The Planning Inspectorate

Appeal Decisions

Inquiry held on 15, 16, 17 and 18 March 2021
Site Visit made on 17 March 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Appeal A Ref: APP/N4205/C/18/3208247
Land at Grundy Fold Farm, Chorley Old Road, Horwich, Bolton

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Elendra Raja against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The enforcement notice was issued on 27 June 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of five dwellings and one garage building together with the altering of land levels.
- The requirements of the notice are:
  1. Demolish the five dwellings at the site shown (labelled on Plan A and the attached photographs as Plot 1, Plot 2, Plot 3, Plot 4 and Plot 5 attached to this Notice);
  2. Demolish the partially erected garage adjacent to Plot 4 (as shown in photograph A attached to this Notice);
  3. Permanently remove from the land all materials resulting from the demolition process along with all associated plant and equipment;
  4. Permanently remove from the land the shipping containers and the caravan (as shown in Photograph B attached to this Notice); and,
  5. Remove from the land all the rubble, hard core and soil which has been used to alter the land levels and facilitate the unauthorised development.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/N4205/W/19/3237913
Land at Grundy Fold Farm, Chorley Old Road, Horwich, Bolton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Grundy Fold Home Owners Association against the decision of Bolton Metropolitan Borough Council.
- The application Ref 05083/18, dated 30 Nov 2018, was refused by notice dated 30 August 2019.
- The development proposed is: 1) Demolition of buildings at Plots 3 and 4; 2) Removal of containers and caravan; 3) Erection of new dwellings at Plots 3 and 4; 4) Operational works pursuant to completion of partly built dwellings at Plots 1, 2 and 5; 5) Erection of garages; and, 6) Associated works to include comprehensive landscaping scheme.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The boundaries of the land to which the enforcement notice relates in respect of Appeal A and the application site in respect of Appeal B are slightly different. There are also material differences in the developments subject of both appeals. Moreover, the appellants seek for Appeal B to be allowed only if Appeal A is dismissed. However, to all intents and purposes, both appeals relate to the same land within the same ownership. In addition, whilst Appeal A has been submitted solely by Mr Raja, he is a member of the Grundy Fold Homeowners Association (the GFHA) who are the appellants in respect of Appeal B. It is said that Appeal A was submitted only in Mr Raja's name to avoid multiple appeals, but that all parties involved in the GFHA had collectively instructed the agent to pursue Appeal A. Furthermore, both developments relate to the erection of 5 dwellings of a similar scale, design and layout and the issues in respect of both appeals are broadly the same. The evidence of the main parties covers both appeals in the round. As a result, I have dealt with the two appeals in one decision letter, albeit separate considerations, conclusions and decisions have been taken on each.

2. An unsigned and undated S106 unilateral undertaking was submitted with the appeals. It was confirmed at the Inquiry that it had since been withdrawn and the appellants were no longer seeking to rely on it as part of their case. I have therefore not taken it account in my decisions.

Appeal A – The Enforcement Notice

3. The requirements of the notice seek the demolition of the 'partially erected garage', however, the alleged breach includes the erection of a garage. The parties agreed at the Inquiry that the alleged breach should be corrected to refer to a partially erected garage since that is what has been constructed on the land. That would ensure that the breach and requirements of the notice are consistent with one another. I can correct the notice accordingly without causing injustice to the Council or the appellant.

Appeal B – Preliminary Matters

4. The description of development in Appeal B refers to the removal of containers and a caravan which does not amount to an act of development. In addition, the development for which permission is sought in respect of Appeal B is partly retrospective. On that basis the parties agreed at the Inquiry that a more accurate description of the development for which planning permission is sought in respect of Appeal B is the erection of five dwellings, erection of garages and associated works to include comprehensive landscape scheme. I have therefore dealt with Appeal B on that basis.

5. Amended plans were submitted with Appeal B. They relate to changes to the landscaping proposals. I am satisfied that the amendments do not materially change the proposal before me such that interested persons would be prejudiced by my consideration of them. I have therefore taken the amended plans into account in my decision.

Site History and the Fallback Position

6. The appeal site has a long and complex planning history which is set out in detail in the Statement of Common Ground[1]. Whilst I have had regard to the full history of the site, most pertinent in respect of the appeals is the grant of planning permission in 2014 for the extension of existing farmhouse along with demolition of existing outbuildings and erection of 4 no. dwellings[2]. I shall hereto refer to this as the 2014 permission.

7. It is common ground between the parties that the 2014 permission has been commenced by the construction of the footings for the garage on Plot 4. It is therefore common ground that the permission is extant and capable of implementation. Indeed, the Council issued a lawful development certificate on 3 October 2018 confirming the lawful commencement of the 2014 permission[3]. I see no reason to come to any alternative view.

