The Planning Inspectorate

# Appeal Decisions

Hearing held on 22 November 2022

Site visit made on 21 November 2022

**by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 January 2023**

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**Appeal A Ref: APP/A3655/C/21/3282731**
**Appeal B Ref: APP/A3655/C/21/3282732**
**Land at Warehams Farmhouse, Sutton Green Road, Sutton Green, Guildford, Surrey, GU4 7QH**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Alexander Bance (Appeal A) and Mrs Margaret Bance (Appeal B) against an enforcement notice issued by Woking Borough Council.
- The notice was issued on 10 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the construction of a detached single storey structure comprising a triple bay garage and guest cottage as shown in the approximate position hatched black on the Plan attached to the notice.
- The requirements of the notice are to:
  - i) Remove from the land the detached single storey structure comprising a triple bay garage and guest cottage as described at paragraph 3 of the notice; and
  - ii) To remove from the land all materials and debris and paraphernalia associated with and arising from compliance with requirement i) above.
- The period for compliance with the requirements is: 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act. 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 1990 Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the 1990 Act.

**Summary Decisions: Appeal A is allowed the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision. Appeal B is dismissed.**

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**Appeal C Ref: APP/A3655/D/21/3288976**
**Warehams Grange Sutton Green Road, Sutton Green, Guildford, GU4 7QH**

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs A Bance against the decision of Woking Borough Council.
- The application Ref PLAN/2021/1048, dated 21 September 2021, was refused by notice dated 3 December 2021.
- The development proposed is erection of extension to dwelling, consisting of pool house, plant room, loggia and garage / car port (Part Retrospective application).

**Summary Decision: Appeal C is allowed and planning permission is granted in the terms set out below in the Formal Decision.**

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## Applications for Costs

1. At the Hearing applications for costs in relation to all 3 appeals were made by Mr and Mrs Bance against Woking Borough Council. These applications are the subject of separate decisions.

## Preliminary Matters

2. There are 3 appeals before me that relate to the same site and the same appellants, Mr and Mrs Bance. Appeals A and B relate to an enforcement notice and Appeal C a refusal of planning permission. The planning application in relation to Appeal C is to retain the development cited within the enforcement notice in combination with a proposed section of wall. As such, and to avoid duplication, I have dealt with the decisions, on that basis, together in my reasoning below unless specified otherwise.

3. A signed and completed Statement of Common Ground (SOCG) was not agreed by both parties. However, both parties submitted separate versions of the SOCG and there are common areas where there is no dispute in respect of the matters they both agree and disagree on. Within both copies of the SOCG it is stated that the parties now agree that the structure is within the curtilage of the dwellinghouse and that there is not a breach of planning control in relation to paragraph E.1(e)(ii) of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Both parties also now agree that when it was constructed the single storey structure was required for a purpose incidental to the enjoyment of the dwellinghouse as such. Based on my observations at the site visit and the evidence before me I have no reason to disagree with their findings. I have dealt with Appeals A and B on this basis.

## The Notice

4. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.

5. The address of the land to which the enforcement notice relates does not reflect that utilised within the planning application as the name of the property has altered. To ensure clarity I intend to delete the wording of section 2 of the notice and substitute it with '*Land at Warehams Grange, Sutton Green Road, Sutton Green, Guildford GU4 7QH (also known as Warehams Farmhouse) as shown edged red on the attached plan ("the Plan")'.* There is no dispute that this correction would not cause any injustice to the parties.

6. As the enforcement notice only relates to operational development the wording relating to the use/s of the single storey structure in sections 3 and 5 of the enforcement notice is superfluous. I therefore intend to delete the wording '*comprising a triple bay garage and guest cottage'* in sections 3 and 5 of the notice. This correction would not materially alter the effect of the notice and there is no dispute that these corrections can be made without injustice to the parties.

**The ground (c) appeals – Appeals A and B**

7. This ground of appeal is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the onus is on the appellants to show, on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. The planning merits of the development are not relevant as my decision on this ground of appeal rests on the facts of the case, on relevant planning law and judicial authority.

