 of the TCPA90. S172(2) and s172(3) set out who shall be served with a copy of the notice and when service shall take place.
20. Appellant B’s submissions on ground (e) are again that the notice should be quashed due to the lack of an explanatory note. Having already found that the omission does not nullify or invalidate the notice, I can only add here that the requirement for an explanatory note is not set out in s172. Appellant B has not demonstrated that the notice was probably not served as required by that section. Appeal B must fail on ground (e).

APPEAL B ON GROUND (C)

21. Ground (c) is that the matters described by the notice do not constitute a breach of planning control. That would be the case if what is alleged does not involve development or require planning permission. Appellant B pleads ground (c) only in relation to the alleged metal storage container.
22. Under Article 3(1) and Class H of Part 7 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO),

planning permission is granted for the erection, extension or alteration of an industrial building or a warehouse. However, Article 3(5) of the GPDO provides that the planning permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing building, the building is unlawful, and likewise if permission is granted in connection with an unlawful use.

23. I find below that neither the storage use nor canopy structure is lawful. Even if the metal container is an extension, it is not within the curtilage of an “industrial building or warehouse” as required by condition H.2. It also conflicts with limitation H.1(d), which provides that development is not permitted by Class H if any part of it would be within 5m of any boundary of the curtilage of the premises.
24. The metal container does not benefit from the planning permission granted under Part 4, Class A of the GPDO for the provision of buildings or moveable structures required temporarily in connection with and for the duration of operations being or to be carried out on that or adjoining land. Appellant A may be involved in the construction industry but that is not evidence of the container being required for operations taking place on or next to Yard no. 2.
25. The metal container is not “a gate, fence, wall or other means of enclosure” permitted under Part 2, Class A of the GPDO, and that claim is not in line with the judgment in *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No. 1)* [2000] EWCA Civ 60, a case which concerned the curtilage of a listed building. Part 2 permits not the construction of buildings which enclose their contents but means of enclosing land. The container does not have that function because it does not adjoin any boundary of Yard no. 2.
26. Appellant B has not shown that planning permission is probably granted for the metal container via the GPDO. He makes no case that planning permission is granted via any other means or, conversely, that planning permission is not required at all. I conclude that the stationing of a metal storage container probably amounts to a breach of planning control as alleged. Appeal B fails on ground (c).

APPEAL B ON GROUND (D) AND APPEAL A

27. Ground (d) is that is that no enforcement action may be taken in respect of the matters, as would be the case if the time for doing so has expired. This mirrors s191(2)(d) of the TCPA90 which provides that existing uses or operational developments are lawful at any time if (a) no enforcement action may be taken in respect of them...because the time for enforcement action has expired⁷.

Lawfulness of the Storage Use

28. Under s171B(3) of the TCPA90, no enforcement action may be taken in respect of a material change of use of land after the end of the period of ten years beginning with the date of the breach. For an LDC to be granted pursuant to Appeal A or Appeal B to succeed on ground (d), the appellants must show that, on the balance of probabilities, following a material change of use, the storage use had been continued without significant interruption for a ten year period by 8 June and/or 20 September 2024, the dates of the LDC application and the issue of the notice.

⁷ Lawfulness also depends, under s191(2)(b), on the use or development not constituting a contravention of any of the requirements of any enforcement notice then in force. This provision is not relevant to either appeal because the enforcement notice subject to Appeal B is not in force.

29. There is no dispute that Yard no. 2 forms a discrete planning unit. Appellant B may occupy the whole of The Spinney as landowner, but Yard no.2 is not occupied for the same main purpose as any other part of the wider property. It is connected to the other land at The Spinney through use of the shared access road, but otherwise Yard no. 2 is physically and functionally separate from the adjacent residential units and scaffolding yard.
30. Accordingly, the first question is whether a material change of use of Yard no. 2 alone to storage use alone had probably taken place by 8 June or 20 September 2014. A change of use is material, and thus “development” for planning purposes, where it results in some significant difference in the character of the activities taking place on the land as a matter of fact and degree⁸. The storage use must have been carried out entirely in the open until at least spring 2016, when the appellants say construction of the timber building began.