8. Furthermore, the parties agree that there is a realistic possibility that, in the event the notice is upheld in respect of Appeal A and that planning permission is dismissed on Appeal B, the appellants will build out the 2014 permission. Indeed, I heard evidence at the Inquiry that the appellants will be left with little other option to do so, both for financial reasons and otherwise.

9. Nevertheless, since the dwelling on Plot 5 approved by the 2014 permission comprised an extension to the previously existing farmhouse which has now been demolished, the appellant accepts that the 2014 permission can no longer be implemented insofar as it relates to the dwelling on Plot 5. It is therefore agreed by the parties that the fallback position in this instance only amounts to the construction of four dwellings pursuant to the 2014 permission. Condition 19 of the 2014 necessitates the construction of garages to accompany the dwellings. I see no reason to believe that such garages would not be constructed in the event the 2014 permission is carried out and the four dwellings built. Whilst I note the Council's view that the fact no dwelling would be capable of being built on Plot 5 means no garage would either, it is nevertheless a requirement of the 2014 permission. I find it therefore reasonable to conclude that a garage would be built out.

10. As a consequence, for the purposes of this appeal, I consider the fallback position amounts to the construction of four dwellings and five garages pursuant to the 2014 permission.

Appeal A on ground (a) and Appeal B

11. The terms of the deemed application in respect of Appeal A derive directly from the matters as specified in the notice. On that basis, the application seeks planning permission for the erection of 5 dwellings and one partially constructed garage as constructed on the site.

12. Appeal B relates to the erection of five dwellings with associated garages and landscaping. Appeal B would incorporate the demolition of plots 3 and 4 as built in respect of Appeal A with the erection of two new properties on those plots. In addition, there would be some alterations and additions to the current dwellings on plots 1, 2 and 5.

[1] CD-A5
[2] LPA Ref: 91673/14
[3] LPA Ref: 04276/18

Main Issues

13. Initially, it was the appellants' case that the developments do not amount to inappropriate development in the Green Belt since it was said to fall under exception (g) of paragraph 145 of the National Planning Policy Framework (the Framework) as the partial or complete redevelopment of previously developed land. However, it was confirmed at the Inquiry that the appellants' position had changed prior to the Inquiry at the point when proofs of evidence were exchanged.

14. As a consequence, it is now common ground between the appellants and the Council that the development amounts to inappropriate development in the Green Belt. I see no reason to conclude otherwise. Paragraph 143 of the Framework is clear that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 sets out that 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 proposal, is clearly outweighed by other considerations.

15. As a result, the main issues in both appeals are:

- the effect of the developments on the openness of the Green Belt;
- the effect of the developments on the character and appearance of the area;
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the personal circumstances of the appellant, human rights and the existence of the fallback position, so as to amount to the very special circumstances required to justify the development; and,
- if very special circumstances are demonstrated, whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole.

Openness

16. Paragraph 133 of the Framework indicates that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.

17. The Court of Appeal in *Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466* confirmed that the concept of Green Belt openness has a spatial aspect as well as a visual aspect. The parties agreed at the Inquiry that both aspects are relevant to the assessment of openness in this instance. In *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3*, the Supreme Court endorsed the approach in *Turner,* whilst also clarifying that how to take into account visual effects is a matter of planning judgement. The Supreme Court also clarified in *Sam Smiths* that openness is the counterpart of urban sprawl and that it does not imply freedom from any form of development.

18. It is indicated in the written evidence of the appellants that their assessment in terms of the spatial effects of the developments on openness were assessed against the baseline position of the fallback position[4]. This was a position reiterated at the Inquiry.

19. However, it was the Council's position at the Inquiry that the baseline for the purposes of Green Belt assessment should comprise the lawful development which exists at the site. That is said to consist of the footings of a single garage erected pursuant to the commencement of the 2014 permission, along with a single storey building referred to in both parties' evidence as an outbuilding associated with the previous use of the land. In addition, I noted from my site visit that there is a smaller building on the eastern edge of the land which appears to house amenity facilities. The parties subsequently agreed[5] that this smaller building forms part of the existing lawful development on the land.

20. It was accepted by the appellants at the Inquiry that all the pre-existing buildings at the site which have been subsequently demolished cannot legitimately form part of the baseline for the purposes of an assessment of impact on Green Belt openness. It is clear from the evidence that they were demolished prior to the commencement of the alleged matters in respect of Appeal A. It is a matter of fact that in the event the enforcement notice is upheld and the requirements to demolish the dwellings carried out, then the only buildings on the land that would remain are the aforementioned buildings which are said by the parties to be lawful. That is also the case if Appeal B is dismissed.

