

You are requested to attend a meeting of the Planning Committee to be held in The John Meikle Room, The Deane House, Belvedere Road, Taunton on 4 January 2017 at 17:00.

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### Agenda

- 1 Apologies.
- 2 Minutes of the meeting of the Planning Committee held on 23 November and 7 December 2016 (to follow).
- 3 Public Question Time.
- 4 Declaration of Interests  
To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct.
- 5 48/16/0071 Variation of Condition No 01 (Approved Plans) and Condition No 05 (Time limits for boundary treatments/cycleway/footpaths) of application 48/15/0027 on land to the East of Bridgwater Road, Monkton Heathfield
- 6 10/16/0023 Change of use of land and barn from agricultural to holistic retreat, erection of side extension to the barn, siting of 6 No. tents/shepherd huts and parking at Satori, Oatens Lane, Churchstanton
- 7 10/16/0010 Change of use of holiday chalets to residential dwelling houses at Willow Lodge & Bracken Lodge, Pay Plantation, Stapley
- 8 Latest Appeals and Decisions received

Bruce Lang  
Assistant Chief Executive

02 February 2017

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under "Public Question Time" is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

Except at meetings of Full Council, where public participation will be restricted to Public Question Time only, if a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council's Planning Committee and details of the "rules" which apply at these meetings can be found in the leaflet "Having Your Say on Planning Applications". A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

Full Council, Executive, Committees and Task and Finish Review agendas, reports and minutes are available on our website: [www.tauntondeane.gov.uk](http://www.tauntondeane.gov.uk)



Lift access to the John Meikle Room and the other Committee Rooms on the first floor of The Deane House, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available off the landing directly outside the Committee Rooms.



An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter.

**For further information about the meeting, please contact the Corporate Support Unit on 01823 356414 or email [r.bryant@tauntondeane.gov.uk](mailto:r.bryant@tauntondeane.gov.uk)**

If you would like an agenda, a report or the minutes of a meeting translated into another language or into Braille, large print, audio tape or CD, please telephone us on 01823 356356 or email: [enquiries@tauntondeane.gov.uk](mailto:enquiries@tauntondeane.gov.uk)

## **Planning Committee Members:-**

Councillor R Bowrah, BEM (Chairman)  
Councillor M Hill (Vice-Chairman)  
Councillor M Adkins  
Councillor C Booth  
Councillor W Brown  
Councillor J Gage  
Councillor C Hill  
Councillor S Martin-Scott  
Councillor I Morrell  
Councillor S Nicholls  
Councillor J Reed  
Councillor N Townsend  
Councillor P Watson  
Councillor D Wedderkopp  
Councillor G Wren

## **Declaration of Interests**

### **Planning Committee**

- Members of Somerset County Council – Councillors, D Wedderkopp and M Adkins
- Clerk to Milverton Parish Council – Councillor Wren
- Vice-Chairman to Kingston St Mary Parish Council and Chairman to Kingston St Mary Village Hall Association – Councillor Townsend
- Trustee to Bishop Fox's Educational Foundation, Trustee to Trull Memorial Hall – Councillor Stephen Martin-Scott
- Councillor to Comeytrowe Parish Council, Member of the Fire Brigade Union – Councillor Simon Nicholls
- Trustee of Hestercombe House and Gardens, Trustee of the Somerset Building Preservation Trust, Director of Apple FM – Councillor Marcia Hill

48/16/0071

THE MONKTON HEATHFIELD CONSORTIUM

**Variation of Condition No 01 (Approved Plans) and Condition No 05 (Time limits for boundary treatments/cycleway/footpaths) of application 48/15/0027 on land to the East of Bridgwater Road, Monkton Heathfield**

Location: STREET RECORD, BISHOPS CLOSE, BATHPOOL, TAUNTON

Grid Reference: 326024.126781

Removal or Variation of Condition(s)

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## **Recommendation**

**Recommended decision: Conditional Approval**

### **Recommended Conditions (if applicable)**

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

BR101 rev D Location and Block Plan  
30814\_LL(90)01 rev K proposed site plan  
AP(00)03 Ground Floor Plan  
AP(00)04 Elevations Sheet 1/2  
AP(00)05 Elevations Sheet 2/2  
AP(00)07 Sections  
AP(00)20 Rev A Site Sections  
30814\_LL(90)04 rev C Fences and Gates  
30814\_LL(90)06 rev H Landscape Materials plan1/2  
30814\_LP(00)07 Rev C Landscape Materials Plan 2/2  
30814\_Y(90)\_01\_P2 Planting schedule  
30814\_LP(00)02 Rev C Proposed Boundary fence  
30814\_LP(90)003 Rev G Boundary Treatment Plan  
39814\_LL(90)102 rev C Monkton Heathfield Primary School  
30814\_LP(00)008 Rev A Sprinkler Tank and Bin Store Enclosure  
2152 PO3 section 38 - Cyclepath and Footway  
2151 - Cyclepath and Footway long sections  
C-01 Rev P6 Drainage Strategy 1/2  
C-02 Rev P6 Drainage Strategy 2/2

Reason: For the avoidance of doubt and in the interests of proper planning.

2. The proposed flame retardant acoustic fence shall be constructed in accordance with the details hereby permitted within 1 month of the date of this permission and shall be maintained as such thereafter. Any damaged or defective fence panels shall be replaced within 2 weeks of identification with fence panels of the same specification in all respects.

In order to ensure that the proposed fence is erected and maintained in a fully functional state as approved in the interests of the security and amenity of neighbouring occupants.

3. Within 1 month of the date of this permission a maintenance schedule for the fence shall be submitted to and approved in writing by the Local Planning Authority and the fence shall thereafter be maintained in strict accordance with the approved schedule.

Reason : To ensure that the fence is properly maintained and functional at all times.

Notes to Applicant

## Proposal

The planning application seeks to amend two planning conditions, 01 and 05 attached to the permission for the new primary school and footpath/cycleway at Bathpool, Monkton Heathfield. Condition 01 lists all of the approved plans associated with the permission. The current proposal, if approved, would amend the details of the boundary treatment shown on the approved plans and hence the list of the approved plans with those details on would need to be amended accordingly.

### **48/15/0027 – Condition 05**

“Within 2 months of the date of this permission full details of the proposed footpath cycle link lying at the north of the site shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include proposed route and construction of the path, lighting, landscaping and boundary treatments (**In particular the wall boundary treatment adjacent to 154A Bridgwater Road**). Prior to the commencement in the use of the primary school the approved footpath/cycleway, including all boundary treatments, shall be provided in strict accordance with the approved details and shall thereafter be maintained as such.

Reason: To ensure that a comprehensive footpath cycleway network is provided to enable sustainable links to the primary school with an acceptable impact on the amenity and security of the neighbouring residents in accordance with Taunton Deane Core Strategy policies SS1 and DM1”

The detail of a 3m high boundary wall was subsequently submitted and approved.

This proposal is to replace the approved brick wall with the erection of a 3m high acoustic fence. The fence would be located abutting the utility poles and extend further along the northern boundary of the site (42m) and reduce any gap between the new and existing boundary.

## Site Description

The site is located along the northern side of the new public cycleway/ footpath which is to the north of the new primary school along the A38 at West Monkton. To the north of the site lie the existing residential properties of 154 and 154a Bridgwater Road. 154 Bridgwater Road is built at right angles to the cycleway/ footpath and fronts onto the main former A38 highway. There is a shared access driveway

between the boundary and the dwelling with a separate private garden to the rear. 154a Bridgwater Road is located to the east (rear) of that private garden. It has been designed as a single aspect dwelling which faces south, towards the boundary which is the subject of this application. There is currently approximately 10m between the dwelling and its southern hedge boundary.

## **Relevant Planning History**

48/16/0027- Application for approval of reserved matters following outline application 48/05/0072 for the erection of a 420 place primary school, incorporating a nursery facility with associated landscaping, access and parking and community facilities on land east of Bridgwater Road, Monkton Heathfield conditional permission granted 4th Dec 2015.

## **Consultation Responses**

*WEST MONKTON PARISH COUNCIL* - Support the proposal.

*SCC - TRANSPORT DEVELOPMENT GROUP* - Having reviewed the revised plans the Highway Authority have no objection in principle to the variation of conditions and the amendments to the proposed wall to Acoustic Fence.

As this fence will run alongside the adopted footway/cycleway the Highway Authority have issued the scheme drawings to "structures" to comment, when these comments are received I will issue them directly.

Providing the wall is provided and maintained in line with the SCC procedures, I do not envisage there be a fundamental problem.

With regard to the change in delivery time scales as the time has passed this variation is considered acceptable on this occasion.

*SCC - CHIEF EDUCATION OFFICER* - no comment received

*WESSEX WATER* - No comment received

*POLICE ARCHITECTURAL LIAISON OFFICER* - I have no objection to the proposed variation.

1. The proposed 3 metre high wooden acoustic fence exceeds the height normally recommended for side/rear boundary protection for domestic dwellings, which is 1.8 metres or 2.00 metres plus where it immediately abuts a public footpath, as in this case.

2. The thickness of the T & G boards making up the fence i.e. 32mm also exceeds the thickness normally recommended, which is 15mm minimum .

3. The flame retardant finish to the panels is recommended.

4. The panels will be flush on the outside, which is also recommended, to avoid any footholds for climbing. In my view, such panels would also prove more difficult to climb than a wall.

5. The fence extends beyond the boundary of 154A Bridgwater Road in both directions, which should also improve privacy for the occupants.

6. The galvanised metal posts proposed appear suitable and the method of fixing between the panels and posts should create a secure mechanical bond, so that

panels cannot be easily removed. The fixings should also be galvanised or stainless steel with a design life to match the timber components.

7. The footpath/cycleway has street lighting which is a good deterrent.

8. The existing hedge along the boundary of 154A will also act as a deterrent if left in situ.

*CHIEF FIRE OFFICER - DEVON & SOMERSET FIRE RESCUE -*

*LEISURE DEVELOPMENT - no comment to make*

*LANDSCAPE - No landscape objection*

*ENVIRONMENT AGENCY - No comment received*

*ENVIRONMENTAL HEALTH - NOISE & POLLUTION -* I note that the application is to vary the proposal to build a 3m high brick wall at the boundary of 154A Bridgwater Road and to build a 3m high acoustic fence instead.