The Appellants’ Sworn Evidence

31. The appellants have submitted a number of witness statements in support of these appeals. All of the statements were made in front of a solicitor and in the form of statutory declarations. I treat the declarations as sworn evidence which carries significant weight.
32. Appellant B submitted two statutory declarations, one for each appeal, and he said in both that he used Yard no. 2 for storage of building materials after purchasing The Spinney in 2003. However, no case is made that there was a material change of use in 2003 or that the use took place without significant interruption for any ten year period thereafter.
33. The appellants submit that the ten year clock can be counted from 1 November 2012, when Appellant B granted a licence to EBL to occupy Yard no. 2 “for the purpose of open storage...access to and agress [sic] into the Designated Space and Access Ways...[and] parking cars in the Car Parking Spaces”. EBL paid monthly rent to Appellant B for such use of the land thereafter as shown in the submitted copies of the 1 November 2012 and subsequent licence agreements.
34. Mr Ruddy, the manager of EBL and now EPHL, swore that they “first took a licence of [Yard no. 2] starting in November 2012. At that time, we used it for open storage of our timbers, materials, steel, acrow props and other machinery plants or equipment needed for my business. I also parked my boat there for a while and very often a trailer would be parked there and our truck.”
35. Likewise, an employee of EBL/EPHL made a statutory declaration, dated 7 June 2024, that the firm had been using Yard no. 2 “for about the past 12 years” initially for open storage. The use was also described as having taken place for “some 12 years” in a statutory declaration made by a customer or associate of the company, and while that document was dated 3 March 2025, the evidence is still of the use beginning more than ten years before June 2014.
36. Another statutory declaration was made in support of Appeal A by SM, who swore that “the storage yard” was already there when they moved into the flat opposite in February 2014. SM continued living here for at least nine years and described how

⁸ There is no allegation or question of there being a material change through the intensification of a lawful use at Yard no. 2.

the land was used for storing timber tools, building materials, a boat and, on occasion, a trailer and a van. SM patently could not testify as to whether the use began in November 2012, but February 2014 is still more than ten years before June or September 2024.

37. The Council seem to have confused SM's tenancy agreements with Appellant A's licence agreements. Given that the residential use of other land at The Spinney is not connected to the storage use of Yard no. 2, it is not surprising that the activities began at different times and are subject to different paperwork. I find SM's evidence consistent with the other sworn statements.
38. Thus, the declarations are clear as to the fact of items being stored on Yard no. 2 for more than ten years. However, none of the witnesses are explicit as to the initial extent of the storage use, even though the first question in relation to immunity is when the **material** change of use took place.

The Photographs and Plans

39. The chronologically earliest photographs of the site are Google Street View photographs submitted by the Council. The first of these photographs is dated September 2012, meaning that it was taken before EBL's first licence agreement. However, it must be said that Yard no. 2 looked pretty well the same in the June 2014 and September 2015 Street View images.
40. These photographs all show Yard no. 2 as fenced and with trees growing within as well as around the land. It is not possible to gauge the number or positions of the trees, because they are shown in leaf in each image, and so it is also not possible to rule out the storage of items below the level of the fence or between or behind the trees. Thus, the Street View photographs are not fatal to these appeals, but I must be clear that they show no positive sign of any storage use on the land.
41. The next relevant photograph is one taken on the ground by a Council officer who attended The Spinney on 17 November 2015 to investigate the residential and scaffold yard uses. This photograph, submitted by the Council, shows the western or street end of Yard no. 2⁹ as mostly comprising uncovered ground that included several young trees and was subject to significant leaf fall. I do not agree that the leaf litter appeared "undisturbed for a considerable period". It was uneven and had probably been moved whether by the wind, wildlife and/or human activity.
42. This photograph also shows a commercial and few household bins, a trailer and some building materials or debris on the land at the street end of Yard no. 2. By their nature and number, these items do not give the impression of a probable storage use. However, most of the land is out of shot and most stored goods to this day are kept further back from the front.
43. Photograph 04 submitted with the 2024 LDC application shows the western end of Yard no.2 being used for open storage to a greater extent than in 2015, but yet still including trees on open ground covered in leaves. Whenever the material change of use took place, the western end of Yard no. 2 has probably since been used for incidental access, circulation and parking as much as the primary storage use, as indeed was said in the Planning Statement also submitted with the application.

⁹ The photograph shows a tree outside Yard no. 2 by its southwestern corner. The tree has a distinctive shape with a left or east facing branch which allows comparison between photographs.

