Planning Inspectorate

Appeal Decisions

Site visits made on 13 January 2026 and 19 June 2026

by Grahame J. Kean B.A. (Hons) Solicitor, MIPRoW, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2026

Appeal A Ref: APP/J4423/C/24/3349011
Harrison Springs, Penistone Road, Sheffield, S35 1WN

- The appeal is made by Mr Saeed Nazir against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 26 June 2024.
- The breach of planning control as alleged in the notice is: without planning permission, the unauthorised development of the construction of an annex building and attached enclosure (as identified on Plans 2 and 3 and shown in Photographs 1 and 2).
- The requirements of the notice are:
  1. Demolish the annex building and enclosure (as identified on Plans 2 and 3 and shown in Photographs 1 and 2), including foundations, floor slab and associated hard surfaces and remove the resultant materials from the Land.
  2. After complying with paragraph 5.1 prepare the Land in accordance with the specifications set out in the Preparation of Ground for Planting Appendix.
  3. After complying with paragraph 5.1 and 5.2 plant trees upon the Land in accordance with the specifications set out in the Replacement Planting Appendix.
  4. After complying with paragraph 5.1 and 5.2 seed the areas of the Land not covered by the tree planting in accordance with the specifications set out in the Seeding Appendix.
  5. Replace any trees which fail or die within a 10-year period by 30th of June of the year following the failure or death of the relevant tree (or trees)
- The periods for compliance with the requirements are:
  Step 5.1 must be completed within 2 months of the date upon which this enforcement notice takes effect.
  Step 5.2 must be completed within 6 months of the date upon which this enforcement notice takes effect.
  Steps 5.3 and 5.4 must be completed within the first full planting season (being 1st November to 31st March) following compliance with Steps 5.1, and 5.2.
  Step 5.5 must be undertaken for a 10 year period on an ongoing basis beginning with the date upon which steps 5.1 to 5.4 (inclusive) are completed.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/J4423/C/24/3349018
Harrison Springs, Penistone Road, Sheffield, S35 1WN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Saeed Nazir against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 26 June 2024.
- The breach of planning control as alleged in the notice is: without planning permission, the unauthorised undertaking of engineering operations to raise land levels and building operations to erect security fencing.
- The requirements of the notice are:
  1. Remove all of the unauthorised security fencing from the Land (as shown on Photograph 4) that has been erected around and within the Land (extent indicated with a blue dashed line on Plan 4).

2. Erect Construction Exclusion Zone Barriers in accordance with the specifications set out in Tree Protection Appendix.
3. After complying with paragraph 5.1 and 5.2 remove the material which has been deposited on the Land to form the raised landform to the front of the dwellinghouse (as identified on Plan 2 and shown in Photographs 2 and 3), excavating down to substantially similar ground levels to those shown on Plan 5 and remove the resultant materials from the Land. Excavation beneath the canopy of existing trees shall be by hand only (no mechanical excavation beneath the tree canopy).
4. After complying with paragraph 5.1, 5.2 and 5.3 prepare the Land in accordance with the specifications set out in the Preparation of Ground for Planting Appendix.
5. After complying with paragraph 5.1, 5.2, 5.3 and 5.4 plant trees upon the Land in accordance with the specifications set out in the Replacement Planting Appendix.
6. After complying with paragraph 5.1, 5.2 5.3 and 5.4 seed the areas not covered by the tree planting in accordance with the specifications set out in the Seeding Appendix.
7. Replace any trees which fail or die within a 10-year period by 30th of June of the year following the failure or death of the relevant tree (or trees).

- The periods for compliance with the requirements are:
  Steps 5.1, 5.2 and 5.3 must be completed within 2 months of the date upon which this enforcement notice takes effect.
  Step 5.4 must be completed within 6 months of the date upon which this enforcement notice takes effect.
  Steps 5.5 and 5.6 must be completed within the first full planting season (being 1st November to 31st March) following compliance with Steps 5.1, 5.2, 5.3 and 5.4.
  Step 5.7 must be undertaken for a 10 year period on an ongoing basis beginning with the date upon which step 5.1 to 5.6 (inclusive) are completed.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision: The appeal is allowed and the enforcement notice is varied as follows:

- **in the periods for compliance substitute "two months" with "three months" as the**
- **period for compliance with Steps 5.1, 5.2, 5.3 and "six months" with "eight months" as the period for compliance with Step 5.4.**

Subject to the variations, 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.

Appeal C Ref: APP/J4423/C/24/3349021
Harrison Springs, Penistone Road, Sheffield, S35 1WN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Saeed Nazir against an enforcement notice issued by Sheffield City Council.
- The notice was issued on 26 June 2024.
- The breach of planning control as alleged in the notice is: without planning permission, the unauthorised development of the construction of an outbuilding and formation of hard surfaces (as identified on Plans 2 and 3 and shown in Photograph 1).
- The requirements of the notice are:
  1. Erect Construction Exclusion Zone Barriers in accordance with the specifications set out in Tree Protection Appendix.
  2. After complying with paragraph 5.1 demolish the outbuilding (as identified on Plans 2 and 3 and shown in Photograph 1), including foundations and floor 3. 4. 5. 6. slab, and remove the resultant materials from the Land.
  3. After complying with paragraphs 5.1 and 5.2 Break up and remove the hard surfaces (as shown on Photographs 2, 3 and 4 and to the extent of the area outlined in red on Plan 2).
  4. After complying with paragraphs 5.1, 5.2 and 5.3 prepare the Land in accordance with the specifications set out in the Preparation of Ground for Planting Appendix.
  5. After complying with paragraph 5.1, 5.2, 5.3 and 5.4 plant trees upon the Land in accordance with the specifications set out in the Replacement Planting Appendix.

6. Replace any trees which fail or die within a 10-year period by 30th of June of the year following the failure or death of the relevant tree (or trees).

- The periods for compliance with the requirements are:
  Steps 5.1, 5.2, and 5.3 must be completed within 2 months of the date upon which this enforcement notice takes effect.
  Step 5.4 must be completed within 6 months of the date upon which this enforcement notice takes effect.
  Steps 5.5 must be completed within the first full planting season (being 1st November to 31st March) following compliance with Steps 5.1, 5.2, 5.3 and 5.4.
  Step 5.6 must be undertaken for a 10 year period on an ongoing basis beginning with the date upon which steps 5.1 to 5.5 (inclusive) are completed.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision: The appeal is allowed and the enforcement notice is varied as follows:

- **in the allegation of breach of planning control delete "Photograph 1" and replace with "Photographs 1,2,3 and 4";**
- **in Step 3 of the Requirements after "Plan 2)", insert the words "excluding the hard surfaces within the fenced dog compound"; and**
- **substitute "two months" with "three months" and "six months" with "eight months" as the periods for compliance with Steps 5.1, 5.2, 5.3 and 5.4 respectively.**

Subject to the variations 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.

Appeal D Ref: APP/J4423/D/24/3348299
Harrison Springs, Penistone Road, Sheffield, S35 1WN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Saeed Nazir against the decision of Sheffield City Council.
- The application Ref 23/01944/FUL, dated 9 June 2023, was refused by notice dated 23 May 2024.
- The development proposed is: retention of storage/garage building.