An acoustic report has been submitted with the application (Acoustic Consultants Limited, 5 October 2016) which compares the proposals for a brick wall and an acoustic fence. The report states that, as the two methods of construction are of a certain density, they will give an equivalent performance; therefore it would be the height, width and location of the barrier that would determine the overall acoustic performance.

The report does include computer modelling to compare the acoustic performance of the brick wall and the proposed acoustic fence, which found very little difference between the two proposals, although the fence could result in slightly lower levels.

I can accept that as long as a barrier is made of material of a certain density then a change in the material used will not make a difference to the performance of the barrier. A 3m high acoustic fence, 32mm thick, would provide a very similar performance to a 3m high brick barrier. Therefore, Environmental Health do not object to the scheme proposed by the applicant.

The performance may be improved by widening the barrier, or making it higher. However, in any of these situations noise will still go around or over a barrier.

## **Representations Received**

2 letters of representation have been received raising the following objections to the proposed boundary fence:

- A 3 m high brick wall as the boundary treatment between our property and the school/footpath/cycleway, was part of the planning permission, as requested from the beginning.
- An acoustic timber fence as not acceptable to neighbouring residents
- Whilst it was agreed that the noise impact was not an issue for residents of 154a Bridgwater road, the developer suggest that the proposed acoustic fence (closer to the boundary and an extended length) will cut down any noise impact from the school and footpath",
- Why haven't 154 Bridgewater Road and Brittons Ash residents been shown the same consideration



- The fence would be erected on the south side of the utility poles (which are situated close to our boundary) and that the fence panels adjacent to the poles would have to be removable in nature in order that they could be accessed for any necessary maintenance works. This will result in an unsecure boundary which is unacceptable
- Title deeds would need to be altered to include this agreement which could have a negative impact should we wish to sell our property in the future.
- Having had time to reconsider the situation we were prepared to give up our own land for the wall to be erected, thus enabling room to accommodate the necessary footings but the proposal does not do this.
- Noise – we disagree that a fence would be better than a wall and if there is no difference between the two we request a wall as agreed previously
- Security - we are prepared for the wall to be sited on our own land and would not intend to leave a gap where the wall ends but would make sure it is adjoined to our other boundary structures to ensure that our property is fully secured and non-accessible.
- Removable panels are certainly not accepted.
- Our intention is to erect garden trellis onto the boundary and train plants up it to try to replace the once natural outlook we used to enjoy, thus access to maintain the utility poles by removing the panels would not be possible. A timber fence would not be so supportive to trellis and climbing shrubs as a wall would be and it would be a non-permanent structure needing to be replaced, thereby destroying any planting.
- Privacy With the panels intended to be removable, our privacy would be compromised.
- Amenity a timber fence would not be a more amenable proposal than a wall. What is provided at Brittons Ash is not relevant. In the application for the school, Stride Treglown stated that a red brick wall would compliment the school walls so why has this changed?
- Maintenance of the hedgerow would not be necessary as the hedge was recently flailed and is virtually non-existent and ruined. The hedgerow can be removed to accommodate the wall, we certainly do not want workers accessing our property to maintain a hedgerow which we have looked after for over 15 years, compromising our security and privacy.
- It is our understanding that in order for a variation of a condition to be acceptable all parties have to be in agreement we are certainly not in agreement with a timber fence as opposed to the brick wall already granted.
- The Crime Prevention Design Advisor Referred to the recommendations of the “Secured by Design ‘New Homes 2016’”. He advised in point 6 of his Report that “the galvanised metal posts proposed appear suitable and the method of fixing between the panels and posts should create a secure mechanical bond, **“so that panels cannot be easily removed.”** Therefore this variation is not compliant with the stated “recommendations”.
- The West Monkton Parish Council has also recommended and supported a timber fence, even though Mr Cavill attended the meeting on 1 October 2016 at our property and was made clearly aware that we categorically objected to a timber fence. As our Parish Councillor and ourselves as his Parishioners, he did not (and never has) supported us, instead erring on the side of the Developer, it would appear. We believe this variation should be the subject of an Environmental Impact Assessment for the visual impact upon us, whether it be a wall or a timber fence, as this is an amendment to the original Planning Permission and the original Outline Application was subject to an EIA Report.

- The variation applied for is of no betterment or benefit to residents, only the betterment of the Developer.
- An environmental assessment should be provided for this proposal, particularly regarding the decibel levels from the noise generated from the school grounds.
- The applicant has provided no clear reason for the change of specification.
- 'Betterment' is peculiar, as a wooden fence is less secure, worse for noise reduction and worse for an increase privacy, than a brick wall.
- Stride Treglown's statement to match a fence the other side of the field and that the fence will cause less maintenance are completely ridiculous and inadequate
- Why was a wall requested here for noise but not to 154 Bridgewater Road?
- Mr & Mrs Morgan (154a) have agreed that some of their land can be used to construct the wall and it would seem a bit under-hand for the council to withdraw this from the planning permission,
- The planning department do not seem to recognise residents genuine concerns.
- We have proof that any structure of 3 metres will not be enough to prevent sound from penetrating into the home environments of property's that are adjoined to the school at the level described.
- Now the school is operational a comprehensive sound report should be carried out to give the residents an indication of the noise levels and inform the council of the type, height and length of structure that should be erected along the southern boundary of 154a Bridgewater Road.
- TDBC should carry out a full and impartial sound report using the correct dB criteria (ie LA (maxf)).
- We suggest that residents would want full assurance that the dB level will not exceed the limit suggested on the planning application. This could now be monitored on the actual 315 pupils that are at the school, together with the Nursery children and the remaining children 105 children that will join the school could be assessed pro-rata in the assessment.

## Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), saved policies of the Taunton Deane Local Plan (2004), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below. Policies from emerging plans are also listed; these are a material consideration.

DM1 - General requirements,  
 D7 - Design quality,  
 D8 - Safety,

## **Local finance considerations**

### **Community Infrastructure Levy**

The development of this site would not result in payment to the Council of CiL monies

### **New Homes Bonus**

The development of this site would not result in payment to the Council of the New Homes Bonus.

## **Determining issues and considerations**

In December 2015 planning permission was granted for the erection of a new primary school at Monkton Heathfield. The proposals included the provision of a new cycleway/ public footpath to the north of the school grounds to link the new development to the east with the local centre and secondary school to the west. Condition 05 of that permission was for the submission and approval of details of a boundary wall between 154a Bridgwater Road and the cycleway/ footpath. The boundary at that time was formed by a high hedge (a temporary fence has since been constructed along that boundary for security whilst this application is considered).

When looking in detail at the erection of the proposed wall the developer noted that there are two utilities poles located at the southwest and southeast of the boundary of 154a Bridgwater Road and as a result any wall construction must be a minimum of 1m either side of that boundary in order to give access for maintenance of the poles and wires. In addition the foundations for such a wall would need to be 900mm wide this resulted in the wall needing to be constructed away from the boundary leaving a gap between the two which was considered to be insecure.

A meeting was convened between the developer and the occupiers of 154a the occupiers to discuss the situation The residents stated that they wanted a wall to be constructed as approved and that they did not want a wall to be constructed along the line of the current hedge, to the north to the poles (their view on this has since changed) and finally they did not want a fence in the place of the proposed wall.

The developer has considered the treatment of the boundary and proposes the erection of a 3m high acoustic fence as an alternative to the approved wall.

The reason for the condition was to protect the amenity and security of the residents:

**Amenity** - If the fence is erected adjacent to the existing hedge boundary (as proposed) rather than replacing it, then the visual impact of the fence viewed from 154a Bridgwater Road would be minimised by the hedge.

**Security** - The supporting information suggests that the construction of an acoustic fence would provide greater security than the wall because 1) the fence could be sited much closer to the boundary as it could abut the utility poles (with demountable

fence panels adjacent to the poles) and reduce the gap between the wall and hedge which would be otherwise be created and could be misused. 2) The proposed fence would extend beyond the limits of the boundary with 154a Bridgwater Road and tie into the hedge line in a way that the approved wall could not and 3) its construction would leave a smooth surface preventing it being climbed to gain access over the fence. In respect of security considerations the Crime Prevention Officer has commented that he would normally expect a 2m high fence to be acceptable in such locations and has no objection to the current proposals.

The residents have subsequently requested that the wall is erected along their boundary replacing the existing hedge but this does not form the current proposal. In my opinion it would appear to have significant disadvantages : 1) security - it would leave the utility poles on the footpath/cycleway side of the boundary giving an opportunity for them to be climbed to gain access into the private amenity area contrary; 2) amenity - it would require the foundation to be constructed within their garden area and 1m away from the utility poles thereby forming a reduction in their amenity space between the dwelling and the footpath/cycleway

The 2 objection letters refer to the suitability of the wall to prevent noise between the school and the residential curtilage and property. In this regard it is important to remember that it was established by the existing planning permission that noise from the school would be audible at neighbouring residential properties. It also established that mitigation, in the form of boundary treatment and a restriction of hours of use would mitigate these impacts to a reasonable degree. The applicant has submitted a noise report with the planning application which asserts that both a 2.4m high acoustic fence and a 3m high acoustic fence would ensure a reasonable noise impact. Further the report confirms that there would be no discernable difference in the reduction of noise between a wall and acoustic fence (as proposed) on the estimated noise from the school. This point is confirmed by the Environmental Health Officer who raises no objection to the proposal.

It is proposed that the wall is treated with a fire retardant finish and to be regularly maintained by the management company that is being set up to maintain all of the open spaces. I recommend a condition to ensure that the fence is constructed in accordance with this and is thereafter maintained as such to ensure that this is the case into the future.

Whilst the visual impact of the proposed fence, when viewed from the footpath and cycleway, would be less satisfactory than that of a brick wall it is considered that the advantages in terms of security and noise are such that the proposal is considered to be acceptable.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

**Contact Officer: Mrs J Moore**

10/16/0023

MISS E FINCH

**Change of use of land and barn from agricultural to holistic retreat, erection of side extension to the barn, siting of 6 No. tents/shepherd huts and parking at Satori, Oatens Lane, Churchstanton**

Location: SATORI, OATENS FARM LANE, CHURCHSTANTON, TAUNTON,  
TA3 7PU

Grid Reference: 318829.112115

Full Planning Permission

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## **Recommendation**

**Recommended decision: Conditional Approval**

### **Recommended Conditions (if applicable)**

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A4) Belle Tent Dimensions  
(A4) Shepherd Hut detail  
(A3) Location Plan  
(A4) Site Block Plan  
(A4) Earth Closet detail  
(A3) Barn Plan - Existing and Proposed Elevations  
(A3) Barn Plan - Proposed Floor Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

3. No tent erection shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out and thereafter retained as such, in accordance with the approved details as above, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not harm the character and appearance of the area in accordance with Policy DM1 of the Taunton Deane Core Strategy.