44. The Council's officers took another three photographs of the land during their November 2015 visit. The appellants obtained and submitted these images, which show a building contractor's van, a metal container, building materials plus two or three caravans with an awning or tent. The same are shown in a photograph said by Appellant A to have been taken on 8 March 2016.
45. I am surprised the Council did not submit the extra 2015 photographs, as they ought in the interests of candour. However, the pictures provide little support for the appellants' case, and not simply because November 2015 was less than ten years before June or September 2024. I also note that the sworn declarations referred to "vans", trailers and a boat on the land, but not expressly to caravans.
46. More importantly, the extra 2015 photographs show the same items as each other and, therefore, the same part of the land. They were probably taken away from the western end, but close to another boundary because the items are shown close to what look like overgrown hedges as well as trees. Even if that observation is wrong, it is likely that all four Council photographs omit to show most of Yard no. 2.
47. That finding is consistent with earliest aerial photograph before me. It was dated 10 March 2016, and it shows the land as then being almost entirely covered by trees. This image explains why only trees could be seen beyond the fencing in the Street View pictures and why the Council only photographed two parts of the land. It makes it difficult to conceive of how a material change of use of the land to a storage use could have occurred as a matter of fact or degree.
48. As noted above, another document before me is a plan (no. 2A) dated June 2016 which shows "site layout plan of existing flats + site". For the purposes of this plan, the word "site" means The Spinney. Yard no. 2 was shown as including a central area for "covered storage" where the timber building is today, an area at the back or east end of the land for "2 no. static caravans and covered [unreadable]" and a third area for "communal bins".
49. The appellants have not explained why any "communal" facility would be sited on Yard no. 2 in June 2016 if the land had been subject to a material change of use as a separate planning unit some two or three years previously. The plan begs the question as to whether the bins photographed by the Council in November 2015, albeit on a different part of Yard no. 2, were required for the appeal storage use or a different "communal" purpose, perhaps related to those works at The Spinney for which plan 2A was drawn up.
50. A topographical survey of 14-30 Hendon Wood Lane dated 14 December 2016 shows the appeal land from west to east as including "Yard 2", "storage shed" and "limited access/caravans". By March 2017, aerial photographs shows that most trees had by now been cleared, a canopy roof was in place, and what looks like Mr Ruddy's boat as well as the caravans were at the eastern end of the land. That may amount to evidence of the storage use having been begun by March 2017 but not of the material change taking place two or three years beforehand.
51. The Council officers who visited The Spinney in November 2015 made no mention of Yard no. 2 in their written notes. That is probably because they saw the land as then mainly open, tree-covered and unused, save for the presence of bins, a trailer and waste at one end, and the caravans, awning, van and building materials at the other. At that time, the character of the use of the land was probably not, as a

matter of fact and degree, that of a storage yard. The statutory declarations do not contain such detail as to make any other scenario more likely.

52. The appellants' evidence is not sufficiently precise or unambiguous to show that a material change to a storage use had probably taken place by June or September 2014. On the evidence before me, the character of the activities taking place was probably changed to a material degree between March 2016 and March 2017, when trees were felled and construction of the canopy was begun.
53. On the dates of the LDC application and the issue of the notice, it was probably not too late for the Council to take enforcement action against the material change of use of Yard no. 2 to storage. I do need not address whether the use was carried out without significant interruption.

Lawfulness of the Building or Canopy Structure

54. Under s171B(1) of the TCPA90, no enforcement action may be taken against the carrying out of building operations after the end of the period of four year beginning with the date on which the operations were substantially completed if that was before 25 April 2024.
55. The appellants claim that the canopy structure was substantially completed by June 2016. Its roof perhaps looks larger in aerial photographs taken after March 2017, and so the Council suggests that June 2019 was the time of substantial completion. But even that was in time for the building to have become immune from enforcement action by June or September 2024 **if** the four year rule applies.
56. The Council contends that, because the storage use is not immune under the ten year rule, enforcement action may be taken against the building via the "*Murfitt* principle". The Courts held in *Murfitt v Secretary of State for the Environment* [1980] JPL 598 that, where an enforcement notice is issued in respect of a material change of use of land, and works were carried out to facilitate that use, the notice may require that the use is ceased **and** the "ancillary" works are removed, even if the works would otherwise be lawful, so that the land is restored to its condition before the breach of planning control took place.
57. As the appellants point out, there are limits to the *Murfitt* principle. The Court of Appeal held in *Caldwell v Secretary of State for Levelling-up, Housing and Communities* [2024] EWCA Civ 467 that an enforcement notice which alleges a material change of use cannot require the removal of operations that were fundamental to or causative of the change. For example, as in *Caldwell*, a material change of use of land to residential use may be a consequence of the construction of a dwellinghouse as a separate development in its own right.
58. If the canopy was erected to bring about the material change of use of the land to storage, the Council would only be able to enforce against the building on the basis that its construction involved unlawful operational development. And they would have lost the opportunity to do so because of the four year rule. However, that may be disapplied if the erection of the canopy structure was merely ancillary to the unlawful material change of use. The appellants' claim of the storage use predating the canopy by some three years does undermine their submission of the building bringing about the material change of use.