Decision: The appeal is dismissed.

Appeal E Ref: APP/J4423/W/24/3346000
Harrison Springs, Penistone Road, Grenoside, Sheffield, S35 1WN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Saeed Nazir against the decision of Sheffield City Council.
- The application Ref is 23/01858/FUL.
- The development proposed is: retention of an agricultural building (retrospective application) (Resubmission of application 22/01086/FUL)

Decision: The appeal is dismissed.

Appeal F Ref: APP/TRN/J4423/10240
Harrison Springs, Penistone Road, Grenoside, Sheffield, S35 1WN

- The appeal is made under regulation 18 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (the Regulations) against a tree replacement notice (TRN).
- The appeal is made by Mr Saeed Nazir against the issuing of the notice by Sheffield City Council.
- The Council's reference is 21/00322/ENHTP.
- The notice was issued on 26 June 2024.
- The requirements of the notice are:
  You must plant trees on the Land of the size, species and at the locations and in accordance with the specifications and details set out in the attached Planting Schedule.

- The period of compliance with the notice is: within the next full planting season following the notice taking effect from 01 November to 31 March.
- The appeal is proceeding on grounds set out in section 208(1) (b), and (d) of the Town and Country Planning Act 1990 (the Act).

Decision: The appeal is dismissed, and the Tree Replacement Notice (TRN) is upheld.

Preliminary and procedural matters

1. As the Inspector for all six appeals, whilst I have considered each appeal on its own merits, I have had regard to my findings, where relevant, in relation to the other appeals.

Site inspections

2. The first site visit was accompanied by both parties in unclement weather, and I indicated a further site visit might be necessary. The second was undertaken on an "access only required" basis to which the Council agreed, at which I was able to inspect more closely the areas covered by the notice in Appeal F.

Appeal A and Appeal D

3. Appeal D sought planning permission to retain the unauthorised annex which is also the subject of Appeal A. There is no ground (a) appeal because the effect of s174(2A) of the 1990 Act is that such an appeal is barred. The planning merits of retaining the annex are considered in Appeal D.

Updated NPPF and policy background

4. The National Planning Policy Framework (NPPF) was updated on 17 August 2026. The parties were invited to comment as to whether its national decision-making policies (NDMP) have relevance to their cases. I have considered the comments received.

5. By s38(6) of Planning and Compulsory Purchase Act 2004 any determination under the Planning Acts must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework 2026 (NPPF) asserts that it is a material consideration of critical importance and states in Annex A that its national decision making policies (NDMP) are "*material considerations which must be taken into account in decision-making from the day of its publication*" despite the Government's decision not to put the NPPF on a statutory basis.

6. The NPPF replaces relevant paragraphs cited by the parties in the previous version with the following National Decision Making Policies (NDMP):

   - DP3: Key principles for well-designed places, seeks development that responds to its context, integrating with and enhancing its surroundings.

   - N2: Improving the natural environment states that development should consider the environmental qualities of land proposed for development, including habitats, landscape character, the natural beauty of the countryside, and identify opportunities to conserve or enhance such qualities.

   - N6: Areas of particular importance for biodiversity and geodiversity.

7. The development plan includes the Sheffield Unitary Development Plan 1998 (UDP) and Sheffield Development Framework Core Strategy 2009 (CS).

8. Development proposals in the Green Belt are considered through applying NDMP GB6 and GB7. The UDP and CS are several years old and adopted before the current NPPF was published in August 2026. The policies related to Green Belt include CS71 Protection of Green Belt, GE1 Development in the Green Belt, GE2 Protection and Improvement of the Green Belt Landscape, GE3 New Building in the Green Belt and GE4 Development and the Green Belt Environment. Whilst the aims are broadly in line with national policy, they are in detail materially inconsistent with the NPPF and should be given very limited weight.

9. UDP Policy BE6 expects good quality landscape design in new developments. including a suitable landscape scheme for new planting and/or hard landscaping and which promotes nature conservation and uses native species where appropriate. It is broadly in line with NDMP N2 Improving the natural environment.

10. UDP Policy GE8 Areas of High Landscape Value, states protection and enhancement of the landscape will be the overriding consideration. Whilst in line with the previous NPPF requirement to protect and enhance valued landscapes, NDMP N2(1)(a) now refers more generally to landscape character and the natural beauty of the countryside.

11. UDP Policies GE11 Nature Conservation and Development, GE13 Areas of Natural History Interest and Local Nature Sites and GE15 Trees and Woodland seek to protect mature (replanted ancient) woodland, avoid degradation of the nature conservation value of the Hall Wood Local Wildlife Site as well as any reduction in biodiversity.

12. CS Policy CS74 Design Principles expects high-quality development taking advantage of and enhancing distinctive features of the Council's areas.

Appeal A - Ground (b)

13. An appeal on this ground is that the matters alleged in the enforcement notice to have occurred, have not occurred as matter of fact. The test is the balance of probabilities. The appellant claims that the notice is unclear as it refers to the construction of an annex building and an attached enclosure whereas, it is said, there is no attached enclosure and so the breach alleged has not occurred.

14. On site I clearly saw that the annex building and a structure in the nature of an enclosure attached thereto, had been erected as clearly identified on Plans 2 and 3 and shown in Photographs 1 and 2 attached to the notice. The enclosure may be only partially formed by the side wall of the annex, the retaining walls and parapet of the adjacent driveway, but I find that "enclosure" is an accurate description of part of the alleged unauthorised structure.

15. I have considered the alternative wording of the notice suggested by the Council, ie to omit reference to the enclosure so that "annex" is the sole target of the notice, but there is no need: it is a perfectly proper approach to have identified part of it as an enclosure and the appellant can be under no misapprehension as to what the target of the notice is from its wording and attached photographs clearly identifying the extent of the development.

16. I find that what is alleged to have occurred as described, has occurred as a matter of fact and consequently the appeal on this ground fails.

Appeal A - Ground (f)

17. An appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. By s173(4) of the Act, the purpose of the notice is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.

18. Reading the enforcement notice as a whole it appears that its purpose is both to remedy the breach of planning control and the injury to amenity by requiring demolition and removal of the annex building and enclosure and restoration of the land to its prior condition by seeding the land, planting trees and ensuring replacement of failing or dying trees.

19. The appellant's case is that it is excessive to have to remove hard surfaces, driveway retaining walls and replant woodland to the south of the annex.

20. In the first place, demolition of the driveway retaining walls is not necessary to comply with this notice. As to the hard surfaces, Figure 2 in the notice clearly shows the extent of hard surfaces to be removed. There is no appeal on ground (a), therefore I am unable to entertain arguments based on the planning merits of the appeal. The Council, identifying harm to landscape character and loss of mature, ancient, protected woodland, has sought to re-establish woodland on the site by plotting the pre-existing tree canopy on a plan and requiring replacement planting where the canopy has been lost.

21. The specification for the works is not excessive to achieve a complete remedy of the breach of planning control. It is a reasonably proportionate approach to have divided the replanting requirements among the three enforcement notices, so that the enforcement notices focussed on areas affected by the operational development. Therefore Figure 2 shows the replanting area adjacent to the annex from which woodland has been removed. Replanting is necessary to remedy the harm to the landscape and woodland loss. The hard surface removal, preparatory works and replacement planting of woodland lost in this area is proportionate and necessary to remedy the injury to amenity and breach of planning control.