4. The area allocated for parking and turning on the submitted Design and Access Statement shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of highway safety.

5. The development hereby permitted shall not be commenced until details of a strategy to protect wildlife has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of Blackdown Environmental's Preliminary Ecological Appraisal dated June 2016 and include:
  1. Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
  2. Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
  3. A grassland and hedgerow Management plan
  4. Details of any lighting

Once approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in writing by the Local Planning Authority

Reason: To protect and accommodate wildlife.

6. The **tents/shepherd's huts** shall be occupied for holiday purposes only.

The **tents/shepherd's huts** shall not be occupied as a person's sole or main residence.

The site operator or owner shall maintain an up to date register of the names of all owners/occupiers of individual **tents/shepherd's huts** on the site and of their main home addresses, and the duration of their stay and shall make this information available at all reasonable time to the Local Planning Authority.

Reason: To prevent permanent occupation that would be contrary to countryside policies as set out in with paragraph 55 of the National Planning Policy Framework.

7. Should the business use cease the tents, shepherds huts and toilet structures shall be removed from the site.

Reason: In the interests of the character and appearance of the AONB.

8. Details of the means to prevent light spill from the barn shall be submitted to and approved in writing by the Local Planning Authority and shall thereafter be complied with. There shall be no external lighting or additional structures or engineering works without the further permission of the Local Planning Authority.

Reason: In order to preserve the amenity of this rural area.

#### Notes to Applicant

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.

## Proposal

The proposal is the change of use of land to site up to 6 shepherd's huts or tents on the site to serve as holiday accommodation for a small holistic rural healing retreat. The works also involve parking for 6 vehicles, compostable toilets and conversion and extension of a barn for guest facilities.

## Site Description

The site consists of agricultural land on the south western side of an existing valley and is an area of mixed pasture and woodland. Access is from the road to the top of the hill and this already serves as access to a farm building and there is further consent for another building not yet constructed.

## Relevant Planning History

10/15/0005AGN - An Agricultural Notification granted in April 2015 for an agricultural building in the east corner of the field that would be 18.2 metres long, 12.2 metres in width, 5.4 metres to the eaves and 7.2 metres to the ridge with a fibre cement roof. While work has commenced on the access track the building has yet to be constructed.

## Consultation Responses

*CHURCHSTANTON PARISH COUNCIL* - The council objects to the granting of permission for the following reasons:

- The access road is not suitable to the increased traffic that this development would undoubtedly cause.
- Light pollution caused by the proposed glass fronted barn development
- Noise pollution in an area of peace and quiet
- Under DM2 development of an agricultural site should currently be actively farmed and any development should be for an additional income stream. There is no evidence of the land in question being farmed and furthermore there is no permanent structure on the site to extend/develop.

*SCC - TRANSPORT DEVELOPMENT GROUP* - The area around the proposed site can be seen as an unclassified highway subject to the national speed limit. However on site observations, given the nature of the immediate area and width of the road vehicles speeds are more in the region of 30mph. Visibility splays in the area are also in accordance to what's required where Manual For Streets would apply (2.4 x 43m). The application plans to hold up to six vehicles, it is opinion of the Highway Authority that the site has sufficient space to accommodate parking and turning space requirements.

Having reviewed the submitted information the Highway Authority has no objections to this planning application subject to the following conditions:

The area allocated for parking and turning on the submitted Design and Access Statement shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

*BLACKDOWN HILLS AONB SERVICE* - The AONB Partnership supports its local planning authorities in the application of national and local planning policy in order to ensure that any development in the AONB conserves and enhances the natural beauty of this nationally designated landscape, which is afforded the highest level of protection by national policy.

In support of this, the Blackdown Hills AONB Management Plan 2014-19 is the agreed policy framework for conserving and enhancing the AONB and seeks to ensure that all development affecting the AONB is of the highest quality. It contains the following objectives and policies considered to be particularly pertinent to this proposal:

*PD 1/B Seek to ensure that any necessary new developments or conversions within the AONB or affecting its setting conserve and enhance natural beauty and special qualities, particularly by respecting the area's landscape character and the local character of the built environment, reinforce local distinctiveness and seek to enhance biodiversity.*

*PD 5/A*

*Encourage quiet enjoyment of the AONB and avoid or restrict developments, activities and events, including artificial light installations, which detract from the tranquillity of the Blackdown Hills.*

*LC 3*

*The Blackdown Hills landscape is valued as a place where a sense of tranquillity can be enjoyed free from man-made noise and visual intrusion.*

*LC 3/B*

*Support measures to conserve and enhance tranquillity and dark skies.*

*BG 1/C*

*Avoid and reduce the impacts of development on biodiversity and ensure*



*biodiversity enhancements are delivered.*

*AE 1/D*

*Promote and develop the AONB's role in supporting health and wellbeing.*

*RET 1/C Support the development of sustainable tourism activities within the AONB that are compatible with conserving and enhancing natural beauty and the special qualities of the AONB, increase understanding and appreciation of the Blackdown Hills and benefit the local economy.*

The Blackdown Hills Area of Outstanding Natural Beauty is primarily a pastoral landscape that has retained a sense of remoteness and remains largely unspoilt by modern development. The AONB Partnership therefore believes that any development proposal in an isolated and remote location requires very careful consideration as to necessity and potential impact on local character and special qualities in order to conserve and enhance the natural beauty of the area. The site is located in the Bolham valley, an area of particularly rich biodiversity value, and part of a mosaic of habitats, including dry and wet woodland, unimproved and marshy grasslands, mire and scrub, that is particularly characteristic of the AONB. The applicant notes that the site has an unspoilt nature and a negligible amount of noise and light pollution.

The AONB Partnership has considered this application, and elements of it, specifically as a business proposal for a holistic retreat; not as agricultural diversification, not as a tourist site, and not a barn conversion.

Turning to the detail of this application, we consider that there are several points that require particular attention in determining whether the proposal is compatible with the high quality landscape and unspoilt nature of the surrounding area, including:

- The balance between staying guests 'getting away from it all' and the potential comings and goings associated with workshops, activities and courses being provided on a daily basis
- Light spill from the glass fronted building
- Elements such as creation of a garden
- The extent to which external therapists generate business and activity rather than support retreat guests (as evidenced by the supporting comments from a Sarah Holt for example)
- The extent of levelling, surfacing and clearance required to site the accommodation and toilet units

If the planning authority is minded to approve this application, the AONB Partnership would wish to see controls and conditions relating to the following aspects in the interests of minimising landscape and visual impacts:

- Use restricted to 'small holistic retreat', rather than general tourism use
- Therapeutic uses ancillary to retreat
- Colour of tents/huts
- Control of lighting, additional structures, engineering works such as access tracks
- Wildlife and habitat protection/management

- No permanent accommodation
- No residential use
- Structures to be removed/land restored if use ceases

### *BIODIVERSITY –*

The application is for the change of use from agricultural use to create a small holistic retreat with the conversion of the existing barn, siting of 6 tents/shepherd huts and parking at Satori, Oatens lane, Churchstanton.

The existing open fronted barn will provide a shower block and toilets. Each tent/ shepherd hut will be positioned on a movable timber deck.

The proposed parking will be restricted to an existing hard standing.

There are no plans to remove or breach any hedgerows on site. I support the laying of existing hedges.

Blackdown Environmental carried out a Preliminary Ecological Appraisal of the farm site in June 2016.

There are a number of designated sites located within 1 Km of the site including sites with species rich grassland.

Findings of the report were as follows:

#### **Badger**

Sett entrances indicative of badger were identified on site. However no works are anticipated to impact on setts so a licence will not be required.

#### **Reptiles**

Areas of rank field margins at the periphery of the site and clearings within areas of dense scrub as well as hedgerow habitat have potential to support reptiles. Clearance of any of this vegetation should take place in a precautionary manner.

#### **Bats**

The site is considered to be used by foraging and commuting bats and so the use of artificial lighting should be kept to a minimum.

The surveyor found no evidence of bats using the existing barn.

One tree was identified as having bat roost potential. However there are no plans to fell any trees on site.

#### **Nesting Birds**

Hedgerows and areas of scrub have potential to be used by a variety of bird species. Tussocky grass could offer potential nesting for ground nesting species such as skylark.

The surveyor states that design plans for the proposal have due regard for habitats of principle importance and have been engineered to cause minimal disturbance. I agree that if plans alter then further advice should be sought from the ecologist.

Suggested Condition for protected species:

The development hereby permitted shall not be commenced until details of a strategy to protect wildlife has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of Blackdown Environmental' s Preliminary Ecological Appraisal dated June 2016 and include:

1. Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
2. Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
3. A grassland and hedgerow Management plan
4. Details of any lighting

Once approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in writing by the Local Planning Authority

Reason: To protect and accommodate wildlife

### **Informative Note**

It should be noted that the protection afforded to species under UK and EU legislation is irrespective of the planning system and the developer should ensure that any activity they undertake on the application site (regardless of the need for planning consent) must comply with the appropriate wildlife legislation.

*ECONOMIC DEVELOPMENT* - Enterprise in rural areas, particularly in the tourism (holiday accommodation) sector, is vital to the growth of Taunton Deane's economy, supporting a high proportion of local jobs both directly and indirectly. I am therefore happy to support this application.

*SCC - RIGHTS OF WAY* - No comments

*DIVERSIONS ORDER OFFICER - Mr Edwards* - The Public Footpath T6/29 is affected by this proposal. If it is deemed necessary to divert the footpath for planning consents to be implemented then early contact should be made.