59. My finding that the material change of use probably took place between March 2016 and March 2017 makes it possible that the building works were causative. That proposition is also supported by Mr Ruddy's statement that the canopy was required because "continuing to use the site for the purposes of open storage was limiting our work activities as the weather played havoc with our business". However, the aerial and the appellants' own recent ground photographs show that items have been and still are stored in the open as well as under cover.
60. I do not doubt that the building makes the storage business more viable, but the appellants have not shown that the construction works were causative of or fundamental to the material change of use in *Caldwell* terms. I find that, on the balance of probabilities, that the erection of the timber structure was probably ancillary or incidental to the material change of use of the land to storage. It was not too late for the Council to taken enforcement action against the building on the date of the LDC application or when the notice was issued.

Other Evidence and Conclusions on Appeal A and Appeal B on Ground (d)

61. Appellant B claimed that "as established in *R (oao) Brown v Epping Forest DC* [2016] EWCA Civ 404, where a building was constructed specifically for a particular purpose and had only ever been used for that purpose, the use became lawful at the same time as the building itself." However, that citation relates to a case which did not involve Brown or concern the time for taking enforcement action¹⁰. The appellants' evidence was not that the storage use became lawful at the same time as the canopy, and that is just as well since the Supreme Court has held that a use may be unlawful even when it takes place within a lawful building¹¹.
62. Appellant B also quotes an Inspector describing "covered and open storage areas" at The Spinney in their decision on appeal ref: APP/N5090/W/18/3203582. I have not seen the decision letter but, since the reference includes "/W/18", the appeal must have been made in respect of a planning application and not matters of lawfulness, and it must have been lodged in 2018. The decision may show that the use and canopy were present in that year, but those points are not in dispute.
63. The Flat 4 and waste transfer appeals concerned the lawfulness of uses of other parts of The Spinney. The decision letters issued in those cases contain scant reference to Yard no. 2. The appellants have not shown that "a longstanding history of storage use, continuously for at least 12 years under the same occupiers...has been formally recognised in previous appeal decisions".
64. For the reasons given above, I find that the time for taking enforcement action in respect of "use of the land for the purposes of open storage of **and** the building located thereon for the purposes of covered storage" had probably not expired on 8 June 2024, the date of the LDC application subject to Appeal A.
65. I also conclude that, on 20 September 2024, it was probably not too late for the Council to take enforcement action in respect of the material change of use of Yard no.2 to a storage yard, the erection of a canopy structure and indeed the stationing of a metal storage container incidental to the making of the change of use. Appeal B fails on ground (d).

¹⁰ *R (on the application of Lee Valley Regional Park Authority) v Epping Forest DC & Valley Grown Nurseries Ltd* [2016] EWCA Civ 404 is concerned with the meaning and effect of planning policy.

¹¹ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

APPEAL B ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

Planning Policy

66. The Council's reasons for issuing the notice in September 2024 refer to policies contained in development plan documents (DPD) including Barnet's Core Strategy (CS) and Local Plan Development Management Policies (DMP). The Council also referred to draft planning policies in Barnet's emerging Local Plan.
67. Neither party has informed me as to whether the emerging Local Plan is now adopted, or whether the CS or DMP DPD remain in force. I have not pursued those questions because both parties accept that the National Planning Policy Framework (the Framework) provides the key policy context for the first main issue and, as set out below, the other issues raised are not determinative in this case.

Main Issues

68. The main planning issues are:
- Whether the material change of use to storage, the erection of the canopy structure and/or the stationing of the metal container amounts to inappropriate development in the Green Belt, with regard to the Framework.
 - The effect of the use on the living conditions of nearby residents,
 - The effect of the canopy structure on the character and appearance of the surrounding area, and
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the developments.