8. The appellants' case is that the detached single storey structure benefits from permitted development rights by virtue of Article 3 and Schedule 2, Part 1, Class E (Class E) of the GPDO. However, the Council considers that condition 5 of a planning permission[1], granted in 2000 (the 2000 permission), for the *erection of a detached building comprising 2 stables with hay store, tack room and field shelter and construction of a tennis court with a four-metre-high chain link fence* applies to an area owned by the applicants at that time, Mr and Mrs Hanson, and which it considers is shown on the location plan submitted with the planning application. Condition 5 states *"No further structures, new surfaces, or means of enclosure shall be erected within the site without the prior written approval of the Local Planning Authority".* The reason given for that condition is *'in order to preserve the openness of the Green Belt'*. An informative on the consent indicates that the plan numbered P/01/A dated May 2000 (the approved plan) relates to the approved development. That plan includes four elevational drawings, a floor plan of the stables building, a site plan and a location plan. There is no red line, demarcating the application site, visible on that drawing.

9. The *Dunnett* judgment[2] at paragraphs 30 through to 37 cites the authorities relating to the meaning of conditions. Within those paragraphs the *Trump*[3] judgment is highlighted as the correct approach to the interpretation of planning conditions. The general principles that were set out by Lord Hodge in *Trump* are referred to in paragraph 34 of *Dunnett* and at the end of the paragraph it states that *'this approach thus requires an open-textured approach to the objective exercise of construction of planning conditions, with due regard to the natural and ordinary meaning of the relevant words, but also consideration of the context (including purpose) and common sense'.*

10. Condition 5 of the 2000 permission does not specify what constitutes *'the site'* and as stated previously there is no red line visible on the location or site plans that are on the approved plan. The decision notice nor the approved plan therefore provide clarity as to what *'site'* condition 5 applies to. The Council have provided a copy of the worksheet and delegated officer report associated with the 2000 permission and there is no further clarification on this matter within those documents themselves. A map has been provided which accompanied those documents and a large area of land is shown cross hatched on it. A similar shape and size area of land is indicated on the Council's Geographical Information Service (GIS) associated with the 2000 permission.

11. However, those maps do not form part of the approved plan associated with the 2000 permission and there is no evidence before me to indicate that the

[1] Ref No: PLAN/2000/0566
[2] *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2017] EWCA Civ 192
[3] *Trump International Golf Club Scotland Limited v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85

area shown on the GIS was derived specifically from the approved plan. In addition, the proposed development only related to a small area of the overall land holding associated with Warehams Grange. I acknowledge that the reason for the condition is to preserve the openness of the Green Belt. Nevertheless, applying condition 5 to the wider area of land cannot and would not have been considered reasonable as development was only being proposed on the area shown on the site plan. As such, it is more likely than not that *'the site'* referred to within condition 5 relates to the area shown within the site plan on the approved plan. Moreover, Mr Hanson the applicant at the time has stated in writing that '*the condition we agreed to in our 2000 planning permission for stables and a tennis court only related to the site of the stables and tennis court, and did not affect the rest of the property'.*

12. Taking into account all of the above, in my judgement, it has not been demonstrated that condition 5 of the 2000 permission applies to the area where the detached single storey structure has been constructed. As such, whether the condition excludes the operation of the GPDO is not determinative to this ground of appeal and it is therefore not necessary to reach a conclusion on that matter.

13. There is now no dispute that the development, as constructed when the enforcement notice was issued, met all the limitations and conditions of Class E except for E.1 (e)(i) and E.3. E.1(e)(i) states that development is not permitted if the height of the building, enclosure or container would exceed— (i) 4 metres in the case of a building with a dual-pitched roof. E.3 states that in the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

14. In relation to E.1(e)(i) the height of the building cannot exceed 4 metres where the building has a dual pitched roof. Whilst, a dual pitched roof is cited within this limitation, it is the height of the **building** (my emphasis) that is to be measured. A chimney is part of a building therefore in my judgement the height of the detached single storey structure included that of the chimney. The height of the building with the chimney in place significantly exceeded 4 metres in height. Therefore at the date the enforcement notice was issued the detached single storey structure did not meet that limitation and it was not permitted by Class E.

