The Planning Inspectorate

Appeal Decisions

Hearing Held on 17 and 18 October 2023

Site visit made on 18 October 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal A Ref: APP/X0360/C/22/3313844
Land at Atlanta, Wargrave Road, Remenham, Wokingham RG9 3JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Christopher Williams against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 6 December 2022.
- The breach of planning control as alleged in the notice is, without planning permission, (1) the material change of use of the Land to residential, and (2) operational development comprising the erection of a dwellinghouse (Building A), the erection of an ancillary storage building (Building B), and the erection of a raised platform (decking) (C).
- The requirements of the notice are:
  - i) Cease the residential use of the Land.
  - ii) Demolish Buildings A and B and the raised platform (decking) (C) marked on the attached Plan.
  - iii) Remove all resultant material and debris resulting from step (ii) from the Land.
  - iv) Restore the Land to its former condition prior to the breaches of planning control taking place.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the 1990 Act. Since an appeal has been brought on ground (a) and the requisite fee has been paid, an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Appeal B Ref: APP/X0360/X/22/3303555
Land at Atlanta, Wargrave Road, Remenham, Wokingham RG9 3JD

- The appeal is made under section 195 of the 1990 Act as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Christopher Williams against the decision of Wokingham Borough Council.
- The application Ref 221304, dated 27 April 2022, was refused by notice dated 19 July 2022.
- The application was made under section 191(1)(b) of the 1990 Act.
- The development for which a certificate of lawful use or development is sought is for amenity building, roof to storage area and mooring.

Appeal C Ref: APP/X0360/W/22/3310598
Atlanta, Wargrave Road, Remenham, Wokingham RG9 3JD

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr Christopher Williams against the decision of Wokingham Borough Council.
- The application Ref 222376, dated 20 August 2022, was refused by notice dated 31 October 2022.
- The development proposed is the erection of an infill front extension, timber decking, roof to storage area and installation of a replacement flue (retrospective).

Summary Decisions

Appeal A Ref: APP/X0360/C/22/3313844: the appeal is dismissed and the Enforcement Notice is upheld with corrections and variations

Appeal B Ref: APP/X0360/X/22/3303555: the appeal is allowed in part, but is otherwise dismissed

Appeal C Ref: APP/X0360/W/22/3310598: the appeal is dismissed

Application for costs

1. At the Hearing an application for costs was made by Mr Christopher Williams against Wokingham Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. For the reasons set out in detail below[1], I have found that the breach of planning control alleged in the enforcement notice relating to operational development comprising the erection of a dwellinghouse (Building A) has resulted in the erection of a new building. In the light of that finding, the planning application subject to Appeal C is redundant. For example, the development for which retrospective planning permission is sought comprising the erection of an infill front extension and the installation of a replacement flue form part of the wider development comprising the erection of the dwellinghouse. It is neither correct nor possible to consider those elements of the wider development in isolation: it is not possible to assess the effect of the infill front extension on the openness of the Green Belt in isolation when it forms an integral part of a new building. It is the entirety of that new building that must be assessed in that regard.

3. Nevertheless, the application has been accepted as being valid by the Council and accordingly I must determine the appeal as submitted. The development for which planning permission is sought in that application (the erection of an infill front extension, timber decking, roof to storage area and installation of a replacement flue) are all subsumed into the deemed planning application made under section 177(5) of the 1990 Act in the appeal against the enforcement notice (Appeal A)[2]. I will therefore consider and reach a conclusion on each of those elements that are still relevant as part of the appeal made on ground (a) as part of Appeal A. I will then translate my findings in relation to those elements into my determination of Appeal C.

[1] Appeal A, appeal on ground (b)
[2] Or, in the alternative, are considered under other grounds in Appeal A.

Background to the appeals

4. These appeals all relate to the same site located on the east bank of the River Thames, upstream of Henley on Thames. Vehicular access to the site is gained from Wargrave Road. The appellant, Mr Christopher Williams, resides at a property located on Wargrave Road a short distance to the south-east of the appeal site. That property enjoys a pleasant outlook overlooking an offshoot of the River Thames but has no private outdoor amenity space.

5. The initial use and development of the appeal site is set out in a Statutory Declaration dated 21 April 2021 made by Mr Williams. In his Statutory Declaration, Mr Williams confirms that he acquired the appeal site in December 1999. At that time, there were already two structures on the site, described as sheds, measuring some 7.0m by 2.5m and 2.5m by 2.5m respectively[3]. In March 2002, Mr Williams submitted a planning application to replace those sheds with a single wooden building for use as a leisure store and changing room (Council Ref: F/2002/6163). Planning permission was refused in June 2002 for a single reason, specifically that the development would be at direct risk of flooding and would increase the risk of flooding elsewhere.

6. In the event, Mr Williams instructed a builder to, as he terms it, "repair/renovate what stood there"[4]. However, I cannot accept that as an accurate description of what subsequently took place. The sheds that were already on the site were clearly two separate structures. The structure that was constructed in 2002 was a single building measuring 8m by 3m, plus a veranda measuring 8m by 2m. In addition, the building erected in 2002 was raised on piers, whereas the previously existing sheds were not. Consequently, although the floor area of the new building was broadly equivalent to the cumulative floor area of the two sheds that previously stood on the site, the new building was materially different in form. I will refer to this as the '2002 building'.

7. As a matter of fact and degree, the 2002 building goes well beyond any reasonable interpretation of repairing or renovating the two separate sheds that previously stood there. What occurred was clearly the demolition of those sheds and the erection a single new building. This discrepancy in the description of that development goes to the accuracy of the version of events as recalled and described by Mr Williams in his Statutory Declaration. This in turn reduces the reliance that I can attach to Mr Williams' description of other events and developments that are set out in his Statutory Declaration.

8. In early 2016, a lean-to extension was added to the building constructed in 2002. The building as then extended was the building that existed immediately prior to the breach of planning control alleged in the Enforcement Notice, and which was referred to at the Hearing as the '2016 building'.