Reasons

Inappropriate Development

69. The Framework provides that development in the Green Belt is inappropriate unless exceptions apply as set out in paragraphs 154-155. Appellant B argues that the canopy structure and metal container are not inappropriate development but has made no such case in respect of the storage use. For completeness, however, I shall discuss that component of the development first.
70. **Paragraph 154.h)** of the Framework allows that the making of a material change in the use of land is not inappropriate development provided that openness is preserved and there is no conflict with the purposes of including land within the Green Belt. The material change of use of Yard no. 2 to storage fails to preserve the openness of the Green Belt because the stored items, mostly comprising building materials and equipment, themselves clutter the land, as do the parked vehicles, canopy structure and metal container associated with the use.
71. It is necessary to consider openness in a visual as well as literal or spatial sense. However, the physical loss of openness caused by the storage use is visually apparent from within Yard no. 2 itself and from The Spinney access road when the yard gates are open. SM describes seeing parked vans at least at the entrance to the land. I accept that the use is screened from wider public view by reason of a dip in the land as well as fencing, but that does not mean openness is preserved.

72. The Green Belt purposes include assisting in urban regeneration by encouraging the recycling of derelict or other urban land. Yard no. 2 was covered by trees, and it still lies at the end of a short run of housing in a semi-rural area. It was not derelict or urban. The storage use conflicts not only with this purpose of the Green Belt, but also with that of checking the unrestricted sprawl of large built-up areas. It is inappropriate development for the purposes of paragraph 154.h).
73. **Paragraph 155** of the Framework provides that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where it would utilise 'grey belt' land and not fundamentally undermine the purposes of the remaining Green Belt; there is a demonstrable unmet need for the development; and it would be in a sustainable location.
74. Grey belt land is that within the Green Belt which is "previously developed" and/or does not strongly contribute to specified Green Belt purposes. Since Yard no. 2 was formerly wooded and subject to an unlawful material change of use, it cannot be described as previously developed. It could nonetheless be deemed grey belt, if it does not "strongly" contribute to any Green Belt purpose. However, the evidence of the benefits of the use as discussed below do not demonstrate that it meets an unmet need. It is inappropriate development for the purposes of paragraph 155.
75. Appellant B claims that the canopy structure is not inappropriate development under **paragraph 154.h)** of the Framework, which provides for the re-use of a building of permanent and substantial construction where that would preserve openness and not conflict with the purposes of including land within the Green Belt. The canopy structure is of permanent and substantial construction for policy purposes but, unlike the Flat 4 building, it is not being re-used. On the appellants' own evidence, it was constructed for the storage use and has remained in the same use since. The same applies to the stationing of the metal container.
76. The canopy and container are relatively small in scale and largely screened. Even so, neither structure falls within any exception to inappropriate development set out under paragraph 154 of the Framework. There is no demonstrable unmet need for either structure for the purpose of paragraph 155.
77. I conclude that the material change of use of Yard no. 2 to storage, the erection of the canopy structure and the stationing of the metal container amount to inappropriate development in the Green Belt for the purposes of the Framework. In reaching that conclusion, I had regard to the case of *Europa Oil & Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin). It concerned Green Belt policy as Appellant B claims, but the court did not hold that a lawful building does not harm the openness of the Green Belt.

Living Conditions

78. The Council's concern here is that "insufficient information has been submitted to demonstrate that the change of use does not cause and would continue not to cause an unacceptable level of harm to the amenity of occupiers of nearby residential properties as a result of the noise and disturbance generated by the use and the associated comings and goings." On the evidence before me, there is also insufficient information that the use does or would cause such harm.
79. The alleged storage use will encompass noise-generating activities such as the movement of materials and equipment within Yard no. 2, the movement of vans or

trucks to and from the yard, and conversations between the persons involved in said movements. The statutory declarations are clear that comings and goings from the land take place daily. However, Yard no. 2 and residential properties at The Spinney are separated by the access road as well as two sets of fencing.

80. As Appellant B suggests, a condition could be imposed on any grant of planning permission to reasonably limit the days and times when people can work on the land. I would restrict the hours to normal working times rather than daylight, to not compromise the use in winter or enable late night activity in summer. However, there are no controls on working times at present and yet no local resident has objected to these appeals. An hours condition would be necessary and sufficient to protect the living conditions of nearby occupier in posterity.
81. The Council makes no case against the canopy structure or metal container in respect of this issue. I conclude that those buildings as well as the use, subject to a working hours condition, cause no unacceptable harm to the living conditions of nearby occupiers. The developments do not conflict with the Framework insofar as it promotes a high standard of wellbeing for existing and future occupiers.