15. The chimney has since been largely removed and I observed at the site visit that the height of the building at that time did not appear to exceed 4 metres in height. The appellants consider that the work to reduce the height of the chimney is part of the ongoing completion of the development. However, a development which would otherwise require express planning permission continues to need the permission afforded by the GPDO until it is "substantially completed". Also, development granted by the GPDO must comply with the conditions of the GPDO at the time it is commenced. As such, the GPDO does not grant retrospective planning permission. The Council cited a High Court judgment[4] at the Hearing. However, that case related to a material change of use of a building, a prior approval application and the application of Article 3(5)

[4] *RSBS Developments Ltd v SSHCLG & Brent LBC* [2020] EWHC 3077 (Admin)

of the GPDO. As none of those issues are involved in this case I do not consider that the judgment is directly relevant to the appeal before me.

16. In this case, the detached single storey structure was designed and intended to be used as a pool house, garage, barbecue area and plant rooms. Prior to the chimney being largely removed it is clear that the building had been in use for some of those purposes and its external and internal finishes were in place. As such, in my judgement at the date of issue of the enforcement notice the detached single storey structure was substantially complete and the works to the chimney are a later alteration. Therefore, the later alterations to the chimney cannot reasonably be treated as forming part of the operational development that was undertaken to substantially complete the single storey detached building.

17. Even if, the location and opening mechanism of the doors on the front elevation of the garage mean that the building would not have met the limitation at E.3 those factors would not alter that the single storey detached outbuilding, when substantially completed, did not meet the limitation at E.1(e)(i) of Class E and is therefore not permitted by that Class.

18. It follows that the development subject to the enforcement notice has not been shown to constitute permitted development under Article 3, Schedule 2, Part 1, Class E of the GPDO. I have no evidence before me to indicate that planning permission is not required or is granted for the development. Accordingly, the appeals on ground (c) fails.

### The ground (a) appeal and deemed planning application (Appeal A) and the section 78 appeal (Appeal C)

#### *Main Issues*

19. The main issues are:

- Whether the alleged breach of planning control/the development constitutes inappropriate development in the Green Belt, having regard to the development plan and the National Planning Policy Framework (the Framework);
- If the alleged breach of planning control/development constitutes inappropriate development in the Green Belt its effect on the openness and purposes of the Green Belt;
- Whether the development would constitute ancillary accommodation with regard to the development plan;
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the alleged breach of planning control/development.

#### *Reasons*

20. The appeal site comprises a substantial detached dwelling, its gardens, parking areas, stables and associated paddocks. The detached dwelling is located to the south of an access drive off Sutton Green Road. The evidence before me indicates that the access drive is also a public right of way (PROW). The single storey structure (the structure) is located very close to a rear corner of the

dwelling. It comprises a triple bay garage, pool house, plant rooms and a loggia/barbecue area.

*Whether the alleged breach of planning control/the development constitutes inappropriate development*

21. The site lies within the Green Belt and Policy CS6 of the Woking Borough Core Strategy (CS) states, amongst other things, that within its boundaries strict control will continue to apply over inappropriate development, as defined in Government policy. Policy DM13 of the Development Management Policies DPD (DMP) states, amongst other things, that unless very special circumstances can be clearly demonstrated, the Council will regard the construction of new buildings as inappropriate development in the Green Belt. Exceptions to this are; the extension and alteration of buildings where the proposal does not result in disproportionate additions over and above the size of the original building as it existed at 1 July 1948; and the replacement of buildings where the proposed new building is in the same use as the building it is replacing, is not materially larger than the building it is replacing and is sited on or close to the position of the building it is replacing.

22. These policies are consistent with paragraph 149 of the Framework. That paragraph states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt apart from certain clearly defined exceptions. These exceptions include at c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building and at d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

23. Neither the Framework or the development plan make any specific reference to detached outbuildings as not being inappropriate development within the Green Belt. Nevertheless, the *Warwick*[5] judgment found that *'[149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension'*.

24. The structure as built is detached from the dwelling (main building). The section 78 proposal is to retain the structure and to construct a short section of wall to connect it to the main building. However, the structure is very close to a rear corner of the main building and due to that proximity, it is visually associated with that building. The structure is currently used as a garage, pool house including storage of garden and pool furniture, barbecue area and plant room. As such, it has a functional relationship with the main building. Therefore, in my judgment both the structure as built, and the proposal can reasonably be treated as normal adjuncts and as extensions to the main building when applying Green Belt policies.