9. In his Statutory Declaration, Mr Williams explains that, at the same time as the lean-to extension was constructed, a storage building was also erected[5]. That building originally featured a roof, but that roof quickly deteriorated and was replaced with a tarpaulin.

[3] It is Mr Williams' recollection that there were three sheds on the site at that time. However, the plans submitted with planning application F/2002/6163 clearly show only two sheds. Given that the latter were plans submitted as part of a formal planning application, that evidence is to be preferred.
[4] Paragraph 8 of Mr William's Statutory Declaration.
[5] This is the ancillary storage building (Building B) as alleged in the Enforcement Notice.

The Enforcement Notice

10. The appellant maintains that the notice is invalid and is incapable of correction. The majority of the points raised in this respect do not go directly to the validity of the notice and are covered in the appeals made on grounds (b), (c) and (d). I consider them under the respective grounds of appeal.

11. The appellant does, however, contend that the requirement at paragraph 5(iv) of the notice is unclear in terms of what he must do to comply with it. The requirement at paragraph 5(iv) of the notice is to restore the Land to its former condition prior to the breaches of planning control taking place. The appellant complains that it is not clear from the notice what is the condition of the land to which the Council requires it to be restored: is it the 2002 building, the 2016 building or a complete clearance of the site.

12. The wording used in paragraph 5(iv) of the notice follows closely that of section 173(4)(a) of 1990 Act. It is settled case law that the oft-used standard wording 'to restore the land to its condition before the development took place' is sufficient for validity purposes. This is because, in many cases, the landowner will be the person with the best knowledge of what that previous condition was. I therefore consider that the notice is not invalid in this or any other respect.

Appeal A: the appeal on ground (b)

13. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred. There are a total of three discrete breaches of planning control to which this ground of relates. It is convenient to consider the planning control alleged insofar as it relates to the operational development the first instance.

Operational development comprising the erection of a dwellinghouse (Building A)

14. There is no definition of the term 'dwellinghouse' in the 1990 Act but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. Building A features a fully equipped kitchen, a bathroom, a living area and a separate bedroom. It is fully weatherproof, fully insulated and is heated. I am satisfied that, as a matter of fact and degree, Building A provides all the facilities required for day-to-day private domestic existence. It is therefore a dwellinghouse.

15. It was held in *Impey v SSE & Lake District SPB* [1981] JPL 363 that a change of use could take place as a result of the physical works but that it is necessary to look in the round. In that context, the High Court found that the physical state of the premises is very important but it is not decisive. The High Court also found that actual or intended or attempted use is important but again not decisive. More recently, in *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15, Lord Mance commented that "too much stress… [has] been placed on the need for actual use".

16. On my reading, the judgments in *Impey* and *Welwyn Hatfield* are good authority for the proposition that a use does not necessarily have to commence for a material change of use of have occurred. In this case, Mr Williams explained at the Hearing that Building A has been used for occasional overnight stays but that he had no intention to use Building A as a dwelling. Nevertheless, not only does Building A provide all the facilities required for day-to-day private domestic existence, it does so to a high standard and to a level well beyond that required for a building ancillary to a leisure plot. There is no practical reason why Building A could not be occupied for sustained periods at any time of year or, for that matter, even permanently. Consequently, when looked at in the round, I consider that Building A is a dwellinghouse and is capable of being used as such. In that sense, the breach of planning control alleged has occurred.

17. The question then arises as to whether the erection of Building A as alleged in the notice constitutes the erection of a new building, or is more properly to be considered as a refurbishment/renovation/extension of the 2016 building. In that context, in *Oates v SSCLG & Canterbury CC* [2018] EWCA Civ 2229 it was held that the Inspector was entitled to uphold an enforcement notice alleging the construction of 'new buildings' although the structures included parts of existing buildings. In *Oates*, the Court of Appeal found that what had been constructed comprised some parts of the old building, a considerable amount of new building, and the removal of large parts of the existing structure. In delivering his judgment, Lindblom LJ considered that what the Inspector had found was that the remaining fabric had been fully integrated into the new works so it no longer existed as buildings.

18. Applying the judgement in *Oates* to the facts of this case, I note firstly that the framework of the 2002 building had been largely retained as part of Building A. It was established at the Hearing, and confirmed at the site visit, that the timber cladding of the 2002 building had been largely retained on the rear and both side elevations (apart from the enlargement of an existing door opening in the rear wall) but had been covered over by the new profiled metal cladding.

19. The timber cladding was completely removed from the front elevation of the 2002 building, as was the balustrade (including the structural supports for the roof). The verandah was then infilled by attaching profiled metal cladding to a new timber supporting framework. The old corrugated roof was removed and the building re-roofed. The internal walls were stripped out.

20. The situation is less clear-cut in relation to the lean-to extension added in 2016. The appellant acknowledges that the extent of the works was more extensive in relation to the lean-to extension, to the extent that the roof profile was changed. However, in my judgment, the works carried out to the lean-to extension are more extensive than that.

21. A photograph dated May 2019 shows the roof of the lean-to extension to join the 2002 building at a point immediately below the gutter[6]. It then slopes at a relatively steep angle to a height at the rear that is evidently below the height of the boundary fence fronting Wargrave Road. By comparison, a photograph dated May 2021 from almost exactly the same position shows the roof of the rear element of Building A as being flush with the roof of the main building, and

[6] Appendix 9 to the Council's Enforcement Notice Appeal Statement.

then falling at a very shallow angle to a height at the rear that is significantly above the height of the boundary fence fronting Wargrave Road[7].

22. This is also evident in a photograph taken in April 2021 when works on Building A were still in progress[8]. In that photograph, the internal framework is clearly visible. The top of the internal framework is at a very shallow angle, such that it is practically horizontal. It is of a height significantly above the boundary fence fronting Wargrave Road. That is entirely consistent with the completed Building A shown in the photograph taken in May 2021, but is wholly inconsistent with the photograph of the 2016 building taken in May 2019.