Character and Appearance

82. The Council's reasons for issuing the notice describe the canopy structure as "out of character with the general locality". I agree with Appellant B that the building is not "overly prominent" given that it has a flat roof and is largely screened from view outside the site. A photograph from the Council shows that the top of the building can be seen from Hendon Wood Lane, but the fencing has since been replaced and, in any event, being visible is not the same thing as causing harm. The canopy is basic in its form and materials but that is true of most buildings on storage yards.
83. The notice did not contend that the storage use itself or the container causes any landscape or visual harm. The Council suggested in their Appeal B statement that items stored on the land can be seen from the highway. My response again is that visibility does not equate to detriment, while a condition could be imposed to restrict the height of what is stored.
84. I cannot go as far as Appellant B as to say that the use is "consistent" with the established character of the area. The only lawful commercial use nearby, to my knowledge, is the scaffold yard. This stretch of Hendon Wood Lane is generally characterised by residential buildings which back onto and face green spaces. I also consider that the use does not make efficient use of previously developed land because, as set out above, Yard no. 2 cannot be so described.
85. Nonetheless, on the evidence before me, I would not refuse planning permission for the canopy structure, storage use or metal container on the basis of harm to the character and appearance of the surrounding area.

Other Considerations

86. Appellant B submits that the storage use "provides economic benefits through supporting local businesses and employment. The fact that the site has been occupied by the same group of companies for 12 years indicates a stable business operation that contributes to the local economy". I do not dispute any of those points aside from the 12 year reference. As the statutory declarations from Mr Ruddy and his employee and customer show, small businesses in this area utilise

the appeal storage space. However, neither appellant has provided me with any detailed evaluation of the employment or other economic benefits of the use.

87. Appellant B has also suggested that upholding the notice, which would follow any dismissal of Appeal A on ground (a), would cause him financial loss. This claim was made in relation to ground (g), but it is also material to ground (a). Appellant B will lose rental income if the use of Yard no. 2 for storage must be ceased, and he will incur costs if the land must be restored to its previous condition. Likewise, refusing planning permission would make it necessary for Appellant A to find alternative premises and relocate their business.
88. Again, however, there is little evidence that Appellant A would find it unreasonably difficult to look for an alternative site, or that a refusal of planning permission would cause Appellant B “significant economic hardship”. Accordingly, I accept that the economic benefits of the use and the adverse consequence of the notice are considerations in favour of a grant of planning permission, but I cannot attach more than moderate weight to those factors put together.
89. The other considerations prayed in aid of Appeal B carry no weight. Submissions to the effect that the use or buildings cause no unacceptable harm to openness or the appearance of the area have already been considered. Where there is a lack of any unacceptable harm, that does not amount to a benefit of the developments.

Planning Balance and Conclusion

90. The Framework states that inappropriate development is harmful to the Green Belt by definition and should not be approved except in very special circumstances; substantial weight should be given to any harm to the Green Belt.
91. I have found that the material change of use to storage, the erection of the canopy structure and the stationing of the metal container as described by the notice all amount to inappropriate development in the Green Belt. In accordance with the Framework, I attach substantial weight to the harm to the Green Belt caused by reason of inappropriateness.
92. Subject to conditions controlling the hours of operation and the height of stored items, the use, canopy and container would cause no unacceptable harm to the living conditions of nearby occupiers or the character and appearance of the surrounding area. However, those neutral findings, taken together with the considerations in favour of the appeal do not clearly outweigh the harm caused by the developments by reason of being inappropriate in the Green Belt.
93. The appellants have made no case for the grant of a time-limited permission. In accordance with the Framework, planning permission should not be granted on any basis for the developments because the very special circumstances needed to justify them do not exist. I conclude that Appeal B must fail on ground (a) and the deemed planning application should be refused.

APPEAL B ON GROUND (F)

94. Ground (f) is that the requirements of the notice are excessive to remedy the breach of planning control constituted or, as the case may be, the injury to amenity caused by what is alleged by the notice.