21. Whilst I note the appellants' case in respect of the fallback position and the likelihood of the 2014 permission being built out insofar as it can in the event both appeals fail, a comparative assessment between the effects of the appeal developments and the fallback position is a separate consideration to take account of in assessing whether or not very special circumstances have been demonstrated. This is a matter to which I will return in due course. I must first make an assessment of the effect of the appeal developments against an appropriate baseline.

22. In this instance I find the Council's position that the baseline should be the existing lawful development on the site as set, out in the agreed note received on 18 March 2021, more compelling and as such have assessed the appeal developments on that basis.

23. In respect of both appeals, the appellants' case relies on the footprint and volumetric calculations produced by the Council in their committee report in respect of Appeal B[6]. The evidence of the Council has also incorporated these figures.

24. The footprint of development subject of Appeal A is said by the parties to be 1,266m² whilst the volume is 9,055m³. In respect of Appeal B, the proposal is said to have a footprint of 1,083 m² with a volume of 7,460m³. It was put to me at the Inquiry that the Appeal B figure excludes the proposed garages.

[4] Paragraph 8.7 of POE of Mr Gascoigne
[5] Note from the main parties dated 18 February 2021 - submitted to the Inspectorate on 18 March 2021
[6] CD E3.0

25. In light of the reliance on the Council's committee report figures, I have been provided with no calculations from the appellant for the relevant baseline which comprises the remaining lawful buildings on the site. In contrast, the submissions of Mr Purser on behalf of the Council contained comparisons of both appeals against the existing lawful development on the site.

26. It is said that the footprint of the lawful development amounts to 187.34m² with a volume of 258.1m³. These were not challenged at the Inquiry by the appellants. It is clear therefore that both appeal developments result in a hugely significant increase of built form, both in terms of footprint and volume, above and beyond the lawful baseline of development on the site.

27. Those figures do not include the smaller amenity building which I observed on my site visit and which the parties agree forms part of the lawful development on the land. Whilst I have not been provided with the footprint or volume calculations of that building, it is clear that the building is of only very limited scale. The increase in the volume and footprint of the existing lawful development would only be marginally increased by the inclusion of the amenity building.

28. As a consequence, whilst I acknowledge that a simple increase in volume need not necessarily equate to harm, in this instance I find the increase in built form from the baseline as a result of both Appeal A and Appeal B, both in spatial and volumetric terms, is of a such a scale that both developments would result in significant harm to the spatial aspect of openness.

29. As set out above the lawful development which exists at the site comprises two outbuildings which are remnants from the previous use of the land and the footings of a garage. Whilst the buildings are not necessarily agricultural in appearance or function, their somewhat rudimentary design, small footprint and low volume means they do not appear unduly obtrusive within the landscape.

30. I could see from my site visit that the five dwellings subject of Appeal A are spread out from one another, arranged in a roughly semi-circular fashion from west to east across the site. The development has introduced five large detached dwellings and a partially erected garage. The Council's report to committee identifies building heights ranging from 10.3m to 11.1m.

31. In addition, the proposed development in respect of Appeal B would include five detached dwellings, detached garages on each plot and large expanses of hard surfacing including the long driveway from Chorley Old Road and driveways for each of the properties. The height of the dwellings would be the same as those built in Appeal A.

32. In Appeal A, the dwellings are dispersed significantly across the land with substantial levels of spacing between each of the dwellings. In particular Plots 3 and 4 are particularly disparate from the other dwellings, located as they are to the south and west. This dispersal results in a much greater appreciable expanse of built form within the landscape.

33. In Appeal B the dwellings on Plots 3 and 4 are proposed to be brought much closer to the others, which will reduce that sense of dispersal. Nevertheless, the properties remain substantial in terms of their height and massing and, although the dispersal is reduced, gaps between the properties will still be

significant, such that the development will still appear as a loose and disparate arrangement of urban form, in contrast to the tightly knit, rural buildings which characterise the landscape. As a result, the developments in respect of both appeals will result in the introduction of a substantial intrusion of built form of suburban character into the landscape.

34. As was correctly pointed out at the Inquiry, the planting of trees and vegetation do not amount to development and the presence of such features within the landscape do not necessarily reduce openness. However, impact on openness is not necessarily confined to works which amount to development for the purposes of the 1990 Act. In both appeals, it is proposed to infill gaps between the dwellings with substantial new planting upon parts of the land where such vegetation does not currently exist. Whilst trees and plants can appear as natural features in the landscape, the planting here would appear more formalised, carefully designed to serve and complement the built form within which it will sit. It will therefore have the effect of tying together the dwellings as one dispersed mass of built form.

35. Moreover, the planting will have the effect of reducing long range views of the distant landscape which would otherwise be obtainable between the substantial gaps between the built form. Again, when viewed in the context of the developments as a whole, the proposed planting will reduce any appreciable visual openness of the area.