## **Representations Received**

10 letters of **objection** on grounds of

- Site not in settlement and use inappropriate to area
- Visibility of site from neighbours and footpath will lead to further degradation of visual environment
- Adverse impact on peaceful environment,
- Narrow access roads unsuitable for increase in traffic for visitors and servicing
- Narrow lane with no designated passing places so lead to harm to grass verges

- Lack of parking spaces
- no staff parking provision and parking/turning would prejudice servicing of agricultural barn
- 4 Holiday lettings within half a mile
- contrary to Core Strategy policies DM2 1, 2, 3 and 7 and DM4
- and Blackdown Hills AONB Management Plan policies AE1/A, AE1/B and PD1/B
- New business is not diversification from farming, it does not safeguard local character and heritage interests,
- Not sustainable
- Does not meet government guidance as business will not be run in conjunction with agricultural operation and the scheme will be detrimental to the unspoilt countryside
- conversion of building is not of substantial permanent construction, it would not take a turf roof, significant increase in size, existing is little more than a large garden shed,
- no infrastructure services
- no evidence of farming
- increase in noise, smoke and light pollution in AONB
- compost toilets are inappropriate given soil conditions
- inadequate foul drainage
- loss of trees
- set precedent for other development that would put at risk the future of this remote rural environment
- safety - no emergency services access, no mobile phone signal and no resident staff overnight

1 letter of **support** on the basis of being able to offer courses at the site and it would an asset to local environment

## Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), saved policies of the Taunton Deane Local Plan (2004), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below. Policies from emerging plans are also listed; these are a material consideration.

NPPF - National Planning Policy Framework,  
 SP1 - Sustainable development locations,  
 CP1 - Climate change,  
 CP6 - Transport and accessibility,  
 CP8 - Environment,  
 DM1 - General requirements,  
 DM2 - Development in the countryside,

A1 - Parking requirements,  
A5 - Accessibility of development,  
D7 - Design quality,

## **Local finance considerations**

### **Community Infrastructure Levy**

Not applicable

### **New Homes Bonus**

The development of this site would not result in payment to the Council of the New Homes Bonus.

## **Determining issues and considerations**

The main considerations with the proposal are the compliance with policy, highway impact and the impact on the character of the Blackdown Hills AONB, a protected landscape and drainage.

The development is the creation of a new business for holiday accommodation for a small holistic healing retreat set in the Blackdown Hills Area of Outstanding Natural Beauty. The site lies in the countryside where the overnight accommodation for any visitors would be in 6 tents or shepherd's huts located on the site.

## **Policy**

Policy SP1 identifies sustainable development locations and identifies settlements for development. Outside of these is the open countryside. Policy DM2 deals with development in the countryside and outside defined settlements. The application site land is agricultural land and the use is considered to be the creation of a new holiday business. It is not a community use and does not fall within Class B business use and so criterion 2 of the policy would not apply. Criterion 3 relates to holiday and tourism and part (a) requires accommodation to be within existing buildings where there is an identified need and is compatible with and supports economic diversification of existing farming and service enterprises. Part (b) provides for touring caravan and camping sites with good access to the main road network and not within a floodplain, while part (c) allows for tourist and recreational facilities provided that increased visitor pressure would not harm the natural and man-made heritage.

The site would provide temporary sleeping accommodation for visiting guests for only 6 units (up to 12 people), while the barn use would enable the treatments as part of the healing retreat. This scale of use is considered as low key. The barn conversion would be in keeping with the area and would not be obtrusive and a condition to control lighting at the site is considered appropriate and necessary. The

AONB Partnership and objectors do not see the use as a farm diversification and objectors consider there to be no farm business on the site. However the applicant has demonstrated that the site qualifies and is registered for farm payments and permission for an agricultural building on the site has been granted, although has yet to be erected. The use as an holistic retreat is linked to the holiday use of the site and while not related to agriculture or forestry, it is a use that is considered to fall under the holiday and tourism use that is considered acceptable under policy DM2.

Policy CP8 also deals with the Environment and development in rural areas such as Areas of Outstanding Natural Beauty. The development here lies in such an area and the impact of development on the area and its specific management policies is considered below.

### **Access**

The access to the site is along narrow winding lanes within the AONB and the Parish and locals have raised concern over the unsuitable nature of these roads for the increase in traffic. The Highway Authority however consider the access and visibility suitable and that there is sufficient on site parking for the use. Objection is not raised to the level of traffic on the local roads given the nature of the use. While it is agreed that the access and visibility is adequate to serve the proposed use, the fact that there are no local services will mean that the servicing of the site is reliant on the private car. This has to be considered in light of any other tourism use in the area and while this will encourage more traffic movements the scale of the use has to be considered when assessing in light of policies CP1 and CP6.

### **AONB impact**

The site lies in the Blackdown Hills Area of Outstanding Natural Beauty where the landscape is specifically protected to conserve and enhance the natural beauty of the area. The area is covered by the Blackdown Hills AONB Management Plan and the AONB Partnership has set out the policies they consider apply to the site, as well as advising that the area is one that is located in the Bolham valley, an area of particularly rich biodiversity value, and part of a mosaic of habitats, including dry and wet woodland, unimproved and marshy grasslands, mire and scrub, that is particularly characteristic of the AONB.

Any new development has to conserve and enhance the natural beauty of the area, given its landscape character. All the temporary accommodation is located in secluded spots not visible from rights of way, apart from one which provides for disabled access and would be visible from the public footpath. The appearance of this can be controlled by condition and therefore on balance the harm to the local distinctiveness of the area is not one that in my view would sustain a reason for refusal. The proposed parking is intended to be adjacent to the new farm building and this is again well screened.

The applicant has put forward a case as to why this new business needs to be in this remote and biodiverse location. The nature of the use implies a quiet enjoyment of the countryside and lighting installations could be suitably controlled through condition. It is not possible to control man-made noise and thus the impact on the

tranquility of the area is difficult to assess. However the nature of the scheme as an holistic retreat for holiday makers does not seem to imply rowdy occupants, although clearly this depends on the nature of the residents of the site which the applicant cannot entirely control. However it is not considered this would lead to a policy breach contrary to AONB Management Plan policy *LC3*.

An ecological assessment of the site has been submitted with the scheme and the Council's Biodiversity Officer has commented on the proposal and raises no objection subject to the a condition to secure the necessary controls and enhancements. It is considered that the development would benefit the health and wellbeing of the area in line with policy *AE1D*, although this has to be balanced with the impact on the tranquility of the area. The final policy quoted by the AONB Partnership is *RET1/C*, however this relates to sustainable tourism which the AONB Partnership do not consider applies. Policy *RET1/B* applies to sustainable employment opportunities. Both of these policies are considered relevant and not to be breached by the development proposed. The main issue is the isolated nature of the location here and the sustainability of the development. It is accepted that services will need to be brought in by vehicle but this is no different from any other holiday development in the countryside and is not considered a reason for refusal.

## **Drainage**

The on site barn currently drains surface water to the ground and this would also apply to the new temporary accommodation. Given the scale and nature of this the surface water drainage proposed is considered acceptable. In terms of foul drainage it is proposed to drain the barn building to a septic tank in the adjacent field and these works would be governed under the Building Regulations. There are 3 compost toilets proposed as part of the temporary accommodation and these are all outside of the flood risk zone. Consequently it is not considered that the scale of use would warrant such environmental concerns to object to the scheme.

## **Conclusion**

In summary while there is support from the Economic Development Officer, this has to be set against the views of local residents and the Parish Council as well as concerns of the AONB Partnership. However significant elements of the proposal can be conditioned to protect the landscape character, biodiversity and night sky, and as the accommodation is of a temporary nature it is reasonable to secure its removal should the business fail. The development has economic benefit and while this would result in increased traffic movements to service this site the impact is considered an acceptable one that would not harm the character of the area. Consequently the use in this rural location is considered to comply with policy and is recommended for approval.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

**Contact Officer: Mr G Clifford**

10/16/0010

MR D COCKCROFT

## **Change of use of holiday chalets to residential dwelling houses at Willow Lodge & Bracken Lodge, Pay Plantation, Stapley**

Location: WILLOW LODGE AND BRACKEN LODGE, STAPLEY ROAD  
STAPLEY, CHURCHSTANTON, TAUNTON, TA3 7QA

Grid Reference: 318615.113354 Full Planning Permission

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## **Recommendation**

### **Recommended decision: Refusal**

- 1 The proposed development would result in two large detached dwellings in an isolated and sensitive rural location, dependent on the private car and would lead to formal domestic curtilage and paraphernalia which would harm the character of the Blackdown Hills Area of Outstanding Natural Beauty contrary to policy PD1/B of the Blackdown Hills AONB Management Plan 2014-19 and CP1 and CP6 of the Core Strategy. In addition insufficient evidence to show that the sequential approach to alternative uses set out in policy DM2 has been fully tested has been provided to comply with the sequential test of DM2 as well as justifying why a holiday use cannot be retained given that in arguing for a third holiday unit two years ago it was claimed that the existing units were in such demand that an additional unit was required.

### **Recommended Conditions (if applicable)**

Notes to Applicant

## **Proposal**

Permission is sought for the change of use of two holiday chalets, removing the occupancy condition originally attached, to allow use as permanent residential dwelling houses. The holiday chalets have been in operation for ten years since 2006.

## **Site Description**

The application site concerns two existing holiday lets (Willow Lodge & Bracken Lodge), situated within a forestry plantation (Pay Plantation) to the south of the village of Stapley; approximately 9 miles south of Taunton.

The two-storey lodges are of timber clad construction under a slate roof, with timber doors and windows.

The site is accessible via a rural country lane situate to the north of the site.



The site itself is reasonably isolated but there is a residential property (Stapley Mill) situated directly opposite the access point to the north.

The site itself is situated within the Blackdown Hills AONB.

## Relevant Planning History

10/05/008 – Erection of two holiday cottages. Permission granted 7<sup>th</sup> July 2005.

10/14/0024 – Erection of a six bedroom holiday chalet with associated garden pond and parking areas. Permission granted 15<sup>th</sup> August 2014.

## Consultation Responses

*CHURCHSTANTON PARISH COUNCIL* - No comments to make on the application.

SCC - TRANSPORT DEVELOPMENT GROUP - Comments as follows:

The site is remote from local services and has no segregated pedestrian facility which is likely to lead to an unsustainable reliance on the private car. This is a matter for the Local Planning Authority to consider as the development is unlikely to lead to severe impact on highway safety or capacity as required by NPPF.

Visibility from the access is considered to be adequate for the likely vehicle speeds on the highway immediately adjoining the site.

In the event of permission being granted, Highways recommend conditions be attached regarding: consolidation of access, access gates, surface water drainage and provision of parking areas. Standard Highways notes have also been recommended.