22. Consequently, the appeal on this ground cannot succeed.

Appeal A - Ground (g)

23. An appeal on this ground is that the time given to comply with the notice is too short. A 4-month extension for step 5.1 is requested and a 6-month extension to step 5.2, thus delaying replacement planting and seeding in steps 5.3 and 5.4.

24. There is no compelling reason why Step 1 may not be achieved within the period stipulated. Likewise, a further period of four months should be adequate in my view to prepare the land in accordance with the specifications clearly set out in the attachments to the notice. A full planting season is allowed to plant the required trees and complete the seeding works and that is with effect from completion of the preceding steps which should afford ample time for compliance including to source the requisite number of trees.

25. The works are necessary to remedy harm to the Green Belt, landscape character, woodland cover and biodiversity harm. Replanting of woodland in the area of lost canopy should be undertaken as soon as practicable. I find the stipulated periods for compliance to be reasonable.

26. Therefore, the appeal on ground (g) does not succeed.

Conclusion on Appeal A

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Appeal D

Main issues

28. It is undisputed that the development is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. The main issues are:

    - the effect of the proposal on the openness of the GB and the purposes of including land in it;
    - whether there is harm other than harm to the Green Belt; and
    - 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.

Openness

29. The unauthorised annex including the “enclosure” part occupy a significant footprint and building volume on a prominent part of the site. In combination with extensions to the house already approved but also in its own right, the unauthorised structure has an adverse visual and spatial effect on the openness of the Green Belt. Loss of openness here significantly affects a purpose of the Green Belt by failing to assist in safeguarding the countryside from encroachment. Harm to openness is a key reason development is deemed inappropriate, with substantial weight given to this harm in accordance with NDMP 6.2.

Other harm

30. The site is in an area of high landscape value as defined by the UDP. The landscape character assessment (LCA) sets out the value of the Upland Wooded Ridges and Slopes LCA covering the site, noting its wild character and woodland. The landscape is assessed to be of value, but the previous ‘valued landscape’ category is not replicated in the NPPF. The appellant objects that the LCA previously made no justification for the area being a valued landscape. UDP Policy GE8 deals with areas of high landscape value. Whilst it states landscape protection is an overriding consideration in line with the previous NPPF requirement to protect and enhance valued landscapes, NDMP N2 is concerned with improving the natural environment and N2(1)(a) and (d) now refers more generally to landscape character, natural features of value and the natural beauty of the countryside.

31. In addition the land east and south of the original garage had soft landscaping including trees, and part of the protected ancient woodland which has been felled. Loss of these trees is contrary to UDP policies GE13, 15 and NDMP N6.2 which states that development entailing loss or deterioration of irreplaceable habitats (such as ancient woodland, ancient or veteran trees) should be refused, absent wholly exceptional reasons which have not here been adequately demonstrated.

32. Not every building on undeveloped land outside a settlement site would fail to integrate and NDMP S5 is generally positive towards development outside settlements. However, the removal of trees to facilitate the development has caused considerable harm to the character and appearance of the area, including considerable harm, albeit at a more localised level, to local landscape character, whether or not the landscape is formally designated as a landscape of value. The attractive expanse of woodland itself, with the attendant features of biodiversity interest are in my view physical attributes that take the landscape beyond ordinary countryside and worthy of protection. The development markedly fails to take into account the aims of the policies cited above.

33. The design, including its mass and scale is not sympathetic to the form and disposition of the main dwelling and is out of keeping with it, principally in my view because of its size, dominant rectangular and flat roofed form creating a dissonance in relation to the main house. The design conflicts with supplementary planning guidance (SPG) which is underpinned by development plan policies including UDP Policy BE5(c) requiring good design in extensions respecting the scale, form, detail and materials of the original building. It also conflicts with CS Policy CS74 which expects high-quality development taking advantage of and enhancing distinctive features of the locality, which is consistent with NDMP DP3.

Other considerations

34. The points put forward in favour of the development are, firstly that the property was extended prior to adoption/publication of the UDP/NPPF, so it is unreasonable to focus solely on additions to the original dwelling. I agree that a prominent, larger dwelling in the Green Belt has existed for several years but the changes in the form of the annex that have been wrought upon it and that are subject to the notice, have resulted in significant harm to the openness of the Green Belt.

35. Secondly, a fallback position is argued for regarding permitted development rights to construct larger, more prominent building works to the east of the dwelling. That would depend on the nature of the alternative works which are not specified. House extensions were approved[1], but permitted development rights were removed since disproportionate additions to the original dwelling were said to have been already made and further additions were unacceptable in the Green Belt.

36. Permitted householder development accommodates work that by virtue of its design do not need the scrutiny of an expressly made application for permission. That is wholly different from development that, as here, does not conform to such rules. Very limited weight is given to the unarticulated fall-back argument.

37. Thirdly, it is said that the use of the building facilitates agricultural practices on site, but it is clearly used for residential purposes too. Its use "*as an incidental space to*

[1] Permission Ref. 23/01945/FUL

the barn" ie to the building on the other side of the plot, militates against its characterisation as a genuinely needed structure for agricultural use.

38. Taken singly or together, these matters do not in my view amount to the very special circumstances needed to justify the inappropriate development.

Summary

39. The development is inappropriate development in the Green Belt. Substantial weight is given to this harm in accordance with NDMP 6.2 as with the harm due to loss of openness which adversely affects a purpose of the Green Belt in failing to assist in safeguarding the countryside from encroachment. Additional harm is caused due to the design of the annex structure which is out of keeping with the original house and undermines its character and appearance including its setting.

40. The development also detracts from the appearance and character of the local landscape, where land to the east and south of the original garage was also formerly occupied by soft landscaping including trees which contributed positively to the character of the landscape and formed part of the protected ancient woodland which has been partly felled on the site. The loss of these trees causes additional harm contrary to UDP policies GE13 and 15 in the damage caused to existing mature and ancient woodlands, policies consistent with NDMP N3 which has also been breached in the failure to recognise the benefits trees provide for biodiversity, climate change mitigation and the quality of the built environment.

41. The matters claimed to be very special circumstances have been considered but fall short of coming within this category, either singly or taken together. The harm to the Green Belt by reason of inappropriateness and other harm identified is not clearly outweighed by other considerations. Permission is therefore refused.

Conclusion on Appeal D

42. For the reasons given above the appeal is dismissed.

Appeal B

Appeal B - Ground (a)

43. The main issues in this case are:

- whether development is inappropriate development in the Green Belt and if so the effect on openness;
- effects of the development proposal on the character and appearance of the area, including landscape character;
- effects on loss of mature (replanted ancient) woodland, degradation of the nature conservation value of the local wildlife site and reduction in biodiversity; and
- whether any 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 inappropriate development in the Green Belt

44. NDMP GB6 states that development in the Green Belt is inappropriate unless it falls within a category in Policy GB7.1 (a)-(h). Sub-paragraph (f) lists other forms development that are not inappropriate, provided impacts on openness of the Green Belt are minimised and there would be no significant conflict with the Green Belt purposes. The list includes GB7(1)(f)(i):

    "Mineral extraction and processing, engineering operations, and transport, electricity network, water and telecommunications infrastructure required in a Green Belt location."