36. I conclude, therefore, that the developments in respect of both Appeal A and Appeal B would have a significant harmful effect on the openness of the Green Belt, in conflict with Policy CG7AP of the Bolton Local Plan Allocations Plan December 2014 (the LP) which seeks to prevent development which does not maintain openness, as well as the policies of the Framework. In accordance with the Framework, I afford substantial weight to the harm to the Green Belt which arises.

Character and Appearance

37. A Landscape Character Appraisal of Bolton 2001 (the BLCA) sets out an assessment of the landscape character of the Borough. The parties agree that despite its age, the BLCA remains the most accurate character assessment for this appeal. Whilst the parties have also relied upon the more recent Greater Manchester Landscape Character and Sensitivity Assessment (the GMLCSA), it has a broader view of landscape character across a wider area.

38. The site and its surroundings exhibit many of those characteristics identified in the BLCA and GMLCSA. It lies within open countryside to the north of the urban area of Bolton and to the east of Horwich. The site sits amongst open fields to the south, east and west and is bound to the north by Chorley Old Road. I saw from my site visit that the topography of the land rises steeply from the lowlands to the south and continues to rise to the north towards the moorlands in the foothills of the Pennines. Within the area, the landscape is largely free of any substantial accumulations of built form. Nevertheless, as identified in the BLCA it is punctuated by scattered farmsteads, individual rural houses and groups of dwellings clustered into small villages. Landscaping generally comprises field hedgerows interspersed with occasional clusters of mature trees. Some distance to the south of the appeal site lies a heavily wooded plantation. Cloughs of trees are more prevalent in the lower reaches of the valley, toward the urban areas.

39. The appellants argue that there is a clear distinction between the landscape character to the south of Chorley Old Road and the character of the landscape to the north. However, whilst the road acts as a physical dissection of the landscape, I am unpersuaded that there is a definitive and clear change in character when you move from one side of Chorley Old Road to the other. Rather, I observed on my site visit that there is a gradual transition in character from rural fringes to upland moorland hills as the landscape rises. This gradual transition is largely unaffected by the presence of the road.

40. The developments would result in the introduction of a five substantially large dwellings of heights ranging between 10.3m and 11.1m, with, in the case of Appeal B, five garages, roads and landscaping. Whilst substantial elements of soft landscaping are proposed, the development would have a significant urbanising effect, introducing substantial built form of an urban or suburban character into a part of the landscape which exhibits very little suburban or urban character. Where soft landscaping is introduced, this would in part serve only to emphasis the presence of built form. Such landscaping would also take a substantial period of time to establish.

41. Moreover, the appeal site sits on a particularly exposed element of the landscape with little immediate tree cover surrounding it. As such, the scale and volume of the developments is such that the developments would appear as significantly prominent urban features in an otherwise largely open landscape. It would therefore fail to conserve and enhances local distinctiveness.

42. The appellants' evidence draws attention for comparative purposes to several examples of built form in the surrounding area. However, at the Inquiry Mr Folland accepted that none of the examples given were directly comparable to either of the appeal developments. Having visited the wider area on my site visit, I agree that there are no obvious examples of a cluster of large, detached dwellings in a prominent position such as the appeal site. This serves to demonstrate the anomalous nature of the developments.

43. I conclude, therefore, that the developments would have a harmful effect on the character and appearance of the area, in conflict with Policy CG3 of the Bolton Local Development Framework Core Strategy 2011 (the CS). Policy CG3 states that development should: conserve and enhance local distinctiveness; have regard to the overall built character and landscape quality of the area; and, require development to be compatible with the surrounding area.

Other Considerations

Personal circumstances and the best interests of the child

44. Article 8 of European Convention on Human Rights (ECHR) as enshrined in the Human Rights Act 1998 (the HRA) affords the right to respect for private and family life whilst Article 1 of the First Protocol of the ECHR concerns the enjoyment and deprivation of possession. In this regard I also take account the best interests of the child in respect of Article 3(1) of the United Nations Convention on the Rights of the Child having regard to both Mr Raja's two children. No other consideration is inherently more important than the best interests of the child. I have also had regard to the Public Sector Equality Duty

(PSED) enshrined in the Equality Act 2010, insofar as Mr and Mrs Thompson's adult son has a protected characteristic.

45. None of the properties subject of the appeals are presently occupied by the appellants. I nevertheless heard at the Inquiry detailed evidence regarding the significant physical and mental implications experienced by Mr Raja and his family directly related to the planning history of the site and how this would be unduly affected in the circumstances where both appeals were refused. I also heard evidence regarding the substantial financial implications such scenarios would have for Mr Raja and his family. In particular, I heard how dismissal of the two appeals would inevitably result in Mr Raja's children having to move from private to state education. In addition, the stress caused by the ongoing situation and an unfavourable outcome of these appeals for the appellant could place further stress and the risk of the breakup of the family. This would have profound effects on Mr Raja's children first and foremost. I also heard that it would have financial implications for the long-term care of Mr Raja's parents.