25. There is no dispute that the original main building dates from before 1 July 1948 and that it has been extended since that time. The supporting text[6] to DMP Policy DM13 acknowledges that the Framework does not provide any guidance as to what constitutes a disproportionate addition in the context of a

[5] *Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe* [2022] EWHC 2145 (Admin**)**

[6] Paragraphs 5.40-5.42

building extension or alteration. It also advises that the Council will therefore judge each application on its own merits but the expectation will be that to be acceptable proposals will be within the range of 20-40% above the original volume of the building. It goes onto state that the Council will compare the size of the original building with the proposed extension taking into account siting, floorspace, bulk and height.

26. From the figures supplied within the appellants' evidence, the previous extensions together with the structure result in a total floorspace of 591.3 square metres, a 55.6% increase from the original floorspace, and a volume of 2266.8 cubic metres that equates to an 81.6% increase above the original volume of the building. Moreover, at the Hearing it was confirmed that the figures do not include the volume of the carport and loggia given the advice of a Council Officer. Nonetheless, the structure is single storey and only part of its roof at most can be glimpsed from the PROW due to its location some distance from that PROW, its orientation and its juxtaposition to the main part of the building.

27. In addition, it is largely screened by the tall mature landscaping and solid gates to the front boundary of the site. It is only from the carparking area to the side and the rear garden of the main building that the structure can be seen to any degree. That structure is congruous with the main building and has been designed to match its style and detailing. Moreover, the main building is set within extensive grounds, such that the structure does not unduly detract from the character and appearance of the main building or the surrounding area. The connecting wall to the main building proposed within the section 78 application would not materially alter the spatial or visual impact of the structure.

28. However, the structure increases and elongates the built form, associated with the main building, into the rear garden area. Furthermore, when taken into account cumulatively with the previous extensions I consider that it results/would result in disproportionate additions over and above the size of the original building. Therefore, it does not/would not comply with DMP Policy DM13 and paragraph 149 c) of the Framework.

29. With regards to paragraph 149 d) the appellants consider that the structure can be treated as a replacement building for the stables and that both the structure and the stables were and are in a use that is incidental to the residential use of the main dwelling. The submitted completed Unilateral Undertaking (UU) would ensure that the stables would be demolished within 9 months if planning permission is granted for the development/s. Nonetheless, the structure has not currently replaced that building and it is not close to the stables.

30. The stables appear to have been used for the keeping of horses by the previous owners who also installed a horse walker. The appellants' neighbours have also, in the past, utilised the stables to keep their horses in them as the appellants do not own any horses. As such, there is little evidence to indicate that the equestrian use of the stables was/is incidental to the residential use of the main building. It is therefore reasonable to consider that the structure and the stables are not in the same use. Even if I found that the structure is not/would not be materially larger than the stables for the reasons given above

the development does not/would not comply with DMP Policy DM13 and paragraph 149 d) of the Framework.

31. I have no evidence before me to show that the scheme would fulfil any of the other categories as set out at paragraph 149 of the Framework. Against this background the structure as constructed/proposed amounts to/would be inappropriate development within the Green Belt.

*Effect on openness of the Green Belt and the purposes of including land within the Green Belt*

32. Given it is single storey, its location to the rear of the dwelling, and the screening afforded by the mature landscaping and solid gates I find that the structure does not and would not result in any visual impact on the wider area. However, it has nonetheless added an extension to the building on what was a previously open area of the site. Consequently this reduces the openness of the Green Belt, albeit that reduction is modest.

33. Although I have found that the reduction in openness is modest, that impact also amounts to encroachment into the countryside and conflicts with the purposes of including land within the Green Belt. It adds to the harm I have identified in respect of the structure being inappropriate development.