23. Photographs taken from inside of the rear element of Building A when under construction tell a similar story[9]. The opening for the escape window in the north-west elevation is at the top of the structure and at a height that, in my judgment, exceeds the height of the lean-to extension of the 2016 building. I have great difficulty in reconciling the position of this escape window with the photograph of the lean-to extension taken in May 2019. It is therefore my assessment that the structure shown in those photographs is not an addition to or repair of the lean-to extension of the 2016 building, but is an entirely new structure.

24. My conclusion in this respect is reinforced by the materials used in the construction of this element of Building A, insofar as both the timber framework and the flooring have a new and pristine appearance. I recognise that the framework of the internal partition shown in these photographs appears to be of a slightly darker colour than the framework of the main structure. This could suggest that the internal partition was erected separately from the main structure. But this does not necessarily mean that framework of the main structure shown in those photographs was that erected in 2016. Other evidence suggests that, on the balance of probability, this is not the case. There are other plausible reasons as to why the framework for internal partition appears to be constructed from different materials: for example, simply a different batch or different type of material.

25. This is therefore a situation in which the then existing building (the 2016 building) was essentially stripped back to its framework, and then extended to the front and rear by the construction of new elements of framework. The whole was then re-clad in new metal profile cladding and re-roofed. The remaining fabric of the 2016 building, including elements of the original timber cladding, have been fully integrated into the new works and as such no longer exist as an identifiable building.

26. Adopting the language used in *Oates*, what has been constructed in this case comprises some parts of the old building, a considerable amount of new building and the removal of large parts of the existing structure. I therefore conclude that, as a matter of fact and degree, the works undertaken amounts to the erection of a new building. That building provides all the facilities required for day-to-day private domestic existence, and as such is a dwellinghouse in *Gravesham* terms. It follows that, on the balance of probability, the breach of planning control in this respect has occurred.

[7] Ibid
[8] Ibid
[9] Council's LDC Appeal Statement.

Operational development comprising the erection of an ancillary storage building (Building B)

27. In his Statutory Declaration, Mr Williams explains that the ancillary storage building (Building B) was erected in 2016. When first erected, the building had a roof but that roof very quickly leaked and the building was covered with a tarpaulin. Photographs show that by September 2019 a replacement roof had been installed.

28. The evidence before me is that Building B was substantially complete in 2016. The installation of the replacement roof was a later alteration. The breach of planning control as alleged in the notice has not occurred. To the extent that it constitutes a breach of planning control at all, it has been mis-described in the notice. It seems to me that it should more properly be described as the installation of a replacement roof. Although whether that constitutes a breach of planning control is a point more properly considered under ground (c), it is convenient to deal with it here. In that respect, it is my view that the installation of that replacement roof is *de minimis* and on the balance of probability does not constitute development requiring planning permission.

The material change of use of the Land to residential

29. It is settled case law that, for a material change in use to have occurred, there must as a matter of fact and degree be some significant difference in the character of the activities from what has gone on previously. There is no requirement for a local planning authority to state in an enforcement notice what it considers to be the 'from' use, and in this case the Council has not done so.

30. In his Statutory Declaration, Mr Williams confirms that the 2002 building was fitted with a kitchen and a bathroom, and that there was a bed and a sofa in the remaining space. The kitchen and bathroom are shown in photographs appended to his Statutory Declaration, which also show that the space was heated[10]. The 2002 building therefore provided all the facilities required for day-to-day private domestic existence. The addition of the lean-to extension in 2016 did not change that. I am therefore satisfied that, as a matter of fact and degree, the 2002/2016 building was a dwellinghouse in *Gravesham* terms.

31. However, the use of the land comprised by the appeal site as set out by Mr Williams in his Statutory Declaration is not a residential use associated with the dwellinghouse on the site. The use of the land described by Mr Williams includes hosting various social functions, and in that capacity included occasional overnight stays by family and friends. But, in the absence of any private outdoor amenity space at his home on Wargrave Road, the land was predominantly used by his family throughout the year as play space for his children, a use that evolved as his children grew older. As Mr Williams explained at the Hearing, he was frequently at the appeal site for maintenance of the plot and in association with the mooring there. This evidence is corroborated in the Statutory Declaration of Mr Miles Williams dated 21 April 2021. The use described by Mr Christopher Williams is therefore that of a leisure plot, which is a *sui generis* use. The Council has no evidence of its own to contradict that provided by Mr Williams or make his version of events less than probable.

[10] Exhibit CW11.

32. I am also mindful that in February 1989 planning permission was granted by the Council for the 'change of use of land at River Thames slipway to moor a boat' (Council Ref: 322243). Notwithstanding the somewhat ambiguous description of the development, this permission clearly relates to the mooring of a boat and to the land known as 'Atlanta'. The mooring of a boat is another *sui generis* use, and the grant of that planning permission constitutes another component of the use of the land.

33. It therefore appears to me that, more likely than not, the planning unit as a whole has a mixed use. There is no LDC before me in respect of the use of the land. It is therefore not within my remit to formally determine the lawful use of the land. That is a matter for the Council in the first instance. Nevertheless, in the context of the appeal on ground (b) that is before me, the evidence shows that there has been no significant difference in the character of the activities on the appeal site from 2002 until the date on which the enforcement notice was issued. I am satisfied on the balance of probability that the breach of planning control alleged in relation to the material change of use of the Land to residential has not occurred.

34. The appeal on ground (b) therefore succeeds in respect of the material change of use of the Land to residential and the operational development comprising the erection of an ancillary storage building (Building B), but fails in all other respects. I will correct and vary the notice accordingly.