46. It was also indicated at the Inquiry that Mr and Mrs Thompson's adult son lives independently with carer support. It is said that he lives occasionally with Mr and Mrs Thompson during holidays and periods of carer leave.

47. It was clear from the evidence of both appellants who appeared at the Inquiry that neither them nor their families would be left homeless as a result of the failure of the appeals. Mr Raja said that the family would have to remain in rented accommodation as they are at present for the foreseeable future. Mrs Thompson indicated that they had already purchased another property in which they were living, whilst their son had separate accommodation which was relatively secure in its tenancy. Indeed, Mrs Thompson indicated in evidence that the impact of the appeals being dismissed would be minimal on their son since the existing property they own and reside in was purchased to ensure it was suitable for his needs as and when he stayed with them.

48. Moreover, whilst Mr Raja's children would have to leave their current education setting, which would probably result in stress and other physical and mental wellbeing issues for the children, it was clear that they would still be able carry on receiving an education in an alternative establishment in the area.

49. There is, nevertheless, taking all of the above into account, no doubt that upholding the enforcement notice and refusing planning permission would result in the loss of the appellants' homes and significant disruption to family life, both in financial terms and in terms of the physical and emotional wellbeing of the appellants and their children. I have also had regard to the personal circumstances and detrimental effects to the other members of the GFHA as set out in the affidavits of Mr Jackson and Ms Ayrigan, albeit Ms Ayrigan's affidavit is unsigned and undated which reduces the weight I can afford to it.

50. I conclude, nevertheless, that taking into account all of the above, the personal circumstances of the appellants and the best interests of the child are factors to which I afford significant weight to in support of the appeals.

Biodiversity

51. The appellant has put forward an open space scheme in support of both appeals which could be secured by condition. This scheme includes the land

immediately beyond the appeals site which is within the ownership of the appellants. The scheme proposes to maintain and enhance existing natural features whilst also creating new habitats including new planting of native tree and shrub species. In addition, it is said there would be appropriate management of existing grassland and the inclusion of new wetland and marginal planting. Opportunities would be created for breeding birds and bats with an increase foraging/food resources for a range of species and hibernation/refuge features to complement new planting and habitat creation. The appellants would seek to ensure sustainable and long-term biodiversity benefit through appropriate ongoing management.

52. There is no dispute that the land as it exists provides for 24.16 units for habitats and 0.3 units for hedgerows, units being a measurement of the size of the area combined with the quality or condition of the habitat therein. In contrast, the ecology proposals would result in the provision of 60.21 units for habitats and 3.07 units for hedgerows. As a result, there would be a substantial increase in biodiversity benefits, in accordance with CS Policy CG3. I afford the benefit significant weight in support of the appeals.

Housing Land Supply

53. Appeals A and B would each deliver five additional dwellings towards the supply of housing. I note that the Council is currently only able to demonstrate a 3.7 year supply of housing, significantly below the 5 years supply required by the Framework. Nevertheless, the contribution is relatively small in the context of the overall requirement and supply and thus I afford the benefit limited weight.

Pre-Application Advice

54. I note that the appellants received pre-application advice that was perhaps more favourable to them than the eventual outcome of Appeal B. Indeed, I also note the Council's officers recommended approval for the application in respect of Appeal B. Nevertheless, pre-application advice is given on a without prejudice basis and does not bind an authority to any particular outcome. Moreover, members are entitled to come to an alternative view than their officers provided their decisions have been made in accordance with the statutory duty laid down in section 38(6) of the Planning and Compulsory Purchase Act 2004. I therefore afford very little weight to this matter as a factor in support of the appeals.

Environmental Impacts

55. The appellants suggest that the need to demolish the development subject of Appeal A would result in wasted resource and noise and air emissions. However, no substantive evidence of what those impacts would be have been advanced by the appellants. As a result, I afford such matters very little weight.

The Former Commercial Premises

56. The appellants refer to the detrimental visual impact of the former commercial buildings on site, as well as their impact on Green Belt openness. In contrast, the appellants state that the developments subject of both appeals would be a significant improvement over the former buildings. However, the buildings were almost all demolished prior to the commencement of the development

subject of the notice in Appeal A. As such, I afford very little weight to their removal as a benefit in favour of the appeals.

Fallback Position

57. It is a matter of agreement that the fallback position would constitute inappropriate development in the Green Belt. The fallback position therefore results in definitional harm by reason of inappropriateness and substantial weight is afforded to that harm.