34. I therefore attach substantial weight to the total harm to the Green Belt I have identified.

*Ancillary Accommodation*

35. DMP Policy DM9 states, amongst other things, that ancillary residential extensions, including 'granny annexes' and staff accommodation will be permitted provided they share a common access with the main dwelling and are physically incorporated within it, and are designed in such a way that renders them incapable of being occupied separately from the main dwelling. This policy was not cited within the reasons for issuing the enforcement notice, but it was cited as a reason for refusing the section 78 application. Both parties had the chance to discuss the implications of this policy at the Hearing.

36. The Council believes that as the structure has toilets and showers, bedrooms and some cooking facilities within it that it could potentially be used as residential accommodation whether that is ancillary to or independently from the main building. I acknowledge that the development contains the above facilities and that access to it can be gained without going through the main building even though there is a shared gated common access to the site. As such, the accommodation could be occupied separately from the main dwelling and internally it could be altered and added to regarding the existing limited kitchen facilities.

37. However, the building has been designed with the only windows/doors, to the pool house part, looking onto the swimming pool and its patio area. Moreover, its use is/would be physically and functionally related to the recreational activities occurring within the adjacent swimming pool, its surrounding patio, the adjoining barbecue area and the rear garden. In my judgment, it would be unlikely given the proximity of those features to the main building that the development would be occupied independently of that main building. Moreover, the appellants have completed a UU to provide the Council with further legal certainty regarding the occupation, sale and lease of the

development. I have found that sections 1, 2 and 3 of the schedule to the UU are necessary to ensure that the development is not occupied, sold or leased as an independent unit of accommodation.

38. The location and design of the development in combination with the UU would render the development incapable of being occupied separately from the main building. As such, the development would comply with DMP Policy DM9 with regard to ancillary residential extensions.

39. The Council have cited an appeal decision[7] relating to 1 Lime Grove. However, in that case the proposal related to a freestanding unit and not an ancillary residential extension. Therefore, the details of that case and the application of DMP Policy DM9 are not the same as that before me and I give it little weight.

*Planning obligation*

40. The appellants have completed a UU, as stated previously, to provide the Council with further legal certainty regarding the occupation, sale and lease of the development and also proposing certain measures with regard to the stables. I have considered the UU in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure (CIL) Regulations 2010 and paragraph 57 the Framework. They relate to the following matters.

41. Sections 1, 2 and 3 of the schedule of the submitted UU ensure that the development, whether permitted through the deemed planning application or the section 78 application, would; not be used for any purpose other than a purpose being connected to and incidental to the residential use of the main building; not be used as a single residential dwelling or a house in multiple occupation or an independent unit of accommodation; not occupy or permit the occupation, sell or lease the development independently of the main building. This is necessary given the close proximity of the structure to the main building and to ensure that its use remains ancillary to that of the main building. On that basis, I am satisfied that these sections of the UU would be fairly and reasonably related to the development and that they pass the statutory tests.

42. The effect of sections 4 through to 9 of the schedule of the submitted UU is that if planning permission is granted either for the structure as constructed or for the section 78 scheme then the existing stables would be demolished and the appellants would not take any action to further implement the planning permission[8] granted in 2008 to replace the stables (the 2008 permission).

43. From the oral and written evidence provided, it appears that the existing stables are approximately 268 cubic metres in volume and they have a footprint of around 73 square metres. The 2008 permission was granted for replacement of stable blocks, extension to hardstanding and erection of horse walker. The resulting stable blocks would be around 30 metres in length and its ridge height would be similar to that of the structure. It would have a volume of 407 cubic metres which would be greater than that of the structure, even if the volume of the carport and loggia are added.

44. The existing stables and the replacement stable block would reasonably be treated as falling within the exception at paragraph 149 b) of the Framework, as the provision of appropriate facilities for outdoor recreation. That exception

[7] Appeal Ref: APP/A3655/D/21/3280816
[8] Ref: PLAN/2008/0347

is subject to the facilities preserving the openness of the Green Belt and not conflicting with the purposes of including land within it. The assessment that the stables and their replacement were not inappropriate development must have been carried out during the determination of those planning applications.