Appeal A: the appeal on ground (c)

35. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

36. The appellant's appeal on this ground is in two parts: the infilling of the verandah, and the re-roofing/re-cladding of the 'leisure building'. However, in this case the ground of appeal is fundamentally misconceived. The breach of planning control alleged in the notice is the erection of a dwellinghouse (Building A). The appeal on ground (c) can only relate to the breach of planning control alleged in the notice. The infilling of the verandah and the re-roofing/re-cladding of the 'leisure building' are integral components of the breach of planning control that has occurred, but form only part of that breach of planning control. It is not possible to separate out those components from the wider breach of planning control: for example, it is not possible to find that the re-cladding of the building does not constitute a breach of planning control if the framework to which it is affixed does itself constitute a breach of planning control. The way in which the appellant's appeal on this ground has been framed does not entitle me to reach any conclusion in relation to the latter.

37. Accordingly, the appeal on ground (c) fails.

Appeal B

38. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the

time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

39. The development for which a certificate of lawful use or development is sought is in three parts: the amenity building, storage and mooring. It is convenient to consider these separately.

The amenity building

40. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

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

The approach of the courts in construing the definitions in section 55(1) has been to ask first whether what has been done has resulted in the erection of a 'building': if so, the court should want a great deal of persuading that the erection of it had not amounted to a building or other operations.

41. Adopting that approach, I have found that the erection of the dwellinghouse amounts to the erection of a new building[11]. It follows that what has been done amounts to a building operation for the purposes of section 55(1) of the 1990 Act, and therefore constitutes development for the purposes of that Act. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of development. There is no planning permission in place, deemed or otherwise, for that development. I therefore conclude that, on the balance of probability, the erection of the amenity building was not lawful on the date on which the application was made.

Roof to storage area

42. I have already found that the installation of the replacement roof to the storage is *de minimis* and does not constitute development requiring planning permission[12]. The installation of the replacement roof to the storage area would have been lawful on the date on which the application was made.

The mooring

43. The Planning Practice Guidance (PPG) advises that 'Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it' and that

[11] Appeal A, the appeal on ground (b). The 'amenity building' is the very same structure, albeit labelled differently.
[12] Ibid

'The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision'[13].

44. As indicated above, in February 1989 planning permission was granted by the Council for the 'change of use of land at River Thames slipway to moor a boat' (Council Ref: 322243). The plan submitted with the application for the LDC shows a water-filled indentation into the site in approximately the same position as the plan attached to the 1989 planning permission. It may therefore be reasonable to conclude that the 'mooring' for which the LDC is sought is the same feature.

45. However, that would just be an assumption. The Oxford English Dictionary (OED) defines a mooring as a 'place where a boat is moored'. That description could equally apply to any part of the river frontage: indeed, there is a timber platform on the river frontage of the appeal site which I now understand is used to embark onto boats, and which in my view could potentially qualify as a mooring as defined in the OED. Moreover, the 1989 permission refers to a 'slipway'. At the Hearing, the existing feature was consistently referred to by the appellant as a "wet dock" rather than a mooring which, as a layman on such matters, to my mind connotes a difference between the two things.

46. Consequently, the application does not specify with sufficient precision the 'mooring' for which the LDC is sought. For the reasons set out in the PPG, that could lead to uncertainty and ambiguity in the future. I am therefore not persuaded that, on the balance of probability, the mooring was lawful on the date that the application was made.

Conclusion on Appeal B

47. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the installation of the replacement roof to the storage was not well-founded and that the appeal should succeed in that regard. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and will accordingly issue a certificate of lawful use or development in that respect. In all other respects, I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should not succeed.

Appeal A: the appeal on ground (d)

48. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In view of my conclusions on the appeal made on ground (b) and the scope of this ground of appeal as initially made by the appellant, this ground of appeal now only relates to the erection of a dwellinghouse (Building A) and the raised platform (decking). In order to succeed on this ground, the appellant must show that the development was substantially complete on the date four years before the notice was issued, having regard to the judgment in *Sage v SSETR & Maidstone BC* [2003] UKHL 22. The test in this regard is the balance of probability and the burden of proof is on the appellant.

[13] Paragraph: 010 Reference ID: 17c-010-20140306

The erection of the dwellinghouse (Building A)

49. I have found under the appeal made on ground (b) that the erection of the dwellinghouse (Building A) constituted the erection of a new building. There is no dispute that the erection of this building took place in 2021. The enforcement notice was issued on 6 December 2022. It follows that the building could not possibly have been substantially complete on the date four years before the notice was issued.

The decking

50. As originally submitted, the appellant's appeal on this ground was that enforcement action could only be taken against the additional decking erected in 2019. The appellant's then position was that the original decking had been in place for more than four years before the notice was issued and as such was immune from enforcement action.

51. However, at the Hearing, it emerged that the surface of the original decking had been entirely replaced in or around 2019. As a matter of fact and degree, the wholescale replacement of the original decking constitutes a new building operation. That building operation was not substantially complete on the date four years before the notice was issued.

52. It follows that on the balance of probability, on the date on which the notice was issued, the Council was in a position to take enforcement action in respect of the erection of the dwellinghouse (Building A) and the entirety of the decking. Accordingly, the appeal on ground (d) fails.

Appeal A: the appeal on ground (a) and the deemed planning application, and Appeal C

53. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the *matters stated in the notice*, planning permission ought to be granted (emphasis added). In view of my findings in relation to the appeal on grounds (b) and (c), the remaining matters stated in the notice comprise the erection of a dwellinghouse (Building A) and the erection of a raised platform (decking). The Council has stated three substantive reasons for issuing the enforcement notice relevant to those matters[14], from which the following main issues are raised:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan
- the effect of the development, if any, on the character and appearance of the area
- whether the development increases the risk of flooding on the site and elsewhere, and
- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

[14] The refusal of planning permission that gives rise to Appeal C raises the same main issues.

Whether the development/proposal is inappropriate development for the purposes of the Framework and the development plan

54. Paragraph 149 of the Framework indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. These exceptions include (d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. I have found that the breach of planning control alleged in the enforcement notice relating to operational development comprising the erection of a dwellinghouse (Building A) has resulted in the erection of a new building, together with the associated decking. The exceptions relating to (b) the provision of appropriate facilities for outdoor recreation and (c) the extension or alteration of a building therefore do not apply in this case, and I have not considered them further.