58. The Council's officer report in respect of the 2014 permission identifies the footprint of the entirety of the scheme of the 2014 permission, including its garages, as 998m² with a volume of 9784.52m³. The Council's evidence indicates that taking away the garages the volume is 6,434m³[7]. However, as I have set out above, the fallback does not include the extended farmhouse on plot 5. It was said at the Inquiry that taking away the dwelling on plot 5, the fallback comprises a volume of 8385.52m3.

59. In contrast, the volume for Appeal A is 9,055m. The volume of Appeal B is 7,460m excluding the garages. Factoring in a similar uplift for including five garages in the Appeal B figures as has been done with the fallback, means both Appeal A and Appeal B would result in an increase in built form on the site over and above the 8385.52m³ of the fallback position. Whilst the appellants indicate such an increase would amount to only 8%, I consider this nevertheless would be an increase of such significance to result in material harm to the openness of the Green Belt, such would be the greater amount of built form.

60. Moreover, whilst limited levels of hardstanding have facilitated the development in Appeal A, large areas of hardstanding are proposed in respect of Appeal B to accommodate a driveway and parking areas. The fallback position would also result in a reduced number of dwellings in comparison to both appeals. Additionally, the layout of the approved scheme is more tightly confined, with the spacing between dwellings not as wide, with a layout and design more akin to a tightly knit farmstead than is the case with Appeal A and Appeal B.

61. Taking all of the above into account, both Appeal A and Appeal B would result in a greater presence of built development in the Green Belt than the fallback position. I find that this greater increase in built form would be harmful, both spatially and visually, when located in an area characterised by openness and on a site which, when considered at its baseline, is largely free of built form. As a consequence, considering all the evidence before me, I find the harm resulting to Green Belt openness from Appeal A and Appeal B would be greater than any such harm resulting from the fallback position.

62. Furthermore, both appeal schemes would result in a much wider dispersal of dwellings across the landscape than the fallback position would. Indeed, it was clear from the evidence at the Inquiry that the 2014 permission was designed to be consistent with the scattered farms, individual rural houses and groups of dwellings clustered into small villages settlement pattern identified by the BCLA. The layout and form of the 2014 scheme would appear more in keeping with a hamlet type development where the dwellings are clustered around a

[7] Mr Purser POE – Appendix RP14

central courtyard. In contrast, I have found that the developments in both Appeal A and Appeal B would result in a more disparate and suburban development, at odds with the prevailing landscape character.

63. Whilst the Council may have described the landscape effects between Appeal A and B and the fallback as 'subtle', I disagree that would be the case. In contrast, having had regard to all the evidence before me, I find the difference between the effects in character and appearance terms between the appeals and the fallback position would be significant. As such, I find both developments would be more harmful to the character and appearance of the area than the fallback position.

64. Whilst the extent of the benefits is disputed, it is nevertheless common ground that both appeals would have greater biodiversity benefits than could be secured by the fallback position. Moreover, the appeals would result in the provision of 1 additional dwelling beyond the fallback position which makes a, albeit very limited, contribution towards the housing supply in Bolton. There would also be, an albeit minor, improvement in respect of the living conditions of the occupiers of Plot 2 when compared to both Appeal A and B above the 2014 fallback. This is as a result of the arrangement between Plots 1 and 2 in both appeal schemes creating a greater separation distance between the windows in the front of Plot 2 and the gable elevation of Plot 1.

65. However, these factors are not of sufficient weight to lead me to any alternative conclusion than the developments in respect of Appeal A and Appeal B would be clearly more harmful than the fallback position in respect of Green Belt openness and character and appearance. Cumulatively, those factors are the prevailing considerations in this instance. As a consequence, the existence of the fallback position carries very little weight in favour of either Appeal A or Appeal B.

Whether very special circumstances exist

66. In respect of both appeals, having regard to paragraph 144 of the Framework, I attribute substantial weight to the Green Belt harm which arises by reason of inappropriateness. In addition, I attribute substantial weight to the harm which arises to the openness of the Green Belt in respect of Appeal A. Moreover, I afford significant weight to the harm that would arise to the character and appearance of the area in respect of Appeal A. Whilst the level of harm in respect of Green Belt openness and character and appearance is slightly reduced in relation to Appeal B from Appeal A given the minor changes in layout and scale, the harm remains of such a level that I afford it substantial weight in respect of harm to Green Belt openness and significant weight in respect of the character and appearance of the area.

67. On the other hand, I give significant weight in favour of both appeals in respect of the personal circumstances of the appellants. Whilst there would be benefits in respect of biodiversity from both developments to which I afford significant weight, only limited weight is given to the housing land supply benefits of the appeals. Furthermore, for the reasons set out above I give very limited weight to the fallback position since the resulting harm would be less than the harm arising from both Appeal A and Appeal B. I also afford very little weight to the matter of the Council's pre-application advice, the issue of environmental impacts of the demolition of the matters enforced against and the existence of the former commercial buildings.