45. The appellant considers that engineering operations comprised in the alleged breach should be assessed against these revised tests. In my view this is a misreading of how the policy should be applied because engineering operations must be "*required in a Green Belt location*". A homeowner raising land levels in their garden should therefore show it needs to happen in the Green Belt. The list indicates a strategic public or functional need but in any event the development does not appear to be a functional necessity. A garden on a severe slope causing subsidence or where there are safety issues might be considered, but I am not persuaded that the engineering operations are functionally required to stabilize the land or make the lawful residential use viable. Whilst mitigation is proposed there is no justification advanced for the original works to raise this embankment to the front of the dwelling.

46. According to the appellant's statement the raised landform covers c0.94 acres and features a levelled garden area abutting the driveway to the front of the house, bounded by a 1.4m high post and wire fence. Its edge is at c198.5m AOD and slopes down to the north, northeast and east. The edge of the slope is bounded by a 2.4m security fence. In comparing the topographical survey and the existing site and location plan *"it can be deduced that the land has been raised by approximately 5m maximum".* Views from the garden area thus created have been significantly enhanced but to no particular purpose, unless it is an aesthetic choice. I find on the facts that the exclusion in NDMP GB7.1 (f) does not apply. No other exclusionary category of development is advanced and it does not appear that the unauthorised development is in any other exempt category listed in GB7.

47. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, ie where the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations. In making this assessment, substantial weight should be given to the harm to the Green Belt which would be caused, including harm to its openness.

Openness

48. The fencing has a spatial impact, especially that erected on the eastern boundary which is visible from Penistone Road. Visually, its green colour and mesh design are noted but I agree with the Council that the 2.3-2.4m high fencing is not sympathetic to a rural area. The tipping of a large volume of unknown material on the land to the front of the property results in the formation of a highly engineered and unsympathetic landform that, far from appearing as a natural sloping feature, presents as an artificially created landform giving the site a fortified appearance. The impacts on the openness on the Green Belt are significant and have not been "minimised" through the development. It also causes harm that conflicts with the

Green Belt purpose of preventing encroachment into the countryside, but not significantly so.

Character and appearance

49. It is undisputed that the appellant cleared substantial amounts of protected, mature woodland, and tipped a large volume of material on the front of the property, creating an engineered landform and erected nearly a kilometre in length of c2.3-2.4m high welded mesh security fencing.

50. The site is in an area of high landscape value as defined by the UDP. The LCA sets out the landscape value of the area where the site sits, including its wild character and woodland, terminology that the appellant seems to consider inappropriate here, but I disagree. NDMP N2 seeks development that factors in the environmental qualities of land proposed for development, including habitats, landscape character and the natural beauty of the countryside. The development neither conserves nor enhances those qualities since the wooded and rural landscape character, a character of value, has been diminished in the process of removing so many trees to create the embankment, causing harm to the character and appearance of the area, including considerable harm, albeit at a more localised level, to local landscape character. The development markedly fails to take into account these matters where NDMP DP3 aims to secure development that responds to its context, integrating with and enhancing its surroundings.

51. UDP Policy GE8 seeks “overriding” protection for high landscape value areas but in any case the sweep of woodland on the plot, including ancient (replanted) woodland and its benefits to ecology are key aspects that underpin local identity and a sense of place that NDMP N2 seeks to protect. UDP Policy GE15 is generally consistent with the NPPF in seeking trees to be retained where possible by refusing development that would damage existing mature and ancient woodlands. NDMP N3 also expects proposals to be discussed with highways and trees officers for long-term maintenance of existing and newly-planted trees which the appellant has failed to comply with by removal and destruction of trees. In so doing he has clearly failed to preserve and protect the character of the area.

Other considerations

52. Four matters are raised that in combination are said to constitute very special circumstances: the possibility of erecting fencing up to 2m in height with bulkier materials as permitted development; the need to secure the property for domestic and agricultural purposes; landscape and planting mitigation subjecting the east and north embankment slopes to a dense, native landscape buffer; and replanting a larger area of woodland than was lost, with ecology and biodiversity benefits.

53. I accept that the permitted development right referred to would exist once the notice were complied with, but I doubt whether the appellant genuinely intends to use bulkier materials and a “less harmonising colour palate”, there is no evidence as to any real willingness. It is a theoretical prospect only. The need to secure the property for domestic and agricultural purposes however carries moderate weight.

54. The appellant proposes a condition to ensure a re-planting scheme is undertaken and maintained but I have considerable doubts that it is possible adequately to address the harm the development has caused through the imposition of planning

conditions. Extensive damage to the environment has occurred through a series of deliberate acts by the appellant that may not amount to intentional unauthorised development but have demonstrated a near total disregard for the environmental impacts of the breaches, or an appreciation of the qualities and benefits that the woodland bestows, of which the appellant wittingly or not, is the custodian.

55. Nevertheless, I have considered the alternative detailed landscaping and planting proposals[2] and accept that there would be benefits to the appellant's scheme, including ecological benefits. There may be more trees numerically proposed to be replanted, however areas of woodland have also been displaced by the unlawful built development. It would not seem sensible to adopt a mitigation that would only go part way to remedying the breaches of planning control, when the steps set out in the notice stipulate with clarity and precision the best chance of restoring the land to its former condition in a holistic manner, although this will take some time.

56. Taken singly or in combination, the matters advanced by the appellant do not constitute the very special circumstances that would be required to be demonstrated to outweigh the harm occasioned to the Green Belt.

Planning balance

57. The development is inappropriate development as defined in NDMP GB6 and GB7. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is given to the harm to the Green Belt which would be caused, including harm to its openness.

58. Further harm is caused to the character and appearance of the area such that retention of the raised landform and fencing would be contrary to the aims of UDP Policy BE6 in that there would be a signal failure to provide good quality landscape design, which would also conflict with NDMP N2 in failing to take proper consideration of the environmental qualities of land subjected to the development, including habitats, landscape character and the natural beauty of the countryside

59. Other considerations have been considered as requested by the appellant but the harm to the Green Belt by reason of inappropriateness and the other harm resulting from the development, is not clearly outweighed by those other considerations. Therefore, in accordance with NDMP GB6.2 planning permission will be refused.

Appeal B - Ground (f)

60. The appellant's case here is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The case relates to steps 1 and 3 in the notice.

61. By s173(4) of the Act, the purpose of the notice is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach. Clearly, the notice seeks remediation of the engineering operations as specified in the allegation that have raised land levels, and the removal of security fencing so as to remedy the breach of planning control.

[2] Statement of Case, section 2.3, Detailed Buffer Planting plan, Appendix 3.

62. Given the harm identified as a result of the erection of the fencing across the site, the notice is not excessive in requiring its removal. For parts of the site not adjacent to a highway, it is true that means of enclosure up to 2m high would be permitted development but the fencing significantly exceeds this height. It is a matter for the appellant whether, once the requirements of the notice are complied with, alternative fencing meeting permitted development criteria is erected. Permitted development rights do not subsist over a development that is unlawful.