55. In this case, I have found that the 2016 building provided all the facilities required for day-to-day private domestic existence and itself constituted a dwellinghouse. The erection of a dwellinghouse (Building A) as alleged in the enforcement notice is a replacement building in the same use as the 2016 building. It therefore falls to be considered against the exception at paragraph 149(d) of the Framework. The erection of the raised platform (decking) does not fall within any of the exceptions listed at paragraph 149 of the Framework In the light of my conclusions above on the lawfulness of the various structures on the site, the baseline for my assessment on the effect on the openness of the Green Belt is the 2016 building, the ancillary storage building with roof and the original decking surrounding the tree.

56. In terms of the application of Green Belt policy, the supporting text to Policy TB01 of the Wokingham Borough Managing Development Delivery Local Plan (Local Plan) states that restrictive policies apply to the Green Belt and that only limited extensions to a dwelling will generally be permitted. The supporting text to that policy goes on to define 'limited' as a cumulative increase of generally no more than a 35% increase in volume over and above the *original* dwelling (my emphasis). Although specifically directed towards the extension of dwellings, the restrictive policies referred to in the supporting text apply to all forms of development within the Green Belt. I therefore regard the figure of 35% as a useful guideline in the assessment of Building A in Green Belt policy terms.

57. In relation to the appeal site, the original 'building' is the two sheds that existed prior to the erection of the 2002 building. There are no reliable figures for the volume of the original building on the site. There are reliable figures for the 2002 and 2016 buildings, which the Council calculates as 119m³ and 160.6m³ respectively. These figures are not disputed by the appellant. The figure of 160.6m³ represents an increase of some 41m³ over the 2002 building, which equates to a percentage increase of some 34%. This percentage increase of itself approaches the guideline figure of 35% set out in the supporting text to Policy TB01 of the Local Plan. However, the 2002 building was not the original building on the site. Based on the estimated floorspace figures for the original building on the site, it is more than likely than not that the increase in volume over that original building was even greater than the increase of 34% over the 2002 building. Any further increase over and above the 2002 building is almost certain to result in a percentage increase over the original building on the site in excess of the 35% guideline figure.

58. By comparison, Building A has a total volume of 228.9 m³. This is an increase in volume of practically 110m³ over the 2002 building. The equates to a percentage increase approaching 100% over the 2002 building and, more likely than not, even greater in relation to the original building on the appeal site. The cumulative increase in volumetric terms therefore substantially exceeds the guideline figure of 35% set out in the supporting text to Policy TB01 of the Local Plan. As such, the cumulative increase in volume resulting from Building A is wholly contrary to the restrictive policies that apply to the Green Belt, and is therefore unacceptable in Green Belt policy terms.

59. In relation to the exception at paragraph 149(d) of the Framework, there is no definition of the term 'materially larger' in the Framework itself. However, the Framework states at paragraph 137 that the essential characteristics of Green Belts are their openness and their permanence. On my reading, the term 'materially larger' in exception (d) can logically only relate to the effect of development on the openness of the Green Belt. It follows that 'materially larger' must have a volumetric component as well as a floorspace component: otherwise a multi-storey building that replaced a single-storey building of the same or nearly the same footprint would qualify as an exception under criteria (d), notwithstanding a potential significant loss of openness to the Green Belt. Given the importance attached to openness at paragraph 137 of the Framework, that cannot be the intended consequence.

60. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. In spatial terms, the replacement of the lean-to extension to the 2016 building has resulted in a taller structure with a noticeably shallower roof profile and consequently has a greater presence in the Green Belt. The courts have held that a finding of even a limited adverse impact on the openness of the Green Belt would mean that openness was not 'preserved', and that very special circumstances would be required to justify it. In this case, even though the changes to the lean-to extension do not have a significant adverse impact on the openness of the Green Belt, they nonetheless fail to preserve it and accordingly very special circumstances are required to justify that adverse impact.

61. In visual terms, the infilling of the verandah removes the views that were previously available through the open frontage of the 2016 building. This has the effect of making the building appear bulkier in visual terms. The erection of the dwellinghouse therefore erodes the openness of the Green Belt in this location in relation to the baseline position. It follows that Building A is a materially larger building than the building it replaced in spatial, visual and volumetric terms. Consequently, it does not qualify as an exception for the purposes of paragraph 149(d) of the Framework.

62. Comparison between photographs of the site provided as part of the Council's evidence reveals that the existing decking introduces a significant quantum of new built development into the Green Belt in comparison with that which existed previously[15]. In spatial terms, by reason of its area, extent and depth, the addition of that built development significantly erodes the openness of the Green Belt in this location. For the same reasons, the addition of the new decking significantly erodes the openness of the Green Belt in visual terms.

[15] Appendix 9 of the Council's Hearing Statement for Appeal A. Comparison between photographs taken on 6 December 2018 and 7 December 2021 on page 127.

63. I therefore conclude that the breach of planning control alleged in the enforcement notice (Appeal A) and the development refused planning permission (Appeal C) is inappropriate development in the Green Belt in the context of Paragraph 149(d) of the Framework, as well as for the purposes of Policy CP12 of the Wokingham Borough Council Core Strategy (Core Strategy) and Policy TB01 of the Local Plan.

64. Paragraph 147 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and appearance

65. The character and appearance of this stretch of the east bank of the River Thames is derived in large part from the sequence of leisure plots situated between the river and Wargrave Road. The relationship between those leisure plots and the river is a key component of that character, not least because these plots are clearly visible from the towpath that runs along the opposite bank of the river. The size of the plots varies, as does the number and scale of buildings sited on them. In most cases, despite the typically small size of the plots, there is space around the buildings on them and this imparts a spacious quality to the character and appearance of the area. The siting of buildings/structures on the plots also varies, with some (including the building on the plot directly adjoining the appeal site) being sited prominently towards the river frontage. When viewed from the towpath on the opposite bank of the river, the leisure plots are seen against a background of trees beyond and this gives a verdant quality to the appearance of the area.