68. In conclusion, overall, I find that the weight afforded to other considerations in support of either Appeal A or Appeal B does not, either individually or collectively, clearly outweigh the cumulative harm arising to the Green Belt by reason of inappropriateness and harm to openness and any other harm, including to the character and appearance of the area. There are no planning conditions that could be imposed which would overcome the identified harm.

69. As a consequence, the very special circumstances necessary to justify the developments do not exist in respect of both Appeal A and Appeal B. I conclude, therefore, that both developments would conflict with the development plan taken as a whole, as well as the relevant policies of the Framework.

70. In terms of the human rights of the appellants, Article 8 rights are qualified such that an interference may be justified where it is in accordance with the law and the public interest. In this case the interference would be in accordance with the law and in pursuance of the well-established and legitimate aim of the protection of the Green Belt. I also take account of the potential disruption to family life, including education, and their needs in relocating, when considering the period for compliance with the notice. As such, in terms of Article 8 rights, the best interests of the child, and having due regard to the PSED, I find that refusal of planning permission and upholding the enforcement notice would be both necessary and proportionate. I am satisfied that I have sufficient evidence to come to the conclusion that, having regard to the best interests of the child, the protection of the public interest cannot be achieved by means that are less interfering of their rights.

The Framework Paragraph 11

71. It is common ground that the Council is unable to demonstrate a five year supply of deliverable housing sites. Thus, for the purposes of paragraph 11(d) of the Framework, the policies which are most important for determining the application are deemed to be out-of-date. Paragraph 11(d) of the Framework makes clear that in such circumstances, planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or, ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

72. Footnote 6 to the Framework makes clear that the policies referred to in paragraph 11(d)(i) include those within the Framework relating to land designated as Green Belt.

73. Since very special circumstances have not been demonstrated, the policies in the Framework provide a clear reason for refusing permission. On that basis, the presumption of favour of sustainable development does not apply and the question of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole, does not fall to be considered.

Alternative 1

74. The appellants have advanced an alternative scheme under Appeal A on ground (f). The alternative largely relates to revisions to the external appearance of

the dwellings. Given the harm I have identified does not relate to the elevational treatment of the dwellings either as built or as proposed, the alternative advanced would not result in any material reduction in harm from either Appeal A or Appeal B. There would remain the same level of harm to the Green Belt in terms of inappropriateness and openness. Likewise, the amendments would do little to overcome the concerns in respect of the character and appearance of the area. As a consequence, I find the alternative would conflict with the development plan when taken as a whole and a grant of planning permission for the alternative would not be justified.

Alternative 2

75. It was put to me at the Inquiry that there would be scope to grant planning permission for an alternative which would comprise a reduction in the number of dwellings which have been constructed on the site.

76. The Court of Appeal in *Tapecrown Ltd v FSS & the Vale of White Horse DC [2006] EWCA Civ 1744* has established that it is incumbent upon me to consider any obvious alternatives to complete demolition that would overcome the planning difficulties at less cost and disruption to the appellant. Though submissions on the matter did not form part of the appellants' written evidence to the Inquiry, the appellants did make the point in opening submissions that such an alternative would in this case be formed by a grant of planning permission under the deemed application on Appeal on ground (a) for four or fewer of the dwellings as built since they form part of the matters an enforced against.

77. I am satisfied that the development of four or fewer of the existing dwellings would form part of the matters as enforced against. Likewise, a grant of planning permission for fewer than five dwellings would seem in principle to appear as an obvious alternative to refusal of all five dwellings. However, no specific evidence was advanced at the Inquiry as to which of the five dwellings could be retained such that the residual development would suitably overcome the planning harm I have identified in respect of Appeal A on ground (a). Indeed, Mr Garvey on behalf of the appellants explicitly indicated that he could not identify which of the dwellings could be retained to overcome the planning difficulties.

78. Moreover, whilst I explicitly raised this point with the parties at the Inquiry and gave the opportunity for submissions on the matter, very little evidence was advanced on what the planning impacts of granting permission for fewer than five dwellings would be. Thus, in the absence of a clear alternative, I am unable to ascertain whether the suggestion of granting permission for four or fewer dwellings would overcome the planning difficulties. Having regard to the findings of the Court of Appeal in *Tapecrown* that the Inspector's primary task in this exercise is to consider the proposals that have been put before them and not to search around for solutions, I conclude that the alternative suggested would not overcome the planning harm sufficient to justify a grant of planning permission for part of the matters as enforced against in line with section 177(1)(a) of the 1990 Act.

Conclusions on Appeal A on ground (a)

79. For the reasons given above, I conclude that the appeal should not succeed. Planning permission on the application deemed to have been made under

section 177(5) of the 1990 Act as amended should be refused. In refusing the application deemed to have been made, there would be no violation of the human rights of the appellant.