63. I accept that the blue lines on Plan 4 may **coincide** with various boundary treatments on the ground other than the security fencing shown in photograph 4, but the line does not necessarily **refer** (as suggested[3]) to those other boundary treatments. The notice is clear in that, for the type of security fencing shown in the photograph, it should be removed where it occurs along the blue lines on plan 4. There is no need to amend the plan, the nature of the fencing is apparent from the photograph. It must be removed wherever it is erected along the blue lines.

64. The appellant accepts that re-levelling the land as required in the notice would remedy the breach. New hard surfaces have created a driveway forecourt to the front of the dwelling and internal access tracks to the east of the property. Where the surfaces have been formed on parts of the site subjected to unauthorised land raising, the hard surface is part and parcel of the unauthorised new landform. Therefore, Step 5.3 is not excessive in requiring removal of the raised landform where the hardstanding or creation of driveways/access roads has taken place.

65. Apart from the position in relation to other notices, the Council has acknowledged[4] in this notice that no action is targeted against the formation of hard surfaces except where coincident with the land raising. The controlling factor is the extent of the land raising that has taken place. It would not be sensible to amend the notice as suggested, because that would risk underenforcing any new hard surfaces used to create the driveway forecourt to the front of the dwelling and internal access tracks east of the property that are in fact sitting on part of the raised landform. The Steps identify what is necessary to remedy the breach.

66. The appeal on ground (f) does not therefore succeed.

Appeal B - Ground (g)

67. The Appellant requests that the compliance period is extended to 9 months for Steps 5.1, 5.2 and 5.3, and to 12 months for Step 5.4. Two other enforcement notices and a tree replacement notice have been issued where similar periods are requested. It is said that were all the notices to be upheld, it would place the appellant in “significant hardship” to comply with all notices as required.

68. The owner has transformed a 1.5 storey detached house into a larger, 2.5 storey house, constructed a large outbuilding, significant hard and soft landscaping and an extended network of driveways, landscaped amenity garden areas and over 900m of security fencing. Substantial engineered embankments have been formed and works to extend the main house included an extended garage.

69. The earthworks and ground preparation works required are significant. However, I have been given no evidence that supports the claim of potential hardship or

[3] Statement of case, paragraph 5.3.6
[4] Appeal statement (unpaginated), seventh page: *(e) hard surfaces*, last sentence.

reason to doubt that the appellant has the necessary means to carry out the remedial works in an expeditious fashion if required. Steps 5.1 and 5.2 should be able to be achieved in a matter of days and Step 5.3 within a period of two months, but I will extend the periods for these steps to three months and in respect of Step 5.4 I will again extend the period to eight months which is a reasonable amount of time for de-compacting, importing and respreading topsoil in accordance with the specifications set out in Preparation of Ground for Planting appended to the notice.

70. The appeal on this ground succeeds to this extent only.

Conclusion on Appeal B

71. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 17(5) of the 1990 Act (as amended). The appeal on ground (g) succeeds to that extent.

Appeals C and E

Appeal C: the notice

72. The allegation refers to an outbuilding and hard surfaces identified on Plans 2 and 3 and shown in Photograph 1. In fact, the hard surfaces are shown in Photographs 1,2,3 and 4 attached to the notice and are referred to as such in the requirements. The photographs show the hard surfaces identifiable on Plan 2 (the aerial image). This seems to be an error which if corrected would not cause injustice to the parties. Therefore, I will amend the allegation to include Photographs 2, 3 and 4.

Appeal C (ground (a)) and Appeal E

73. The development has taken place in an area of Ancient Woodland of which some areas of that woodland are subject to a Tree Preservation Order. The s78 appeal site (Appeal E) relates specifically to the area delineated by the agricultural barn and hardstanding immediately surrounding it and to the front where the driveway leads to the southwest part of the wider site. The enforcement notice covers not only this area but additional areas of hard surfacing as described above.

Main issues

74. These are:

- whether the development is inappropriate development in the Green Belt including, where relevant, the effect on openness;
- effect on the character and appearance of the area, including consideration of local landscape designations and loss of woodland;
- for development that is not inappropriate whether the benefits of approving it would be substantially outweighed by any adverse effects when assessed against NDMPs in the NPPF; and whether the development should be approved having regard to the development plan and other considerations; and
- for development that is inappropriate, 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 inappropriate development

75. NDMP GB7 identifies development which is not inappropriate in the Green Belt as including (GB7(1)(a)) "development which is for agriculture". There is no size limit, proportionality threshold or requirement to assess the effect on the openness of the Green Belt if the development falls within this category. However, the Council disputes whether the outbuilding erected is genuinely intended for agricultural purposes despite the appellant's claim that it is used for the keeping of animals, feed, and other associated equipment necessary to facilitate agricultural practices. providing adequate shelter and controlled conditions for the livestock

76. On my accompanied inspection there were six sheep outside and four goats and some hens inside the barn, the goats in pens taking up very approximately half of its area, the remainder being used for a raised platform around which were other pens. There was hay storage and various equipment related to agricultural use. Greater numbers of livestock are referred to elsewhere in the appeal statement, shown in photographs submitted. I accept that the building has an agricultural use.

77. Therefore, the outbuilding is not inappropriate development. Under NDMP GB7.1 it should not be regarded as harmful to the Green Belt or required to demonstrate very special circumstances. NDMP S5.5 states that such development should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects when assessed against NDMPs in the NPPF and applying paragraph S5.2 (which states this is only likely to be the case where development fails to comply with a NDMP that states that such development should be refused).

78. Whist the hard surfaced area immediately surrounding the barn may be said to be ancillary to the agricultural use of the barn and so not inappropriate development, this forms only a small part of the overall hard surfacing constructed and the target of the notice. The expanse of hard surfaces identified in the notice does not benefit from the exception in NDMP GB7(1)(a) and amounts to inappropriate development in the Green Belt. There is a significant adverse effect on the openness of the Green Belt as a result, both in terms of visual and spatial amenity.

Character and appearance, landscape and loss of woodland

79. The outbuilding is prominent due to its size and scale and the fact that the woodland around it has been denuded, so it could be erected. The sheer extent of the hardstanding beyond its immediate curtilage area is an incongruent feature in the local landscape and adversely affects its overall rural character, despite the lack of clear views from public vantage points.

80. The appellant divides up[5] the hard surface areas into: the area immediately west of the main dwelling; the curtilage area of the new outbuilding; the gravelled section of driveway to the southwest connecting to the front of the outbuilding; the area between the southern boundary and driveway; and the kennels and area to the northeast of the outbuilding. A justification for the second and third areas is advanced in connection with the agricultural use.

[5] Appeal E, statement of case, Appendix 4.

81. The second area is not associated with the use of the barn as significant parts extend to the north and east outside what I would regard as its curtilage. Whilst the third area affords vehicular access to livestock when kept southwest of the barn, the extent of gravelled driveway, incorporation of a twee looking "feature roundabout" and the like are not necessary for agricultural purposes, bearing in mind also that the appellant refers to keeping a reduced number of livestock.