BLACKDOWN HILLS AONB SERVICE - Comments as follows:

The AONB Partnership supports its local planning authorities in the application of their development management policy framework in order to ensure that any development in the AONB conserves and enhances natural beauty. In support of this, the Blackdown Hills AONB Management Plan 2014-19 is the agreed policy framework for conserving and enhancing the AONB and seeks to ensure that all development affecting the AONB is of the highest quality. It contains the following policy of particular relevance to this proposal:

PD 1/B Seek to ensure that any necessary new developments or conversions within the AONB or affecting its setting conserve and enhance natural beauty and special qualities, particularly by respecting the area's landscape character and the local character of the built environment, reinforce local distinctiveness and seek to enhance biodiversity.

Pay Plantation is situated in a quiet location accessed by narrow lanes, located in the upper Culm valley. It forms part of a mosaic of habitats, including dry and wet woodland, unimproved and marshy grasslands, mire and scrub, that is particularly

characteristic of the AONB. This interesting habitat was considered as a key feature at the time of the original permission for the chalets granted in 2005. This has always been a sensitive location for any type of development, however a change of use to residential would introduce a permanent impact by way of features such as establishment of a domestic curtilage, associated paraphernalia and outbuildings, light spill, for example, and would be bound to generate a number of car based journeys as residents would need to travel to access even the most basic of facilities and services.

Condition 11 of the planning permission for these chalets is clear that if the holiday use ceases the chalets shall be demolished and/or removed and the land restored to its former condition.

The AONB Service is not convinced that there is evidence to show that the sequential approach to alternative uses set out in policy DM2 has been fully tested, and it is difficult to know how the lodges have been marketed and promoted (for holiday accommodation). There also appear to be key differences in some of the points raised and figures presented in the planning statement and viability report, and the viability report that accompanied the 2014 application.

*ECONOMIC DEVELOPMENT* - Comments as follows:

Firstly, drawing on the accounts and information provided by the applicant I see inadequate evidence that the business has been marketed effectively over the past 3 years. Of notable concern to me is the amount spent on advertising/marketing in each of the three years. The breakdown of accounts imply that the owner has spent amply on other elements of the business but has neglected this crucial aspect.

Secondly, the Council receives regular interest in the conversion of properties to accommodate larger leisure parties. These are invariably in rural areas, such as Pay Plantation. The applicant's own evidence, supplied only two years ago, points to a strong demand for this type of business in Taunton Deane.

Thirdly, the area in question is in an Area of Outstanding Natural Beauty, perfectly suited to a business of this nature.

In summary, Economic Development are minded to object to the application. Economic Development are keen to see this business succeed, and the team would be pleased to signpost the applicant towards advice and mentoring support with a view to enabling the applicant to review their business plan.

## **Representations Received**

A site notice was erected 23<sup>rd</sup> June 2016 and neighbours notified 7<sup>th</sup> June 2016.

Former Ward Councillor, C Edwards, advised no objection to the proposal.

8 letters of **Support** raising the following issues:

- Good design compatible with surroundings.
- Excellent opportunity to allow two large families to live in a beautiful setting

- and also support the local community and school.
- The COU is supported by economic evidence and planning policy. Legitimate economic issues have been provided in accordance with Policy DM2 and the NPPF.
  - There are no visual amenity, highways or ecology issues.
  - Parish Council have raised no objection.
  - No alterations are proposed to the buildings.
  - The applicants have struggled for a long time to operate the business in a difficult market.
  - Residential use is preferable over holiday let use, which are used by rowdy hen and stag party guests.
  - Although development would not normally be supported in the AONB, the buildings in this instance are existing with no proposals for alteration.
  - Additional housing residential housing would support local services.
  - The permission (if granted) would provide greater security and stability of neighbouring residents.
  - Sleeps12.com – The holiday let market has definitely changed over the last few years. There are now more and more groups of people looking for short breaks. These groups are often stag and hen groups, or family celebrations. They are looking for high quality accommodation and facilities. Willow and Bracken unfortunately fall below the quality that is required for our present day demand.

1 letter of **objection** raising the following issues:

- Many original objections, as Stapley was an unsuitable place for such large chalets.
- It is extraordinary that the holiday letting market has declined this much in 10 years – so much so that permission is being sort for another huge chalet with a covered pool.
- It makes a mockery of the planning regulations for an AONB.
- Were there any stipulations with the original planning application about what should happen to the chalets if they failed to bring tourism into the area?  
*[Case Officer Note: Condition 11 of the original planning consent ref. 10/05/0008 stated that that if the holiday use were to cease the chalets should be demolished and/or removed and the land restored to its former condition].*

## Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), saved policies of the Taunton Deane Local Plan (2004), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below. Policies from emerging plans are also listed; these are a material consideration.

SB1 - Settlement boundaries,  
A5 - Accessibility of development,  
SD1 - Presumption in favour of sustainable development,  
SP1 - Sustainable development locations,  
CP1 - Climate change,  
CP2 - Economy,  
CP8 - Environment,  
DM1 - General requirements,  
DM2 - Development in the countryside,

## **Local finance considerations**

### **Community Infrastructure Levy**

The development would not be liable for any Community Infrastructure Levy (CIL) payments, as the defined use class would be the same.

### **New Homes Bonus**

The development of this site would result in payment to the Council of the New Homes Bonus.

#### *1 Year Payment*

Taunton Deane Borough	£2,158
Somerset County Council	£540

#### *6 Year Payment*

Taunton Deane Borough	£12,949
Somerset County Council	£3,237

## **Determining issues and considerations**

The main issues for consideration as part of this application are the principle of development, impact upon visual amenity/AONB and impact upon highways.

### **Principle of development**

The application site is situated outside settlement limits, where Policy SP1 of the adopted Taunton Deane Core Strategy, identifies the proposed development site as 'open countryside'. Accordingly, development in such locations is not usually supported due to the lack of accessible services and increased reliance on the private motor vehicle. Nevertheless, Policy DM2 does allow for the conversion of existing buildings and is considered to be the most relevant policy consideration in this instance. DM2.7 is split into two parts where (a) deals with conversions and alterations to existing buildings and (b) sets out the sequential test for a change of use.

DM2.7(a) allows for conversions provided that extant buildings are of a "permanent and substantial construction" and are of a "size suitable for conversion without major

rebuilding or significant alteration or extension". In this respect, having visited the site, it is evident that the building is of a permanent and substantial construction and is of a size suitable for conversion and the development is considered to accord with the requirements of DM2.7(a).

In terms of DM2.7(b) the policy allows for certain uses to be supported following a sequential approach, namely (in order of priority): community uses; class B business uses; other employment generating uses; holiday and tourism; affordable, farm or forestry dwellings; community housing and; in exceptional circumstances, conversion to other residential use.

An Economic Viability Report has been submitted to accompany the application, which has considered the requirements the sequential test. However no evidence of the marketing of the property for any of the alternative uses in the policy has been submitted. This is considered to fail the requirements of DM2. While the site itself has been marketed for over 12 months and the cost of each unit has been put at £400,000, this has to be viewed in light of the evidence of the commercial report that the site is operating at a loss. The evidence submitted with the previous scheme for an additional holiday unit in 2014 indicated that the actual occupancy levels and incomes were based on actual performance and this indicated occupancy levels were between 75% and 95%. Yet were are expected to believed that two years later the business in unviable. The unaudited accounts for the last two years show that in the year to April 2015 nothing was spent on advertising and promotion and only £160 was spent in the tear to 2016. On this basis it is not entirely surprising that the occupancy rates has dropped. It is not considered that the decline in the business identified would warrant a change of use of the properties at this stage and greater effort should be spent on supporting the business and this is reflected in the comments of the Economic Development Officer.

### **AONB Impact**

The site is located within the Area of Outstanding Natural Beauty which is a sensitive area and one where the impact of development has to be strictly controlled to prevent harm to the character and distinctiveness of the area. The provision of permanent dwellings here would require the creation of formal curtilages and would lead to associated domestic paraphernalia which would harm the character of the area. This would be contrary to the aims and policy of the Blackdown Hills AONB Management Plan 2014-19 and CP8 of the Core Strategy.

### **Highways**

The site lies outside of the defined settlements in policy SP1 and policy SB1 in respect of Settlement Boundaries of the Site Allocations and Development Management Plan applies. The permanent residential use would be reliant of the private car and would increase the need for travel over and above the existing use contrary to CP1 and CP6. While the access is considered safe in terms of visibility the increase in use for this site remote from local services would clearly lead to an unsustainable reliance on the private car.

## **Summary**

The use of a permanent dwellings in a remote location within the AONB would normally be considered as a strait refusal as being contrary to policy. The fact that the site has been operating as a successful holiday business and relied on that success to support the argument for a third unit in 2014, makes it unusual that it is claimed the existing business is now unviable. It is considered that the two dwellings should be properly marketed and retained in tourist use. It is not considered that the necessary assessment has been made in line with policy DM2 and the harm to the AONB by allowing two large detached dwellings is considered contrary to policy and is recommended for refusal.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

**Contact Officer: James Culshaw**

**APPEALS RECEIVED – 4 January 2017**

**Appeal reference: APP/D3315/W/16/3161791**

**Site: MILLGROVE HOUSE, STAPLEGROVE MILLS, MILL LANE,  
STAPLEGROVE, TAUNTON, TA2 6PX**

**Proposal: Outline application with all matters reserved for the erection of 2  
No. two storey detached dwellings with double garages at Millgrove House,  
Staplegrove**

**Application number: 34/16/0010**

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**Appeal reference: APP/D3315/W/16/3160923**

**Site: LAND TO THE REAR OF 60 SPRINGFIELD ROAD, WELLINGTON, TA21  
8LG**

**Proposal: Erection of dwelling to the rear of 60 Springfield Road, Wellington**

**Application number: 43/16/0061**

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**Appeal reference: APP/D3315/W/16/3160279**

**Site: FORMER LAMBING BARN, SOUTH OF YARD FARM, WILLITON ROAD,  
COMBE FLOREY, TAUNTON, TA4 3JB**

**Proposal: Prior approval for proposed change of use from agricultural building  
to dwelling house (Class C3) and associated operational development of  
former lambing barn at Yard Farm, Wiliton Road, Combe Florey**

**Application No: 11/16/0006CQ**

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## **Appeal Decisions**

**Site:** HYDE EGG FARM, HYDE LANE, BATHPOOL, TAUNTON

**Application number:** 48/16/0018LE

**Reasons for refusal**

1. Following consideration of the evidence submitted by the Applicant, it is considered that the application fails to demonstrate on a balance of probabilities that the uses as identified in the application or any of them is lawful within the terms of Section 191(2) and Section 1718(3) of the Town and Country Planning Act 1990.