Conclusions on Appeal B

80. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed. In refusing the application deemed to have been made, there would be no violation of the human rights of the appellants.

Appeal A on ground (f)

81. An appeal on ground (f) is that the requirements of the notice are excessive. Section 173(4) of the 1990 Act is clear that a notice can have one of two purposes. They are either to remedy the breach of planning control or, as the case may be, any injury to amenity which has been caused.

82. The notice requires that the development subject of the alleged breach is demolished, and all associated materials are removed from the land. On that basis, it seems to me that the purpose of the notice is to remedy the breach by restoring the land to its condition before the breach took place under section 173(4)(a) of the Act. As a result, any lesser steps that stop short of complete demolition would not remedy the breach of planning control.

83. It is nevertheless incumbent upon me to consider any obvious alternatives to complete demolition that would overcome the planning difficulties at less cost and disruption to the appellant. Given my findings in respect of the Alternative A and Alternative B as set out in Appeal A on ground (a), I conclude that both alternatives would not overcome the planning difficulties. There are no other obvious alternatives apparent to me nor advanced by the parties.

84. On that basis, I find that there are no lesser steps that would remedy the breach of planning control and as a result, the requirements of the notice are not excessive. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

85. An appeal on ground (g) is made on the basis that the time for compliance with the notice falls short of what should reasonably be allowed.

86. The notice gives a time period of six months for compliance with the requirements set out in section 5. It is the appellant's case that the time period is too short and that a period of 12 months would be a more appropriate timescale for compliance.

87. Firstly, it is said that ecological restrictions mean that demolition would be unable to take place within the bird breeding season of March through September. However, there is no evidence that works could not take place if relevant surveys are carried out and agreement is made with the Council. Indeed, such matters would be covered by the protected species licensing regime.

88. Secondly, it is said that the appellant would be unable to source the requisite labour to carry out the demolition works within the six-month period. However, limited evidence of such issues was put before me. Finally, it was indicated by the appellants that the ongoing Covid-19 pandemic would also

have implications that would necessitate a longer compliance period. However, no further evidence was advanced on what those implications would be. This is considered in the context that restrictions for construction have eased in recent months and it remains possible for construction works to take place.

89. Nevertheless, it is clear that the extent of development that has taken place is substantial. These are large dwellings located on a steeply sloping site which it seems to me will require significant planning and due care to demolish. In addition, an extension to the time period for compliance would allow the parties to discuss whether a reduction in the number of dwellings would overcome the planning difficulties.

90. Furthermore, and perhaps more pertinently, it was clear from the evidence that I heard at the Inquiry that upholding the notice will have significant ramifications, both financial and otherwise, for the appellant, his family and his fellow homeowners. Whilst these factors have not in themselves been sufficient to outweigh the harm I have identified in order to justify a grant of planning permission on the appeal on ground (a), they are nevertheless very real and difficult matters for the appellant and others, including his children, to contend with. The appellant is entitled to assume success in appealing the enforcement notice. Thus, an extended compliance period would therefore give the appellant time to put in place any arrangements they need to manage the personal hardship it is said they will endure.

91. Taking the above into account, I therefore find a compliance period of 12 months more appropriate in this instance. Such a period would reasonably accommodate the matters I have discussed above whilst ensuring the necessary expediency to rectify the planning harm. The appeal on ground (g) therefore succeeds.

Formal Decisions

Appeal A

92. It is directed that the enforcement notice is corrected by inserting the words "partially built" between the words "one" and "garage" in section 3 of the notice, and varied by the deletion of 6 months from section 5 of the notice and the substitution of 12 months as the period for compliance.

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

Appeal B

94. The appeal is dismissed.

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Garvey of Counsel

He called:

Mr Elendra Raja	Appellant
Mrs Alison Thompson	Appellant
Mr Rawdon Gascoigne BA(Hons) MRTPI	Director, Emery Planning
Mr Nic Folland BA(Hons) Dip LA CMLI	Director, Barnes Walker Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ian Ponter of Counsel

He called:

Mr Richard Purser BA(Hons) BPl MRTPI	Director, RPC Planning
Mr Carl Taylor BA(Hons) Dip La/CMLI	Director, TPM Landscape

INTERESTED PERSONS:

Cllr Robert Allen	Ward Councillor

DOCUMENTS

1 Opening Remarks of the Appellants
2 Opening Remarks of the Council
3 *AZ v Secretary of State for Communities and Local Government, 2012 WL 6774544 (2012)*
4 *Collins v Secretary of State for Communities and Local Government, 2013 WL 5336341*
5 Equality Act 2010
6 Closing Submissions of the Council
7 Closing Submissions of the Appellants
8 Core Document A9