82. It appears to be the case that the other areas are not associated with agricultural use. Area 5 by the kennels is said to be small in size but all areas are connected. Area 1 is said to have been "partially" surfaced previously but I cannot be confident about the exact area and in any case, limited weight is given to the "historic" photographs showing hardstanding over some areas. No dates are given and there is no ground (d) appeal. No justification is put for Area 4.

83. The connected areas are constituted by asphalt base with chippings topping. The combined effect of this extended network of driveways to the front and side of the main house is to substantially degrade the previous open, undeveloped and natural landscape around it.

84. As to the outbuilding, the Council's objection of harm to Green Belt openness carries no weight as it is not inappropriate development. However, the outbuilding is within the defined ancient woodland boundary whereon several trees have been destroyed to facilitate its construction. This woodland clearance has caused harm to the landscape and woodland character of the site and wider area. Trees here are protected by a Tree Preservation Order (TPO) designating large areas as ancient (replanted) woodland.

85. The cultural practices of halal meat production of which the agricultural use on the site is said to form part, has been considered. No justification is put for siting the building in this location, nor any wholly exceptional reasons where the public benefit would outweigh the loss of woodland habitat and biodiversity. Indeed, to remove protected trees to house sheep and goats for a farming enterprise is difficult to justify. The culture of woodland management has its own traditions, and practices, eg coppicing of native woodlands which among other things lets light in and enhances ground flora without harming mature trees, whereas the actions of the appellant have produced demonstrably adverse ecological and conservation effects, as detailed in the Council's statement.

86. The proposed tree planting compensation scheme would fail to re-establish the lost woodland canopy. The outbuilding is in the heart of the former woodland. It would be impossible to effectively replant the woodland without removing it. The scheme has merit but is compromised. NDMP N6.2 states that development entailing loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) "*should be refused*" unless there are wholly exceptional reasons and a suitable compensation strategy exists.

87. The appellant recognises the limitations of its own scheme[6] whereas having considered the Council's requirements for remedial action, in my judgement these are necessary to re-establish the environmental context in which the appeal site lay prior to the unauthorised development.

[6] Appeal C, statement of case, paragraph 5.2.34

88. The wholly exceptional reasons might, as indicated in the footnote to N6.1 be found in infrastructure projects where public benefits clearly outweigh the loss or deterioration of the relevant habitat. It would not include the more general benefits of farming practices even though the particular practices might have a religious purpose. Whilst of demonstrable benefit, it would not be "*wholly exceptional*."

Planning balance

89. The outbuilding and its curtilage are not inappropriate development in the Green Belt. However, in assessing whether its benefits are substantially outweighed by any adverse effects assessed against NDMPs in the NPPF, the outbuilding has caused the loss of an irreplaceable habitat, ie ancient woodland. A compensation scheme is advanced that has some merit, but the remedial action required in the notice is necessary to re-establish the environmental context in which the appeal site lay prior to the unauthorised development. There are no wholly exceptional reasons to justify the loss of this habitat. NDMP N2.6 states that such development should be refused.

90. UDP Policy GE8 gives areas of high landscape value overriding protection but in any event NDMP N2 highlights the need to assess landscape character and qualities whilst understanding which aspects underpin local identity and a sense of place. In this respect the loss of woodland causes harm and would also conflict with UDP Policy GE15 that precludes development that would damage existing mature and ancient woodlands. Also relevant is NDMP N3 which advises prior discussions with highways and trees officers and for long-term maintenance of existing and newly-planted trees which form part of the development. The appellant failed to comply with the policy by the removal and destruction of trees and in so doing has demonstrably failed to preserve and protect the character of the area. Harm is also caused due to the conflict with CS Policy CS74 in the failure to achieve a high-quality development that respects natural features of the locality.

91. The difficulties of businesses of value to the character of a community are not to be ignored in the administration of planning control. The appellant has a trading relationship with a retailer and slaughterhouse for the livestock and these form part of the bespoke cultural practices claimed for the business. Upholding the notice would interfere to some degree with these practices but the barn did not have to be located where it is for these purposes.

92. Whilst certain policies are in detail materially inconsistent with the NPPF, the outbuilding is contrary to the key development plan policies cited above, and to the plan as a whole. There are no other considerations that indicate a decision should be made other than in accordance with the development plan. The benefits of approving the outbuilding are substantially outweighed by the adverse effects described above.

93. The hard surfaces not immediately surrounding and intimately associated with the outbuilding are inappropriate development in the Green Belt which by definition is accorded substantial weight. There is a significantly adverse effect on openness of the Green Belt as a result, both visually and spatially. Other harm results from the loss of woodland, ancient woodland and the deterioration of the character and appearance of the area conflicting with CS Policy CS74. The development is also contrary to UDP Policy GE11 in that in its design, siting and landscaping it fails to

respect or promote nature conservation or, taking account of the mitigation proposed, acceptably reduce the harmful effects on natural features of value.

94. The benefits of the hardstanding, including what are put forward as the combined benefits with the outbuilding and its use, taken singly or together do not amount to very special circumstances necessary to justify the development.

95. Given the religious persuasion of the appellant and the ethical and halal farming practices advanced here, the public sector equality duty (PSED) is engaged. However, I am not persuaded on the evidence that the appellant would be disproportionately and adversely affected by the enforcement action compared to others that do not share similar protected characteristics. Upholding the notice would be a proportionate means to achieve legitimate aims of enforcing relevant national and development plan policies, taking action proportionate to the breach of planning control and maintaining public confidence in the planning system.

Appeal C - Ground (f)

96. An appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. By s173(4) of the Act, the purpose of the notice is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach. Reading the notice as a whole its purpose is to remedy the breach of planning control and the injury to amenity by requiring demolition and removal of the outbuilding and removal of the hard surfaces from the land, and its restoration by a scheme of tree planting.

97. The appellant contends that removal of the kennels and associated enclosure (Area 5) and removal of the hardstanding at the western elevation of the dwelling (Area 1) go beyond what is necessary to remedy the breach of planning control. The so-called historic photographs are undated, and I cannot be certain when they were taken. There is no ground (d) appeal that claims it is too late to take enforcement action over any part of the hardstanding.

98. The alternative hard surface removal plan has been considered that excludes that part adjacent to the main dwelling and the guard dog compound. However, this overlooks the fact that the requirements set out in the notice are imposed on the land that reflects the extent of the canopy of the lost woodland. Without removing all the hard surfacing beneath that lost woodland canopy, the ability to reestablish it would be compromised.

99. However, the appellant is correct in that the “kennels” (which is one building for the dogs) are not referred to in the Notice as matters which constitute a breach of planning control. As to the fencing around the compound, I agree this is not included in the allegation. The dogs are guard dogs. It would be excessive in my judgement to require removal of the hardsurfacing within the fenced compound area. I shall vary the requirements to exclude this hardsurfacing area only.

100. The appeal on this ground succeeds to this extent only. Otherwise, the steps required are necessary to achieve the purposes of the notice and there are no obvious lesser steps that would achieve those purposes.

Appeal C - Ground (g)

101. The Appellant requests that the compliance period is 9 months for Steps 5.1, 5.2 and 5.3, 12 months for Step 5.4. Two other enforcement notices and a tree replacement notice have been issued. It is said that were all the notices to be upheld, it would place the appellant in "significant hardship" to comply with all notices within the 2 and 6-month periods respectively.