**Appeal decision: Dismissed**

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## **Enforcement Appeal**

**Site:** HYDE EGG FARM, HYDE LANE, BATHPOOL, TAUNTON, TA2 8BU

**Alleged Breach of planning control:** UNAUTHORISED B1 / B8 BUSINESS USE OF AGRICULTURAL LAND AT HYDE EGG FARM

**Reference Number:** E/0042/48/15

**Appeal decision:** Corrections as per decision and then Appeal A is dismissed.





## Appeal Decision

Inquiry opened on 22 November 2016

Site visit made on 23 November 2016

**by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 December 2016

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### Appeal A Ref: APP/D3315/C/16/3144507

**Hyde Egg Farm, Hyde Lane, Bathpool, Taunton, Somerset TA2 8BU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs Barbara Hedges against an enforcement notice issued by Taunton Deane Borough Council.
  - The notice was issued on 15 January 2016.
  - The breach of planning control as alleged in the notice is: *Without planning permission the change of use of the Property from agricultural use to a mixed use comprising B1 Office Use, B8 Storage and Distribution Use and Sui Generis Uses for motor vehicle repairs and as a showroom for a double glazing window business.*
  - The requirements of the notice are: (i) Cease using the Property for B1 Office Use, B8 Storage and Distribution Use and Sui Generis Uses for motor vehicle repairs and as a showroom for a double glazing window business; and (ii) Remove from the Property all equipment and materials associated with the unauthorised uses referred to at paragraph...(i) above.
  - The period for compliance with requirements (i) and (ii) is 6 months.
  - The appeal was lodged on the grounds set out in section 174(2) (d) and (g) of the Act [but see below]. Since the prescribed fees have not been paid within the specified period ground (a), which comprises a deemed planning application, does not fall to be considered.
  - The Inquiry sat for 2 days and evidence from all witnesses, except for Mr Bale, was taken on oath.
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### Appeal B Ref: APP/D3315/X/16/3149823

**Hyde Egg Farm, Hyde Lane, Bathpool, Taunton, Somerset TA2 8BU**

- The appeal is made under section 195 of the Act against a refusal to grant a certificate of lawful use or development [LDC].
  - The appeal is made by Mrs Barbara Hedges against the decision of Taunton Deane Borough Council.
  - The application (Ref. 48/16/0018/LE), dated 2 March 2016, was refused by notice dated 18 March 2016.
  - The application was made under section 191(1)(a) of the Act.
  - The development for which an LDC is sought is *Use of existing buildings and land for Classes B1, B8 and motor vehicle repairs plus ancillary office and showroom uses as shown on submitted plans.*
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## Appeal A: Decision

1. I direct that the enforcement notice be corrected by:
  - i. the substitution of Plan A attached to this decision for that attached to the enforcement notice;
  - ii. the deletion of the allegation in paragraph 3 of the enforcement notice and its replacement with the words "*Without planning permission, the change of use of the Property from agricultural use to a mixed use*"

- comprising B1 Use, B8 Use and Uses for motor vehicle repairs and as a showroom for a double glazing window business"; and,
- iii. the deletion of the requirement in paragraph 5 (i) of the enforcement notice and its replacement with the words "*Cease using the Property for B1 Use, B8 Use and Uses for motor vehicle repairs and as a showroom for a double glazing window business*".
2. I direct that the notice be varied by the deletion of the phrase "6 (six)" in both instances that it occurs in section 6 of the notice and its replacement with the phrase "15 (fifteen)" months to comply with both requirements of the notice.
  3. Subject to these corrections and this variation Appeal A is dismissed and the enforcement notice is upheld.

### **Appeal B: Decision**

4. The appeal is dismissed.

### **Procedural matters**

5. In response to my agenda, which was circulated well ahead of convening the Inquiry, the main parties agreed a Supplemental Statement of Common Ground [Document 1] in respect of a number of significant matters. It records agreement that it would be appropriate to formally correct the notice in a number of respects and vary the notice if the ground (g) falls to be considered.
6. First, the plan attached to the enforcement notice presently includes the residential mobile homes but neither the allegation nor the requirements refer to that use. If the allegation and requirements were corrected to refer to the residential use there would plainly be injustice because, potentially, the Appellant might be rendered homeless and so that would not be appropriate.
7. Conversely if the allegation was amended to include the residential use but not the requirements there would be a deemed planning permission under section 173(11) of the Act. However, given that the Council has issued a personal planning permission [No 12/02/2004] in respect of that residential use, that would not be an appropriate solution either because the planning permission would run with the land. The main parties have therefore agreed that it would be appropriate to correct the plan to which the notice relates so as to exclude the residential area. My site inspection confirmed that the mobile homes and the associated parking and garden area occupy a separate area with a distinct character and so such a solution is not inappropriate. Since the main parties agree that there would be no injustice from such a solution I shall correct the notice by substituting the revised plan for that attached to the original notice.
8. Second it is agreed that the allegation should be corrected to make clear that all the subsisting uses are within the ambit of the enforcement notice. My site inspection confirmed that the use of the site included light industrial uses within Class B1(c), as exemplified by Lee Hedges' business, EG Aluminium Ltd. As drafted it is ambiguous as to whether such a use is within the allegation. It refers to "*B1 Office Use*" but it is unclear whether this was a misrecital, such that it was intended to refer to Class B1 Business<sup>1</sup>, or whether it was intended to be restricted to "B1(a)", i.e. use as an office other than a use within Class A2. It is however noticeable that insofar as the allegation refers to Class B8 it contains a less significant misrecital<sup>2</sup>. On the balance of probability it would therefore appear that the notice included the reference to "*Office*" by mistake.

<sup>1</sup> The title to Class B1 of the Town and Country Planning (Use Classes) Order 1987 [the 1987 Order].

<sup>2</sup> The allegation refers to "Storage and Distribution", but the 1987 Order refers to "Storage or distribution".

9. In reaching this view I have taken account of the report to Planning Committee that sought authorisation for enforcement action. It is titled: "*Unauthorised B1/B8 business use...*" and its purpose is said to be: "*To consider whether it is expedient to serve an Enforcement Notice requiring the unauthorised change of use of the site to cease...*"<sup>3</sup>. Both the report and the Minutes refer to a number of different commercial activities subsisting at the site and so, whilst the title to the report to the Planning Committee refers exclusively to "*Normandy Windows*", I can rule out the possibility that the enforcement notice was intended to be restricted solely to the activities of that company.
10. In closing the Council do not admit that there is an error in the allegation but, by reference to the case of *Brooks & Burton Ltd v SSE* [1977] J.P.L. 720, says that even if the wrong class of use was specified it is not fatal to the notice. Ultimately the position that I take on this point is coloured by the Supplemental Statement of Common Ground in which it is acknowledged that there would be no injustice from such a correction as long as it is taken as part of a package.
11. One component of that package is that the requirement of the enforcement notice should be corrected to ensure it is on all fours with the allegation. In this respect there is one minor, I suspect typographical, difference between the suggested allegation and the requirement in paragraphs 2.2 and 2.3 of the Supplemental Statement of Common Ground, insofar as the former refers to "*B8 Use*" and the latter to "*B8 Uses*". Subject to dropping the plural, 's', I shall correct the allegation and the requirement as I have been invited so to do as, in particular the Appellant, has made no claim that there would be injustice.
12. A second key element of the package agreed between the parties is that the Council has agreed that in the event that the ground (g) appeal falls to be considered that the period for compliance should be extended to 15 months. The logic appears to be that if the allegation was not corrected the Council might need to issue a fresh notice and, allowing for the exercise of an appeal, the businesses would be in a similar position in terms of timescale. Plainly in that scenario there would be additional costs incurred by both sides, both in the preparation and issue of the fresh notice and in the lodging of an appeal. In the circumstances, in the event that the ground (g) falls to be considered I shall, at a minimum, vary the period for compliance to 15 months.
13. The final element of the package agreed between the main parties is that it would be appropriate to admit a fresh ground of appeal. In my agenda I had suggested that this should be a ground (b), my logic being that the Appellant's claim appeared to be that there was no separate use as a showroom for a double glazing window business. However the Supplemental Statement of Common Ground records agreement that this should be admitted as a ground (c), in pursuit of a claim that the showroom is ancillary to the B8 use. I did start to deal with the substantive point exclusively under a ground (c) head but for reasons that I set out below I conclude that is not the appropriate ground. Accordingly, given that the substantive issue is agreed and has been rehearsed at the Inquiry, I shall admit both grounds (b) and (c) to examine the point.
14. Taken as a package the compromise that has been reached between the main parties appears to be equitable and sensible in the circumstances of this case. It confirms my view that, without prejudice to consideration of the grounds of appeal, it would be appropriate to correct and vary the notice as suggested.



15. In the interests of consistency I propose to refer, where possible, in this decision to the numbers of the buildings shown on the plan referred to in the Statement of Common Ground and appended to Mr Horan's proof of evidence.