95. In this case, the notice requires cessation of the alleged use, demolition of the canopy structure and removal of the metal container. It follows that the purpose of the notice, meaning the outcome sought by the Council, is to remedy the breach. For that reason, and since Appeal B has failed on ground (a), I cannot rehearse the planning merits of the development. I cannot vary the requirements of the notice so as to only remedy injury to amenity. Yet Appellant B's case for ground (f) essentially rehearses their previous grounds.
96. I have found that the metal container is not permitted via the GPDO and the storage use is not immune from enforcement action, while the canopy structure did not cause the material change of use and the notice may require its removal via the *Murfitt* principle. I have also decided that planning permission should not be granted for the use or either structure. Appellant B has not shown that, in the event of my reaching those conclusions, it would be excessive for the notice to require cessation of the use, demolition of the building or removal of the container.
97. The requirements do not offend the '*Mans*' principle that a notice must not purport to stop a landowner from exercising their lawful use rights. I conclude that the requirements of the notice are proportionate to the breach of planning control that has occurred. They are necessary and not excessive to remedy the breach. Appeal B fails on ground (f).

APPEAL B ON GROUND (G)

98. Ground (g) is that the period specified by the notice as the time for compliance with the requirements falls short of what should reasonably be allowed. Appellant B seeks an extension of the period from four to thirty-two or, failing that, 18 months, to mitigate the adverse effects of the notice and to "resolve [the] complex legal" situation of the licence agreement. I see little complexity.
99. Under clause 4.1.1, the licence agreement may be terminated "immediately on notice...following any material breach by the Licensee of its undertakings" which include, under Clause 3.4, "not to do any act, matter or thing which would or might constitute a breach of any statutory requirement". Those provisions indicate that the licensor may require the licensee to comply with an enforcement notice.
100. Clause 4.1.3 alternatively allows Appellant B to terminate the licence agreement with "one month's notice...at any time". I note that the agreement was made for a period of five years from 1 November 2022, meaning that it will expire on 1 November 2027, less than 18 months from the date of this decision. However, that does not mean four months falls short of what is reasonable for compliance with the notice. There is nothing in the contract to prompt me to extend the period.
101. Adding weight to that assessment, Appellant B has referred to three "comparable enforcement decisions involving occupied business premises with existing contractual agreements [where] substantially longer compliance periods [were] granted". However, the decision letters submitted with the references ending 2228436, 3136298 and 3158833 did not concern enforcement appeals or occupied business premises. The licence agreement is a relevant consideration, but I reject that it should determine the period for compliance in this case.
102. Moreover, I cannot extend the period to cover activities outside of the notice. It does not require that Appellant A "winds down" their business or constructs "new facilities" elsewhere. I consider that four months does not fall short of what is

reasonable to cease the use, remove the items on the land, demolish the canopy structure, remove the metal container and remove all related materials. There is no evidence that “decommissioning” the building would be a complex or lengthy process even if contractors need appointing.

103. The most pressing points raised in favour of ground (g) are that the requirements will cause Appellant B to lose rent and Appellant A to need new premises. There can be no guarantee of them finding other income or land, but they should have reasonable time to look. I find it proportionate to extend the period for compliance with the notice to six months. Appeal B succeeds to that extent on ground (g).

OVERALL CONCLUSIONS FOR APPEALS A AND B

104. I have had regard to all other matters raised, but none alter my conclusions. I must observe here that the appellants’ evidence, despite being prepared by a qualified solicitor, included submissions, citations and case law quotes that were unnecessary, irrelevant and/or inaccurate and misleading. The evidence lacked the credibility and professionalism I would expect from any party involved in public proceedings. However, I can set those concerns aside for decision-making purposes because the evidence was also insufficient for either appeal to succeed.
105. For the reasons given above, and despite mistakes also being made on their part, I conclude that Council’s decision to refuse to grant an LDC in respect of the existing “use of the land for the purposes of open storage of and the building located thereon for the purposes of covered storage” was well-founded. This is not a case where I may exercise the powers afforded under s191(4) of the TCPA90 to make a split decision. Appeal A should fail and I will exercise accordingly the powers transferred to me under section 195(3) of the TCPA90.
106. I also conclude that Appeal B should be dismissed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the TCPA90.

FORMAL DECISIONS

107. Appeal A (ref: APP/N5090/X/24/3354231) is dismissed.
108. It is directed that the enforcement notice is varied by deleting 4 months and substituting six (6) months as the time for compliance. Subject to the variation, Appeal B (ref: APP/N5090/C/24/3354904) 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 Town and Country Planning Act 1990.

Jean Russell

INSPECTOR