102. For the reasons given in relation to Appeal B on this ground, it is likely that the appellant can carry out the remedial works in an expeditious fashion if required. Steps 5.1 and 5.2 could be achieved in a matter of days. There is no compelling evidence that persuades me that 9 months is necessary to comply with Step 3. Three months should be adequate for the purpose. Therefore, I will vary the notice in respect of Step 3 accordingly.

103. Another four months is envisaged for completion of the works in Step 5.4, ie after Steps 1 to 3 are completed. A more reasonable time would be six months for de-compacting, importing and respreading topsoil in accordance with the clear specifications set out in the Preparation of Ground for Planting appended to the notice. The notice will be varied accordingly.

104. The appeal on this ground succeeds to this extent only.

Conclusion on Appeal C

105. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended). The appeal on grounds (f) and (g) succeeds to that extent.

Conclusion on Appeal E

106. For the reasons given above I shall dismiss the appeal.

Appeal F

107. In accordance with s208(1) of the 1990 Act, the TRN is appealed on two grounds - that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it; and that the place on which the tree is or trees are required to be planted is unsuitable for that purpose. The burden of proof lies with the appellant in relation to his grounds of appeal.

108. The main issues are whether or not:

- the requirements of the TRN are unreasonable in respect of the period, size or species of the trees specified; and
- the place on which the trees are required to be planted is unsuitable for that purpose.

Background

109. The witness statement of the Community Tree Officer (Planning) is instructive, prepared for prosecution proceedings for unauthorised removal of protected trees and appended to the Council's appeal statement. The two areas marked for

replanting in the TRN, Map 2 and Map 3 are sited respectively to the south of the house where ancient woodland has been removed, and to the north/northeast of the house where a former closed canopy woodland, which once contained a small clearing, has now been reduced to pasture. In respect of Map 2 and the ancient woodland, I note the statement that:

"The damage to the land extends far beyond the loss of trees. The woodland in this area is designated as ancient, replanted woodland, as shown in Exhibit VL17, which shows a screen grab from DEFRA' s MagicMap, a mapping tool that provides authoritative geographic information about the natural world from across government. Ancient woodland is defined as woodland that has existed since at least AD 1600, and ancient replanted woodland is those woodlands which have historically had original tree species replaced with new varieties. Due to their longevity, ancient woodlands develop complex ecosystems containing soil profiles, plants, insects, and fungi which are irreplaceable. The re-grading of the land (including importation of soil to create a bank 5m high) extensive building work in previously tree covered areas, raising of soil levels around trees across the site and grazing has irreparably damaged the important ecology of the site. During visits made the site it was noted that virtually none of the ground flora normally associated with a woodland of this nature was present"

110. In respect of Map 3 and the canopy woodland to the north, photographs attached to the witness statement show trees visibly damaged, presumably by plant machinery. I note the statement:

"Within the woodland that remains to the north of the site, it is estimated that 9,583 square metres of understory has been felled. This represents the loss of hundreds of saplings and small trees, all of which were also protected by the TPO, and which required consent from the Council to be removed."

111. On closer inspection of the removal of the understorey in the area of Map 3, the roots of several trees were visibly damaged and showing above the ground level. It is likely that a mechanical excavator was used and intense soil scraping took place that removed the topsoil and leaf litter, brush etc. The structural roots have been left suspended which has reduced the trees' stability. The top soil will have contained the tree's feeder roots which absorb water and nutrients. Removal not only starves the tree but the roots are now exposed to extreme temperatures and moisture loss. The open wounds visible on the trunks are susceptible to wood-decay fungi and pests.

Whether requirements unreasonable

112. The appellant's TRN Appeal Statement is submitted with this appeal. The grounds of appeal are there set out in full.

113. The appeal site is within the boundaries of a woodland tree preservation order (TPO) Ref: TPO/808/101 dated 10 February 1986. The description of the TPO (W1) is "*mixed deciduous woodland with several evergreens mainly consisting of Birch, Oak, Sycamore, Holly and Sweet Chestnut*". According to the appellant, since purchasing the site in 2020, c60 mature trees were removed. It is said on his behalf that he was unaware at the time that the trees were subject to a TPO.

114. The TRN was served following an enforcement investigation identifying numerous breaches of planning control. Applications were made to retain some works as detailed in the appellant's statement. Apart from alterations approved to the main house, the works have been refused on appeal[7]. This appeal is concerned only with the TRN. The area of felling subject to the TRN is within area W1 of the TPO.

115. The TRN in fact alleges that between April 2020 and April 2021 trees comprising some 150 mature trees and more than 1000 saplings of various species were removed in contravention of the requirements of s210 of the 1990 Act and TPO.

116. The TRN requires the appellant to plant 1,374 trees in the next full planting season following the notice taking effect, between 1 November and 31 March. As this will encompass almost two full planting seasons the appellant cannot reasonably complain about the shortness of time allowed. The notice, upon coming into effect following this Decision will provide a buffer of some 16-17 months to source, prepare, and plant the trees. That leaves plenty of time to comply with the enforcement notices which will have come back into effect from the date hereof.

117. As to the replanting of trees shown on the plans attached to the TRN, to the extent that demolition works and earth removal are required to facilitate the full extent of planting requested in accordance with the Decision in Appeal B then, again, plenty of time is allowed for this to be carried out before the TRN works.

118. In the circumstances, the requirements of the TRN are not unreasonable.

Suitability of location

119. The land affected is shown edged red on Map 2 and edged and hatched red on Map 3. The landowner has a duty to plant replacement trees. The requirement is to plant trees on the land of the size, species and at the locations and in accordance with the specifications and details set out in the Planting Schedule attached to the TRN. It is undisputed that the requirement to replant in Parcel B, shown in Map 3 is justified.

120. As to the replanting of areas of woodland in Parcel A, shown in Map 2, 420 trees are to be planted including 10 heavy standard trees in various locations in the rear garden area but it is claimed that, considering the photographic evidence[8] provided, areas in Parcel A are occupied by a rock garden, pond, and other areas of paving where, it is said, such works are not subject to enforcement action, and therefore the TRN cannot enforce their removal.

121. It is not easy to reconcile precisely what is shown in the submitted images with parcel A shown in Map 2. In fact, Map 2 in the TRN shows an area for replanting that carefully avoids the area subject to the enforcement notice the subject of Appeal B. The image of the small "roundabout" feature is clearly outside the area in Map 2 and it would be misleading to suggest otherwise.

122. The other images show a built-up rock garden and a small pool feature which appear to be constructed recently. Their location is not pinpointed. They are not evident on the aerial image that constitutes the appellant's alternative planting

[7] Ie Appeal D and Appeal E. Permission ref 23/01945/FUL was granted 24 May 2024 for two-storey front extension and other alterations to the main dwelling.
[8] Appeal F, Statement of case, Appendix 2.

map[9]. Judging from the image of the small "roundabout", the rock garden and pool occupy a relatively small area within Map 2.