### **What is the correct planning unit?**

16. With one minor exception the enforcement notice plan now correlates with the plan submitted with the LDC [Appeal B]. The exception relates to building 6, which is agreed to be in domestic use and is inconsequential to these appeals. The Appellant confirmed at the Inquiry that the red line identifies the relevant planning unit. The Council agree that the notice should be directed to the red line area, as corrected. However it maintains there are a number of planning units, although it has not attempted to define their extent or even quantify how many different planning units there might be on what is a relatively small site.
17. The leading case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 sets out 3 criteria for assessing the correct planning unit: (a) Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered; (b) Even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered; and (c) Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.
18. It would appear that until at least 1995 the whole site, possibly including the residential mobile homes, fell wholly within category (a) and comprised one planning unit. Based on the evidence before the Inquiry the position since that date has changed insofar as a number of materially different uses have taken place, which have been undertaken by a number of different occupiers. As a general proposition those uses have not been ancillary to each other. It is clear that some uses have been centred on certain areas of the site, i.e. taking place within some buildings, but even the Council has not been able to identify particular parts of the site where each different purpose has been carried on.
19. The Appellant's closing draws attention to evidence from a number of sources<sup>4</sup>, including the Council's witnesses, to support the contention that the uses on the site have been fluid. Mr Hedges told the Inquiry that outside the buildings no areas are allocated to anyone and that, amongst other things, parked vehicles are moved around to let others out. My inspection, taken with all the evidence before the Inquiry, supports a finding that it is not possible to identify a part of the site where each occupier conducts their activity exclusively.
20. To take the example of Normandy Windows, I appreciate they enjoy exclusive use of building 10 and that others would not have access to that building without an invite, with the possible exception of Mr Hedges in an emergency. However the activities of Normandy Windows are not restricted to that building but include use of containers A, B and E, the latter being at the far end of the site. Paragraph 9.8 of Mr Horan's proof of evidence describes what he saw around the external areas of the site in 2015 by reference to his photographs and my inspection revealed little had changed in this respect. Amongst other things Mr Ware confirmed on oath that he uses the skips between container E and building 4, and

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that a company van is kept at that end of the appeal site.

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<sup>4</sup> See paragraphs 1.4.1-1.4.6, inclusive, of the Appellant's closing at Document 8.

21. It would therefore be impossible to draft an enforcement notice directed solely at the activities of Normandy Windows without including the vast majority of the appeal site. The same could be said to a greater or lesser extent for Mr Hedges' activities, which extend to use of buildings 3 and the northern half of 5, containers D and F, and many of the same areas of hardstanding. The same might also be said for the various car storage and repair activities, which take place in buildings 1, 9 and the southern half of 5, and container C, but take place on many of the same external areas. It is inevitable that enforcement notices directed at those uses would contain areas of the site that overlap.

22. In the circumstances the appeal site would appear to fall squarely within criteria (b) as established in *Burdle* because the different activities, and indeed occupiers, are not confined to any particular part of the appeal site. For these reasons I conclude that the entire area within the red line on Plan A is a single planning unit because, whilst used for a number of different and unrelated purposes, they are not confined to separate identifiable areas within the whole.

### **Appeal A, Ground (b)**

23. Under the ground (b) appeal the onus of proof falls on the Appellant to show on the balance of probability that the "*breach of control alleged in the enforcement notice has not occurred as a matter of fact*" [as per section E. (b) of the appeal form]. The alleged breach, as corrected, includes a separate component comprising use as a showroom for a double glazing window business whereas the Appellant says it is an ancillary use and should not be identified separately.

24. In answer to my question<sup>5</sup> Mr Miller confirmed that the sole rationale for this argument was that the office and reception area, which together he described as the display area, was ancillary to a B8 use, for storage or distribution, and did not represent a materially different use of the land. In short the Appellant seeks the allegation corrected either to reflect the description in Appeal B or to simply delete reference to the showroom on the basis that the allegation does not need to identify ancillary uses. I shall deal with this ground on this basis.

25. In evidence Mr Miller's estimate was that 20 % of the building was used as a reception and 20 % of the building was used as an office, i.e. 40 % in total. My site inspection confirmed that this was a good estimate. It was agreed that the building had 8 bays, each approximately 3 m long, namely 24 m in total. The display area measured approximately 9 m long, which is slightly less than 40 % and within that, whilst difficult to be precise, it was agreed that around half the floor space was dedicated to office use and the other half to the display of assembled products, including a lean to and what Mr Ware described on oath as a 3-sided bay window. However the 3 offices were themselves constructed from products that appeared to be sold by the company, e.g. one office wall was made up of various small windows to show the range of products available. All of the internal offices included products that the company sell, to a greater or lesser extent. As Mr Bale observed it would appear that the offices have been constructed to show what the company can do.

26. Mr Ware told the Inquiry that approximately 4 customers a week attend what is identified by a sign as a "*Showroom*" and of those 90 % make a purchase. He explained that he would normally go to the premises where the installation is proposed and provide a quote. The high success rate therefore appears to be

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**because potential customers have already had, what I shall call with respect to**

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<sup>5</sup> I deliberately asked Mr Miller for clarification of the rationale on which this ground of appeal was being pursued given that no formal pleading was given on the appeal form, in the statement of case or in the proofs of evidence.

Mr Ware, the 'hard sell' and merely seek to see the finer details of the products before making a purchase. Mr Ware said the proportion of orders from visitors to the showroom was no more than 10 % of the total number of orders but, noting the onus of proof, no document proves the validity of this estimate.

27. My site inspection revealed that building 10 was not merely used for storage or distribution. There was reference to a compressor and at the time of my visit an employee appeared to be assembling a large window at the eastern end of building 10, which points to that element of the use being within Class B1(c). Amongst other things I note that the company letterhead describes building 10 to be a "*Factory and Showroom*" but, as Mr Bale acknowledged, the office component might itself be a B1(a) use. So the building appears to have four related uses namely as a store or distribution centre, for an industrial process, use as an office and as a self-styled showroom. It therefore appears to be in mixed use and on the limited information before me it is difficult to say that one is clearly ancillary to the other. The size of the floor area is not in itself conclusive. Rather the issue is whether the use as a showroom for customers is ordinarily incidental to the use to which the building as a whole is put.
28. In closing for the Appellant I was referred to the Encyclopedia of Planning Law and Practice, and in particular the commentary on ancillary uses at P.55.39. However whereas a bar at a hotel and a pharmacy at a supermarket are within the range of activities that one might normally expect at such establishments, a showroom at a factory is uncommon. Whilst I accept that it is not unknown, that does not mean that such activity should not require planning permission. The Appellant has not shown, as a matter of fact and degree, that a showroom is ordinarily incidental to the use to which building 10 has been put. Amongst other things the use as a showroom generates additional vehicular movements to and from the site by visiting members of the public. In the absence of any analysis of traffic generation, such as a survey, it has not been shown that the additional movements, which are admitted, are not material and have no environmental effect, e.g. in terms of noise and disturbance to neighbours.
29. For these reasons, in consideration of the Appellant's substantive argument under this head, since it has not been shown that the showroom is ordinarily incidental to the use of building 10 as a factory and office, the ground (b) fails. The allegation, as corrected, has taken place as a matter of fact and there is a need for the showroom to be identified as a material component in the mix of uses that has occurred, and are continuing to take place, on the planning unit.

### **Appeal A, Ground (c)**

30. Under this ground of appeal the Appellant needs to show that: "*...there has not been a breach of planning control*" [as per section E. (c) of the appeal form].
31. It is trite to record that there has been no planning permission for any use of the land<sup>6</sup> other than agriculture. The planning permission granted in January 1987 [Document 5], whilst described as being a change of use<sup>7</sup>, was actually for the: "*Retention of an agricultural building...*"<sup>8</sup>. Even if I were to construe the planning permission as permitting the commercial use of the building that was permitted to be retained it is clear that the permission was personal to Mr D Hedges, rather than the Appellant. The Inquiry was told that Mr D Hedges died in 2007, but in any event it appears to be common ground that the egg

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<sup>6</sup> For this purpose I focus on the land edged red on the plan at Plan A, which excludes the residential use.

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<sup>7</sup> In Table 1 to Mr Horan's proof of evidence.

<sup>8</sup> Source of quote: description in box entitled "Position and Nature of Proposal".

packing and distribution use ceased on the land several years before that. For these reasons it is clear that the only planning permission that might be said to be for a business use on the land is no longer extant or, to use the terminology employed on the face of the decision, was: "*...not for the benefit of the land*".

32. So my starting point under the ground (c) is that the land does not have the benefit of planning permission for Class B8 use or otherwise. There has been no suggestion that Class B8 use has been deemed to be granted as permitted development under the terms of the Permitted Development Orders that would have applied over the requisite period with which I am concerned. It is for this reason that I have admitted ground (b) to deal with the substantive argument. Since there is no permitted use of the land, or building 10, then any claim that an ancillary use is lawful cannot succeed. Ground (c) must fail for this reason.

### **Appeal A, Ground (d) and Appeal B**

33. The Planning Practice Guidance [‘the Guidance’] advises that the Applicant is responsible for providing sufficient information to support an application for a LDC, which is the equivalent of ground (d) in an enforcement appeal. It states: "*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability*"<sup>9</sup>. This test applies equally to an Inspector at appeal stage.
34. As the enforcement notice was issued prior to the date on which the LDC application, the subject of Appeal B, was submitted I intend to proceed on the basis that the material date is 10-years prior to the date of issue of the notice, namely 15 January 2006. On this basis the onus of proof falls on the Appellant to show that the mix of uses alleged in the corrected allegation began prior to the material date and has continued, such that: "*...at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice*" [as per section E. (d) of the appeal form].

### **Preliminary observations**

35. The evidence that was before the Council when it considered the LDC application now the subject of Appeal B is listed on the face of the Council’s decision. It does not list Mrs Overthrow’s statutory declaration but it would appear that was before the Council when it made its decision and it is plainly before me. The submissions of Mr Middleton and Mr Catterall are listed as declarations but I consider that neither are properly sworn. The first is in fact an unsigned email that bears the title statutory declaration and, as such, I am only able to attach it very limited weight. Mr Miller conceded at the Inquiry that the second was not properly sworn because Mr Catterall’s letter has been witnessed by an unknown party. I again attach it very limited weight.
36. Apart from the submitted declarations 5 letters/emails were submitted as part of the application and with the exception of that from Normandy Windows Ltd I am only able to attach those very limited weight because they are not sworn. However Mr Ware did attend the Inquiry and confirmed salient parts of his letter on oath such that I attach substantial weight to that correspondence.
37. The only person to attend the Inquiry and give evidence on oath who has knowledge of the site throughout the relevant period is Mr Hedges. In addition



to his statutory declaration he swore a proof of evidence. Mr Hedges is the key witness at this Inquiry. The problem is that, with the greatest of respect, he did not come across as a convincing witness. First I find his statutory declaration to be ambiguous. To take what I hope is an uncontroversial example the fourth substantive paragraph thereof starts: "*Shed 2, 3, 5...*", but the plan attached to his statutory declaration contains no reference to a shed 3 or a shed 5. I assume that this is intended to refer to what are labelled unit 3 and unit 5 on that plan but I should not have to make such an assumption. The Guidance is clear that the evidence should be precise and unambiguous.