45. Moreover, the stables and the replacement stables is/would be an appreciable distance from the main dwelling. However, I observed that the site immediately surrounding the stables is well maintained and is very similar in appearance to the remaining parts of the garden area that adjoins the main building. Furthermore, the long rear elevation of the existing and replacement stables faces/would face the PROW. The stables and their replacement are a similar distance from the PROW as the structure. Yet due to the structure's juxtaposition with the main building, its orientation and the mature landscaping/solid gates only glimpses of its roof are seen from the PROW even when the landscaping is not in full leaf.

46. Whereas, when the landscaping is not in full leaf the rear elevation and roof of the existing stables are visible through gaps in that landscaping. Additionally, given the length of the replacement stable's rear elevation in combination with its height which includes a clock tower and its orientation to the PROW it seems to me that the 2008 permission would result in greater visual impact outside the appellants' property than the structure has/would have. Accordingly, although the structure and the stables, existing and replacement, are not close to one another and notwithstanding their uses, the replacement stables would nevertheless result in significantly greater harm to the openness of the Green Belt, in visual terms, than the structure has/would have. The existing stables in my judgement result in appreciably greater harm to the openness of the Green Belt, in visual terms, than the structure has/would have.

47. Although the replacement stables were granted planning permission in 2008 and are not yet built, it is accepted by the Council that the horse walker was constructed and the hardstanding was in part extended. Moreover, there is no dispute that the pre-commencement condition on that permission has been discharged. Consequently, it appears that the works carried out constitute a material operation that resulted in the lawful commencement of the 2008 permission and that as things stand at present, the replacement stables could be constructed without any further planning permission.

48. On the basis of the above assessment and my findings below sections 4 through to 9 of the schedule of the submitted UU would meet the statutory tests as set out at paragraph 57 of the Framework.

*Other Considerations*

49. The appellants' case is that even if the alleged breach/development is found to be inappropriate there are other considerations which weigh in its favour. The UU would secure the demolition of the existing stables and the commitment to not take any further action to implement the 2008 permission. The appellants do not currently own any horses, but they have allowed their neighbours to use the stables for their horses. A future planning application to construct stables on the overall site could be submitted. Nevertheless, any future planning application/s would have to be determined on its individual merits taking into account the development plan and national planning policies in place at that time. Moreover, the obligations secured by sections 4 through to 9 of the schedule of the UU would offset the spatial impact of the alleged

breach/development and ensure an overall improvement in relation to the visual impact on the openness of the Green Belt as experienced from the PROW. As such, those parts of the UU attract considerable weight in support of the alleged breach/development.

50. The Council granted a certificate of lawful proposed use or development (LDC) for the erection of 2 outbuildings to the rear of the main building in 2017. One of the buildings would have been in a similar position to part of the development. However, there is no dispute that the development as constructed or proposed would not comply with the plans submitted with the LDC. Moreover, a condition attached to a planning permission[9] granted in 2018 for the removal of two existing porches and existing conservatory and the construction of two storey front and side extension on the main building removed permitted development rights associated with Classes A, B, D and E of Schedule 2, Part 1 of the GPDO. There is no dispute that the development before me was substantially completed prior to that planning permission being begun and the condition coming into force.

51. However, that condition means that planning permission would now be required for the erection of the 2 outbuildings proposed within the 2017 LDC. I acknowledge that the majority of the scale and mass of the development would have been permitted development if it had been substantially completed to comply with Class E of the GPDO prior to the 2018 permission being begun. Nevertheless, the development I observed at the site visit would require planning permission if it was demolished and rebuilt now due to the 2018 permission's condition. Consequently, there is not a reasonable prospect that either of these scenarios would be built if I was to dismiss the appeal therefore, they attract little weight in support of the alleged breach/development.

52. The appeal site is within the Sutton Park/Sutton Green Conservation Area and the main building is a non-designated heritage asset. The Council considers that the structure preserves/would preserve the character and appearance of the Conservation Area and does/would not harm the significance of the heritage assets. Based on my observations I have no reason to dispute these findings. Additionally, there is no dispute that it does not harm the living conditions of nearby neighbours and that it complies with development plan policies in respect of parking, flooding and private garden amenity space. Yet the lack of harm in these respects is neutral and does not weigh in support of or against the alleged breach/development.