123. No planning permission appears to exist for these works and whether they amount to operational development and/or a material change of use of land outside the curtilage of the main dwelling, has not been considered and would be a matter for the Council. But for example, it may be seriously questioned why, having regard to the well-established criteria which it is unnecessary to rehearse here, the appellant refers to the curtilage of the property as including "*a large area of woodland [which] exists to the northeast with a tree belt demarcating the northern, western and southern boundary*".[10] The area is in the same ownership but in character and function is difficult to reconcile with areas more intimately connected with the main house. The point is that the term appears to be used somewhat loosely by the appellant. This should not afford justification for a use of land if outside the curtilage of the main house, for domestic residential purposes whether or not it is part of the same planning unit (which are two different things).

124. In any case, if the garden features are deemed to be within the domestic curtilage, it does not appear on the information provided, that they existed before the TRN was served on the appellant. Having appealed the notice if the appellant then set about installing the items, he would in effect obstruct compliance with the TRN.

125. It may be that the items in question might not unduly interfere with the planting regime. But the appellant will be aware that if the notice is upheld and not complied with, the Council may enter the land, plant the trees and recover any reasonable expenses. By Town and Country Planning General Regulations 1992[11], section 276 of Public Health Act 1936 is applied to TRNs. Section 276 contains a specific power to sell materials removed during the default works:

"(1) A local authority may sell any materials which have been removed by them from any premises, including any street, when executing works under, or otherwise carrying into effect the provisions of, this Act, and which are not before the expiration of three days from the date of their removal claimed by the owner and taken away by him."

126. The provision would appear apt[12] to be invoked, if necessary, to remove materials in the course of planting, that obstruct compliance with the notice. Such additional garden features latterly added, if they stand in the way of full compliance with the TRN, I see no good reason why those powers might not be exercised to remove those works to facilitate compliance.

127. On the other hand, if the features are permanently authorised, a request could be made to the Council to amend the specified planting locations. The Council may waive or relax a requirement of the TRN including after it takes effect so in all, proper implementation of the TRN should not be affected by the matters raised in the appeal statement.

[9] Appendix 3 – Proposed Revised Planting Area and Planting Schedule for Parcel A.
[10] Appeal F, appeal statement, paragraph 2.1.2
[11] See Regulation 14 (SI 1992, No 1492). "14.—(1) The provisions of sections 276, 289 and 294 of the Public Health Act 1936(1) ("the 1936 Act") shall apply in relation to…requirements of a notice under section 207(1) of the 1990 Act," Default powers are referred to, with Reg 14, in PPG, Paragraph: 023 Reference ID: 17b-023-20140306 Revision date: 06 03 2014.
[12] The current legislation applies to England and Wales. Interestingly, s258(7) of Planning (Wales) Act 2026, due to come into force in October 2027, refers to "*where…a planning* authority *removes materials from land in the course of planting trees required to be planted* by a tree replacement notice" (my emphasis). Thus, the assumption was that the power exists in the current legislation.

128. I conclude that the place on which the trees are required to be planted is suitable for that purpose.

Other matters

129. The appellant also claims it is not permissible to replant in accordance with s206(3) rather than s206(1) which he claims is the approach used by the Council. That is not in my opinion what the Council is seeking to do. The Council complied with PPG advice as to what should be in the TRN, including stating the powers it exercised. The appellant does not give the full context of s206(3) which is:

"(3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees— (a) on or near the land on which the trees removed, uprooted or destroyed stood, or (b) on such other land as may be agreed between the local planning authority and the owner of the land, and in such places as may be designated by the local planning authority."

130. The Council states that it considered all replacement planting could not be covered by the TRN, in that it was necessary to remove the annex, outbuilding, associated hardstanding, and groundworks to the front garden before these parts of the site could be replanted and that was why the enforcement notices, now upheld on appeal, required replacement planting on those areas. That is a logical and reasonable approach. The TRN does not seek to re-establish woodland on areas not compromised by lawful operational development.

131. The appellant further objects to the numbers of trees required to be replanted which he says, through his agent – is excessive. However, no appeal is made on grounds that might pertain to such a matter and in any event, this being a woodland, it is well established in the Distinctive Properties case[13] that, following the clear felling of an area of woodland that was subject to a TPO, a TRN may not be excessive in requiring greater numbers to be replanted than were removed.

132. It may be maintained that the requirements of the notice were excessive as the felling affected a limited number of trees, but the mature woodland would have included many seedlings and saplings consistent with its natural lifecycle. The requirements the notice are reasonable on that basis. So, whilst it is correct to point to s206(3) in that for a woodland setting it is sufficient to plant the same number of trees on or near the land on which the trees stood, it is overlooked that when the appellant performs a blanket felling of a woodland area, it is impossible to count the exact number of destroyed seedlings and saplings.

133. The methodology used in the present appeal is plainly set out in Appendix E to the Council's statement. It includes the use of standard planting densities. The prosecution witness statement also evidences some of the methodology used to estimate numbers of felled trees. The appellant brings forward no evidence to substantiate the claim that the numbers of trees required to be replanted is not an evidence-based estimate of the same number of trees, including small and young ones, that would have naturally occupied the woodland area before it was cleared.

[13] See Distinctive Properties (Ascot) Limited v (1) Secretary of State for Communities and Local Government (2) Royal Borough of Windsor and Maidenhead [2015] EWCA Civ 1250

134. The judgment in Palm Developments[14] held that with woodland TPOs there are no limitations in terms of size for what is to be treated as a tree. It should furthermore be noted that in that case, Cranston J said:

"As the Blue Book[15] suggests, because the purpose of a woodland tree preservation order is to safeguard the woodland as a whole, which depends on regeneration or new planting, it must extend to trees which grow or are planted after the order is made."

135. The Blue Book contained a warning from Shakespeare's Richard III, in the words of Queen Margaret who said: "*They that stand high have many blasts to shake them, And if they fall, they dash themselves to pieces*". The ecological reality is that clear-felling of understoreys around mature trees, ie stripping away the surrounding vegetation leaves the surviving trees structurally vulnerable as, on close inspection, I found to be the case.

136. The desecration of the understorey of this area of woodland was clear to see. It presented a sad spectacle. A woodland is more than several trees close to one another. It is a complex, multi-layered habitat. A heathy understorey, not least in this part of the country, can act as a windbreak to trap humidity and prevent the woodland floor from drying out, thus keeping tree roots insulated and moist. By entirely clearing the understorey, the appellant has systematically destroyed the future seedbank, wildlife corridors, and ecological matrix of the woodland floor.

137. Generally, the evidence of the Council including the submitted photographs and aerial images are compelling in that it appears some 8,739.98 square metres of canopy cover has been removed since the purchase of the house by the appellant, Mr Nasir. The replanting schedule is justified as reasonable and the places on which the trees are required to be planted are suitable for that purpose.

Conclusion on Appeal F

138. For the reasons set out above, the appeal is dismissed, and the TRN is upheld.

Grahame J. Kean

INSPECTOR

[14] Palm Developments Ltd v Secretary of State for Communities and Local Government [2009] EWHC 220 (Admin),
[15] Tree Preservation Orders: A Guide to the Law and Good Practice" (often called the "Blue Book") and its 2009 addendum were replaced by Planning Practice Guidance.