66. The dwellinghouse erected on the appeal site is of a scale consistent with other buildings in this sequence of leisure plots. The dwellinghouse is sited towards the rear of the site, in a far less prominent position than the building on the adjoining plot. At close quarters, the profiled metal cladding and the prominent bolts used to secure it give the dwellinghouse an industrial character which, in my view, is entirely inappropriate in this riverside setting. However, when viewed from the public vantage points on the opposite bank of the river, that detail becomes imperceptible due to the intervening distance. In those views, the dark colouring of the cladding ensures that the dwellinghouse is subsumed into the background and is not unduly prominent[16]. I therefore consider that, on balance, the erection of the dwellinghouse does not harm the character and appearance of the area.

67. The same cannot be said of the raised platform (decking). I recognise that in principle the provision of decking in association with a dwellinghouse or leisure plot is entirely appropriate is a riverside setting. However, in this case, the extent of the decking is out of all proportion to the size of the dwellinghouse and the plot on which it stands. The harm in this regard is clearly perceived from public vantage points on the opposite bank of the river. Consequently, by reason of its area, depth and position, the decking constitutes an incongruous feature that is out of scale with its surroundings.

68. I conclude that the installation of the decking unacceptably harms the character and appearance of the area. The development therefore conflicts with Policies CP3 and CP11 of the Core Strategy, as well Policies CC03 and

[16] In terms of character and appearance, as opposed to openness in Green Belt terms.

TB21 of the Local Plan. These policies state, amongst other things, that proposals shall retain or enhance the condition, character and features that contribute to the landscape.

Flood Risk

69. The appeal site is within Flood Zone 3b (functional flood plain). The PPG categorises a dwellinghouse as a 'more vulnerable' type of development in flood risk terms and a use that is not allowed within the functional flood plain. The Flood Risk Assessment produced by the appellant is in relation to the use of the site as a leisure plot, and accordingly does not address either the Sequential Test or the Exception Test in relation to the introduction of a more vulnerable use into the functional flood plain (including the replacement of an existing single residential property). Furthermore, by reason its area and depth, the raised platform (decking) could potentially affect the displacement of floodwater on the site and thereby increase the risk of flooding elsewhere.

70. In the absence of an appropriate Flood Risk Assessment, I conclude that the development unacceptably increases the risk of flooding on the site and elsewhere. I therefore conclude that the development conflicts with Policy CC09 of the Local Plan which, amongst other things, requires that development proposals take account of the vulnerability of that development and that flood risk is not worsened on the site and elsewhere. The development is also not in accordance with the Framework (including the associated Technical Guidance) or the PPG in this respect.

Other considerations

71. The appellant maintains that the Council was wrong to initiate enforcement action in this case. The Council only received one complaint about the development. The appellant therefore considers that the Council incorrectly completed its enforcement scoresheet alleging harm that (in his view) does not exist, as evidenced by the total lack of any representations alleging harm resulting from it. The appellant maintains that the Council's 'zero tolerance' approach to development within the Green Belt and its fear about 'precedent', again (in his view) wrongly identified on the scoresheet as a reason to take enforcement action, is not only inappropriate but is unlawful. The appellant also refers to assurances given by the Council's enforcement officer to the effect that planning permission was not required for the development against which enforcement action was subsequently taken.

72. As the Council explained at the Hearing, its enforcement scoresheet is merely a tool to assist the Council in determining whether or not it is expedient to initiate enforcement action in any particular case. The scores allocated in completing that scoresheet are entirely a matter for the Council. However, having seen a copy of the completed enforcement scoresheet for this development, I find nothing inherently unreasonable about the scores attributed to each aspect of the development. In particular, as set out in the Framework, the protection of the Green Belt is long-established Government policy and is a policy that attracts substantial weight. Attributing a score against the development on the basis that it constitutes a major planning policy breach is entirely consistent with that. There is nothing inherently unlawful in identifying precedent as a material consideration on the enforcement scoresheet. I therefore afford only limited weight to the appellant's concerns about the Council's completion of the enforcement scoresheet.

73. Furthermore, the fact that the Council confirmed in writing that planning permission was not required (except for certain specified works) is subject to the doctrine of Estoppel by Representation, as held in *R v E Sussex CC ex parte Reprotech (Pebsham) Ltd* [2002] UKHL 8. It is clear from the judgement in *Reprotech* that the doctrine of estoppel has no part in planning law and that informal advice given by a Council official is not binding on that Council. It is also settled case law that planning is the subject of an extensive statutory code and that there would be very few instances where a legitimate expectation will have arisen that a Council would operate outside of the code. There is therefore little prosect of a Council being estopped from taking some form of action on such a basis.

74. The email dated 7 May 2021 from the Council's officer informing Mr Williams that planning permission was not required for the works contains a disclaimer to the effect that the email constitutes an Officer opinion only, is given without prejudice and does not constitute any formal determination under the 1990 Act. That disclaimer could not have been any clearer. The Council cannot be held responsible if the appellant chose not to follow that clear advice and not seek a formal determination as to whether planning permission was required through the submission of an application for an LDC. Consequently, having regard to the judgement in *Reprotech* and other settled case law, I afford the appellant's concerns in this respect minimal weight.

75. I am fully aware that the dismissal of this appeal could result in the demolition of the dwellinghouse that has been erected on the site. In other circumstances, this could have resulted in the appellant losing his home. That would have interfered with his rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, his rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would have been interfered with.

76. In the particular circumstances of this case, the appellant resides at a separate property located a short distance from the appeal site. The demolition of the dwellinghouse, should that be required, would therefore not result in the appellant losing his home. Nevertheless, the demolition of the dwellinghouse would result in the loss of a recreational resource that is treasured by Mr Williams and his family, not least because of all the memories associated with it. The appellant's rights under Article 8 and Article 1 of the First Protocol are therefore engaged to that extent. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.

77. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the 1990 Act, such that there is a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant. The appeal site is within the Green Belt, the protection of which is a legitimate planning objective and long-established Government policy. The site is also within Flood Zone 3b. The avoidance of the risk of flooding from development within the functional flood plain is an objective that applies beyond just the appeal site itself. I have found that the breach of planning control alleged in the notice fails to preserve the openness of the Green Belt and would increase the risk of flooding on the site and elsewhere. Consequently, upholding the notice would be in the wider public interest.

78. The appellant sets out his use of the appeal site in his Statutory Declaration. That use is long-established, having commenced in or around 1999 and has formed an integral part of Mr Williams' family and social life ever since. I do not underestimate the value of that to Mr Williams and his family, particularly given that his primary residence has no private outdoor amenity space. The dwellinghouse has formed a component of that use, but only for occasional overnight stays. It is more likely than not that the lawful use of the 2016 building is also as a dwellinghouse and consequently there is no obvious reason why that could not continue to be used for occasional overnight stays in the event that the appeal is dismissed. In any event, I will correct and vary the notice such that the requirement to cease the residential use of the land will not now apply, leaving the appellant to establish the lawful use of that land through discussion with the Council due course.

79. It follows that the use of the land valued by the appellant is unlikely to be under threat in the long term. I fully recognise that there would be significant consequences in the short term should the enforcement notice upheld, both in financial terms and also in terms of disruption and upheaval. Nevertheless, on balance, I conclude that any interference with the appellant's rights under Article 8 and Article 1 of the First Protocol resulting from the demolition of the dwellinghouse would be proportionate to the breach of planning control that has taken place. I am also satisfied that the relevant planning policy objectives could not be achieved by means which interfere less with the appellant's rights and could not be met by a less intrusive action.

80. I have considered whether the harms identified above could be overcome by the imposition of suitably worded conditions, including a condition requiring the submission and implementation of a scheme of landscaping along the lines of that submitted at the Hearing[17]. However, conditions could not reduce the harmful impact of the development (Building A and the decking) on the openness of the Green Belt or reduce the risk of flooding. Consequently, the harms identified are intrinsic to the development that has taken place and the imposition of conditions could not make the development acceptable in planning terms.

The Green Belt balancing exercise

81. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. I attach significant weight to the risk of flooding.

82. The appellant advances several material considerations which, in his view, amount to very special circumstances necessary to justify the development. These include the rodent infestation that resulted from the deterioration of the cladding to the lean-to extension. However, there is no reason why the original cladding could not have been replaced on a like-for-like basis, which would have solved the rodent problem without causing a loss of openness to the Green Belt. Accordingly, I attach only limited weight to that matter. I also attach only limited weight to the Council's completion of the enforcement scoresheet and minimal weight to the informal advice given by the Council officer. Consequently, in weighing the balance, the arguments advanced by the appellant do not amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.

[17] Drawing No AT-L-009b

83. I conclude that the development is therefore not in accordance with the Framework, and also conflicts with Policy CP12 of the Core Strategy and Policy TB01 of the Local Plan. These policies state, amongst other things, that planning permission will not be granted for inappropriate development within the Metropolitan Green Belt. In that context, even though Policy CP12 refers to the now superseded PPG2, the operative provisions within it are nonetheless consistent with the Framework and the policy may therefore be considered up to date in that respect. Furthermore, Policy TB01 does specifically refer to the Framework and may also be considered to be up to date.

84. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation to any part of the land to which the notice relates (my emphasis). However, the appellant has not proposed any alternative schemes for me to consider. In the absence of a definite proposal on which the Council could make an informed comment, I am not in a position to consider whether planning permission could be granted for any part of the development.

Conclusion on Appeal A: the appeal on ground (a) and the deemed planning application, and Appeal C

85. For the reasons set out above, the breach of planning control alleged in the enforcement notice (Appeal A) and the development proposed in the planning application (Appeal C) are contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that in either case determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not be granted for the matters stated in the notice, in whole or in part, and that Appeal C should also be dismissed.

Appeal A: the appeal on ground (f)

86. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include to demolish Building A and the raised platform (decking), and to restore the Land to its former condition prior to the breaches of planning control taking place. The purpose of the notice must therefore be to remedy the breach.

87. I have found that, as a matter of fact and degree, the 2016 building was a dwellinghouse in *Gravesham* terms and, on the balance of probability, it was substantially complete more than four years before the enforcement notice was issued. The Council accepted at the Hearing that the 2016 building was the former condition of the land prior to the breach of planning control taking place. I have approached this appeal on ground (f) on that basis.

88. The corollary is that the requirement at paragraph 5(ii) of the notice to demolish Building A exceeds what is necessary to remedy the breach of planning control that has occurred: all that would be required is to revert Building A to the 2016 building. The appellant is confident that this is, to adopt his term, entirely straightforward.

89. However, a lesser requirement to restore the 2016 building to its condition prior to the breach of planning control taking place would entail returning the building to the exact condition it was in upon substantial completion of the lean-to extension in 2016. This would not only mean replicating exactly the 2016 building in terms of its footprint and all its external dimensions, it would also mean replacing/reinstalling the previous timber cladding, fenestration and internal layout. That would also require significant structural alterations to the building to restore the lean-to extension and the verandah to their previous configurations.

90. At the Hearing, the Council expressed reservations as to whether that would be a practical proposition. I am inclined to agree. Even setting aside the technical difficulty, logistical problems and the financial implications of reverse engineering the 2016 building to its form upon substantial completion[18], it seems to me that doing so would only serve to re-introduce the very same problems that caused the appellant to modify the building in the first place: specifically, the deterioration of the timber cladding and the resulting rodent infestation. Nevertheless, that is a matter entirely for the appellant.

91. I will therefore vary the notice such that the appellant has the option of either restoring Building A to the condition it was in upon substantial completion in 2016 or demolishing Building A in its entirety. This would safeguard the appellant's position in the event that the former proved not to be a viable proposition. I will also vary paragraph 5(iv) of the notice to be consistent with the requirements at paragraph (ii) as I propose to vary them.

92. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me and none have been advanced by the appellant. The appeal on ground (f) therefore succeeds only to the limited extent set out above.

Appeal A: the appeal on ground (g)

93. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months. The appellant seeks a period of compliance of 24 months.

94. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interests of the appellant bound up in the development subject to the notice. In view of my conclusions in relation to the appeal on ground (f), there are three potential scenarios that I need to consider[19].

    (i) returning Building A to its form upon substantial completion in 2016 (the 2016 building)

[18] For example, reverting to the previous framework and sourcing the original materials.
[19] All of these scenarios also require the removal of the raised platform (decking).

(ii) returning Building A to its internal framework as existing in 2016 and then re-cladding with a different material and installing different fenestration, and

(iii) demolishing the dwellinghouse (Building A) in its entirety.

95. Scenario (i) would be technically challenging and would require the original cladding/roofing material/fenestration to be sourced and acquired. It is entirely possible that Scenario (ii) would involve development requiring planning permission. This would necessitate sufficient time not only for the appellant to consider/design the scheme favoured, but also to undertake the works required to comply with the notice and to secure any planning permission(s) that might be required. I consider that a compliance period of twelve months would be required to achieve that.

96. Demolishing the dwellinghouse (Building A) in its entirety, along with removal of the raised platform (decking), is the requirement at paragraph 5(ii) of the notice. The appellant has provided no evidence as to why compliance with that requirement would necessitate a period of twenty-four months. Compliance with the notice would not require any specialist skills or contractors and I have no reason to believe that compliance could not be achieved within the six months specified in the notice. There is, therefore, no technical reason to vary the notice in that respect.

97. However, I recognise that the appellant has enjoyed the use of the appeal site for many years and, should it not prove practical to retain to the 2016 building in some form, he may wish to replace the existing building in order to continue that use. To do so would require planning permission. It will take several months to prepare and submit a planning application, and for the Council to determine that application. It is entirely reasonable to afford the appellant sufficient time to pursue that option, if he so chooses. I consider that a period of 12 months would be sufficient to obtain the requisite planning permission, and then to demolish Building A and remove the raised platform (decking).

98. In weighing the balance between public and private interests, I have taken account of the effect of the development on the openness of the Green Belt and the increased risk of flooding. For the reasons set out above, on balance I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending that period of compliance to the full extent sought by the appellant. The appeal on ground (g) therefore succeeds only to the extent set out above and I will vary the notice accordingly. I am satisfied that this is a proportionate response to the breach of planning control that has occurred.

Conclusion

99. For the reasons given above I conclude that Appeal A should not succeed. I will uphold the notice with corrections and variations and will refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act. I conclude that Appeal B should succeed only insofar as it relates to the installation of the replacement roof to the storage area and accordingly a certificate of lawful development will be issued in that respect. In all other respects, I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that Appeal B should not succeed. Appeal C will be dismissed.

Formal Decisions

Appeal A: Ref: APP/X0360/C/22/3313844

100. It is directed that the enforcement notice is corrected by:

- in paragraph 3 of the notice, deleting the words '(1) the material change of use of the Land to residential'
- in paragraph 3 of the notice, deleting the words 'the erection of an ancillary storage building (Building B)' and substituting there the words 'the installation of a replacement roof to the existing ancillary storage building (Building B)'

101. It is directed that the enforcement notice is varied by:

- deleting paragraph 5(i) of the notice in its entirety
- in paragraph 5(ii) of the notice, deleting the words 'Demolish Buildings A and B and the raised platform (decking) (C) marked on the attached Plan', and substitute there the words 'Demolish Building A and demolish/remove the raised platform (decking) (C) in its entirety **or** return Building A to the exact condition it was in upon substantial completion of the lean-to extension in 2016 (as shown on Drawing Nos. AT-0004A, AT-0005A and AT-0006A), including replacing/reinstalling the previous timber cladding, fenestration and internal layout, and demolish/remove the raised platform (decking) (C) in its entirety'.
- in paragraph 5(iv) of the notice, after the words 'taking place', adding the words 'insofar as consistent with the requirements at paragraph (ii).'
- in paragraph 6 of the notice, deleting the words 'six months' and replacing them with 'twelve months'.

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

Appeal B Ref: APP/X0360/X/22/3303555

103. The appeal is allowed insofar as it relates to the roof to the storage area and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful. In all other respects the appeal is dismissed.

Appeal C Ref: APP/X0360/W/22/3310598

104. The appeal is dismissed.

Paul Freer
INSPECTOR

APPEARANCES

On behalf of the appellant

Mr Christopher Williams	Appellant
Mr Sebastian Charles LLB LARTPI	Solicitor, Aardvark Planning Law
Mr Ian Giuliani	Giuliani Architects

On behalf of the Local Planning Authority

Mr Marcus Watts BSc (Hons) MA	Planning Officer
Ms Sarah Castle	Enforcement Manager

DOCUMENTS SUBMITTED AT THE HEARING

1/ Copy of Decision Notice and submitted plans for planning application F/2002/6163: Proposed erection of wooden building for use as leisure store and changing room. Demolition of existing sheds.

2/ Copy of Drawing No. AT0007: Floor Plan-existing

3/ Flood Risk Assessment submitted with planning application Ref 222376.

4/ Copy of Drawing No. AT-L-009b: Draft Landscaping-Planting-Scheme

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on the 20 August 2022 operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The installation of the replacement roof to the storage area is *de minimis* and does not constitute development requiring planning permission for the purposes of Section 55(1) of the Town and Country Planning Act 1990.

Signed

Paul Freer
Inspector

Date: 23 November 2023

Reference: APP/X0360/X/22/3303555

First Schedule

The installation of a replacement roof to the storage area (Building B as shown on plan attached to this Certificate).

Second Schedule

Land at Atlanta, Wargrave Road, Remenham, Wokingham RG9 3JD

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:23 November 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Atlanta, Wargrave Road, Remenham, Wokingham RG9 3JD

Reference: APP/X0360/X/22/3303555

Scale: Not to scale