53. The appellants consider that the Council failed to follow its own enforcement policy and that the result of that will have a disproportionate impact on them. They also consider that it will cause them hardship due to the demolition of the pool house and the plant rooms – including the relocation of the hot water and heating plant for the main building. However, whether it was expedient for the Council to issue the notice falls outside my jurisdiction in determining Appeal A, and therefore it is not a matter for consideration through it. Moreover, whilst I understand that the demolition of the pool house and relocation of the hot water and heating plan would be disruptive for the appellants there is no evidence before me to indicate that the heating plant cannot be relocated. As a result these matters have little weight in support of the alleged breach/development.

[9] Ref No: PLAN/2018/0186

*Planning balance*

54. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the alleged breach/development, is clearly outweighed by other considerations. I acknowledge that other considerations do not have to be rare or uncommon to be special.

55. The structure as existing and the proposal are inappropriate development, I have found that it has resulted and would result in modest harm to the openness of the Green Belt and that it is/would be in conflict with one of the purposes of including land within the Green Belt. I attach substantial weight to that harm.

56. For the reasons given above, I find that the considerable weight to be given to the identified sections of the UU clearly outweighs the harm to the Green Belt that I have identified. Looking at the case as a whole, I consider that very special circumstances exist to justify the alleged breach/development. I have also found that the development would comply with DMP Policy DM9. Overall, I therefore conclude that the structure and the proposal both comply with the Framework and the development plan taken as a whole.

*Conditions*

57. Conditions relating to the use of the development and the demolition of the stables were suggested by the parties if I considered that part or all of the UU did not meet the statutory tests. Given my findings in relation to the UU I do not consider that the suggested conditions are necessary.

***Conclusion – Appeal A***

58. For the reasons given above the appeal succeeds on ground (a). I shall grant planning permission for the development described in the notice (as corrected).

59. The appeals on grounds (f) and (g) (Appeals A and B) do not therefore fall to be considered.

***Conclusion – Appeal C***

60. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

**Formal Decision – Appeal A**

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

- Deleting the wording of section 2 of the notice and substituting it with '*Land at Warehams Grange, Sutton Green Road, Sutton Green, Guildford GU4 7QH (also known as Warehams Farmhouse) as shown edged red on the attached plan ("the Plan")*'.
- Deleting the wording '*comprising a triple bay garage and guest cottage*' in sections 3 and 5 of the notice.

62. Subject to the corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the construction of a detached single storey structure at Warehams Grange, Sutton Green Road, Sutton Green, Guildford GU4 7QH (also known as Warehams Farmhouse) as shown on the plan attached to the notice.

**Formal Decision – Appeal B**

63. For the reasons given above in relation to ground (c) I conclude that the appeal should not succeed. However, the notice will not be upheld as a consequence of my decision to allow Appeal A on ground (a), grant planning permission on the application deemed to have been made and to quash the enforcement notice.

**Formal Decision – Appeal C**

64. The appeal is allowed and planning permission is granted for the erection of extension to dwelling, consisting of pool house, plant room, loggia and garage / car port at Warehams Grange, Sutton Green Road, Sutton Green, Guildford GU4 7QH in accordance with the terms of the application, PLAN/2021/1048, dated 21 September 2021, and the plans submitted with it.

*D Boffin*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

Mrs J Long – Agent – Planit Consulting (Appeal C)
Mr S Charles – Agent - Aardvark Planning Law (Appeals A and B)
Mr and Mrs Bance - Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Miss Pattni – Counsel – 12 CP Chambers
Mr M Ferguson – Senior Enforcement Officer
Mr B Bailey – Principal Planning Officer

INTERESTED PARTIES:

Mr and Mrs Bell

## DOCUMENTS

Unilateral Undertaking – Signed and Completed Copy

Exhibit MF/1 – Approved Plan – Plan/2000/0566
Exhibit MF/2 – Bundle of documents and maps – Plan/2000/0566
Exhibit MF/3 – LDC – Plan/2015/0902
Exhibit MF/4 – Bundle of documents – Building Regulations
Exhibit MF/5 – Appeal Decision – APP/D3640/X/14/3001083
Exhibit MF/6 – Photographs
Exhibit BB/3 – Appeal Decision – APP/A3655/D/21/3280816