38. Of crucial importance is Mr Hedges' concession in cross-examination that he has: "*No memory for dates*". Amongst other things he could not remember the year that his father died. I intend no criticism; my own weakness is that I am hopeless at remembering people's names. However this does mean that to the extent that Mr Hedges' statutory declaration, proof of evidence and his oral testimony refers to dates I attach that aspect of his evidence very limited weight. By his own admission at the Inquiry the statutory declarations of others should be preferred in terms of dates to Mr Hedges' evidence.

39. Turning to the other statutory declarations I deal firstly with that of Mrs Grigg. As I said in my note to the parties, her evidence does not greatly assist in resolving the key issue before this Inquiry, but it does set out the history of the site during its occupation by Somerset Foods. The penultimate substantive paragraph confirms that since 2000 there have been a variety of businesses run from the site, including that of Mr Hedges, parking of commercial vehicles and the storage of play equipment and bouncy castles etc. I have no reason to doubt those elements of her statement and so it is appropriate to attach her statutory declaration substantial weight. However, at its highest, it would not make out the Appellant's case because it might suggest that there have been material changes of use since 2000 or is otherwise imprecise for that period.

40. Similarly the statutory declaration of Mr Tudge openly admits that: "*I am not familiar in detail with the businesses which have occupied the buildings on the site*". Although I have no reason to doubt that there has been no poultry kept on the site since June 2000 since when the buildings have been used for a variety of business purposes, including Mr Hedges' own business, this again does not make out the Appellant's case. So whilst it is appropriate to attach his statutory declaration substantial weight the lack of precision in the declaration means it is of little assistance in resolving the matters at issue.

41. I propose to examine the remaining statutory declarations of Mr Rippon, Mr Stewart, Mr Brittain and Mrs Overthrow in my substantive reasoning below. However as a general observation I would not lightly interfere with such sources of evidence. Nevertheless, as is suggested in closing for the Council, the fact that those witnesses did not attend the Inquiry to enable the Council to cross-examine their evidence is not an irrelevant factor in the overall balance.

42. Finally, under this heading, it was claimed in closing for the Appellant that I heard no evidence to contradict the assertion that the mix of uses did not change between 2003 and 2013, and that Mr Miller's evidence to that effect was not challenged. There are a number of points to make. First the Council disputed the claim in closing and said it was a matter for submissions; I agree. Second the

Council did not produce witnesses as to fact, but that does not make an assertion by Mr Miller, who has no first-hand experience over that entire period, correct. He has undertaken some analysis of the evidence but his matrix [Document 3] was only submitted at the Inquiry and in the interests

of the efficient use of Inquiry time no adjournment was taken to consider it. As such it would be wrong to attach anything other than very limited weight to what is a secondary source of evidence<sup>10</sup>. The bottom line is that Mr Miller has

only analysed the primary sources of evidence, which is the task that I will also undertake, and so my focus must be on the statutory declarations, letters and emails that have been provided rather than Mr Miller's recent analysis of them.

### **Discussion on Appeal A, Ground (d) and Appeal B**

43. There is no reason to doubt that Somerset Foods was an agricultural activity [Use 'A'] that Mrs Grigg says operated on the site until 2000. She confirms that Lee Hedges' window business also operated on the site and whilst Mr Hedges has cast doubt on his own statutory declaration in terms of dates I accept that LH Glass started in 1995 [Use 'B']. It appears to have been similar to Mr Hedges' current business and would likely be classified as a Class B1 use. Whilst Mr Hedges' core businesses have changed their names over subsequent years<sup>11</sup> and moved between buildings it would appear that those businesses have been a constant feature of the appeal site during the period 1995-2016.
44. Mrs Grigg says Somerset Foods moved away from the appeal site in 2000 but continued to park its vehicles on the appeal site. She identifies those vehicles to be "6 or 7 chiller lorries" which, noting the evidence before the Inquiry that the chiller units operated overnight such that the noise would have potentially been audible outside the site, are likely to have required an operator's licence. When an ancillary use continues after a primary use has ceased on a single planning unit, a use of that magnitude and nature is likely to be material and therefore have become a new primary use [Use 'C']. The parking of lorries unrelated to a storage unit or activity on the appeal site is likely to be a sui generis use rather than use as a distribution centre within Use Class B8.
45. Also in 2000 Mr Hedges' statutory declaration says that Dave Cottrell started to store and repair his banger racing cars on the site [Use 'D']. The Appellant has not suggested that this use is within a Use Class and the consensus between the parties is that it should be identified as a separate activity in its own right. Whilst the vehicles are stored they are also repaired and so it is not a Class B8 use. Although there is very limited evidence to corroborate this aspect of Mr Hedges statutory declaration, in terms of the date of commencement or otherwise<sup>12</sup>, I accept that Use D has operated from the appeal site since 2000.
46. The precise sequence of the activities on the site since 2000 is less than clear but there is some limited evidence as to dates. The statutory declaration of Mr Brittain says that from March 2003 to September 2012 he stored classic cars and 4x4s on the site. Unlike most of the other statutory declarations that have been submitted in this case these dates are precise and as such it is appropriate to attach Mr Brittain's statutory declaration substantial weight. Mr Brittain says that Mr Galling and others did likewise, and that repairs were undertaken on those vehicles. However such use appears to be the same or at least not materially different to Use D, as described above. So whilst this is evidence of other occupiers it does not represent a materially different use.

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<sup>10</sup> My view that Document 3 should only be given very limited weight is corroborated by the fact that some of the entries appear to be wrong, e.g. the letter from the Proprietor of Somerset Locks says the company "continue", as



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at December 2015, to use a secure container and space, whereas the matrix shows that use ceased by 2012, and other entries are confusing, e.g. the source for the reference to a chipcart is said to be Ashley Hayes but I am unclear what that entry refers to, unless it is meant to refer to the chipper in Mr Brittain's evidence.

<sup>11</sup> This includes EG Aluminium and Edge Group, as referred to in the letter from Somerset Locks and Security.

<sup>12</sup> Mr Middleton does refer to the local banger racing guys always being there but that email is not sworn.

47. Mr Middleton says that he kept 3 catering trailers and a transit van at the appeal site from 2002 until 2013 but, significantly, his evidence is imprecise as to the month in 2002 when the use started. He says that he used a storage container, by which I assume he means one of the 5 lorry containers that appear to have been on the appeal site for a considerable time<sup>13</sup>, to keep his freezers and stock for his catering business [Use 'E']. This would appear to have been a Class B8 use, namely for storage or distribution, because the vehicles and trailers were associated with the use of the storage container.
48. Although I have given reasons for attaching Mr Middleton's email very limited weight, his version of events is broadly corroborated by Mr Catterall's letter. However Mr Catterall says he first visited the appeal site in around 2004/2005 and so it does not confirm that Mr Middleton's storage use commenced in 2002.
49. Mr Catterall's letter also says he recalls Somerset Foods' lorries: "*...coming and going from the site several years before I had any involvement in it*". There is a tension between him saying this and his statement that he first went there in 2004, but what I can take from this is that it would appear that Use B had ceased by 2004. I have given reasons for attaching Mr Catterall's letter very limited weight, but it must be right that Use B, insofar as it involved lorries operated by Somerset Foods, ceased after 2000, when Somerset Foods moved away from this site, and before 2007 when the Appellant's husband died.
50. Notwithstanding the above, Mr Hedges' statutory declaration talks about another company, Freshline Foods, who: "*...used the area to store and recharge refrigerated lorries on the hard standing*". This appears to have been a different company operating out of the same area, presumably at a later date, although no dates have been given. It is therefore unclear whether Freshline Foods' lorries took over immediately when the Somerset Foods lorries vacated, whether Use B recommenced at some later date or when the use of the appeal site for the parking of lorries by Freshline Foods ceased. In saying this I acknowledge that the statutory declaration of Mr Brittain says Freshline Foods: "*...parked a refrigerated van on site and had regular chilled deliveries*". Plainly that suggests a very different type and scale of operation and this represents a clear but unresolved conflict between the respective statutory declarations.
51. Mr & Mrs Cooper's email says that they stored caravans, play trailers and had use of one of the containers from 2002. However, once again, no month is given as to when in 2002 their use started. Mr Hedges' statutory declaration elaborates by saying that Mr & Mrs Cooper stored: "*...trailers for parties and fairs including bouncy castles and children's play equipment*". Mr & Mrs Cooper say that use continued after Mr Hedges' death in 2007: "*...until we sold our stock*". That is not a date and so the term is ambiguous. I have given reasons for attaching Mr & Mrs Cooper's email very limited weight but in any event the use also appears to be B8 and, as such, not materially different from Use E.
52. There are several other examples of the use of buildings on the appeal site for storage over the period since 2002. The first example is Ponics Ltd which Mr Hedges' statutory declaration says: "*...stored and distributed hydroponic*

*growing equipment from 2005-2007*". Based on the limited information available it appears to be B8 and, as such, not materially different from Use E.

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<sup>13</sup> Mr Hedges said that all of the containers had been on the site for more than 10-years apart from E, which he said had been placed there within the last 10-years, although he could not be sure of the date, and what I have called F, which has recently been delivered at the rear of building 2 and is used for storage by EG Aluminium Ltd.

53. The second example is that Mrs Overthrow says in her statutory declaration that she rented a container from the summer of 2005 to store her business equipment and materials. The business later expanded into Unit 5 [building 10], which included an office. This activity is likely to have been a mixed B1 and B8 use, but that would not be materially different from the uses that had been established on the appeal site [Use B from 1995 and Use E from 2002].
54. Mrs Overthrow says she rented building 10 until 2010 when her business went into liquidation, but says she rented it after 2010 on a more informal and personal basis. There is no reason to doubt this and insofar as Mrs Overthrow's statutory declaration recounts her own business activity I attach it significant weight. However she does not give a date when she finally vacated building 10, which is ambiguous; I return to consider this point further in due course.
55. The third example is Somerset Locks and Security. The Proprietor's letter dated 11 November 2015 says that the company has had a secure container and space at the appeal site since 2006. My record of what was said to be in the various containers at the site inspection does not record that any container was used by this company now and, in giving evidence on oath, Mr Hedges did not list the company as still being present. However that might be explained by the fact that the letter was written around a year ago. It is therefore evidence of another B8 use from 2006, but is not materially different from the use that had already been established on the appeal site [Use E].
56. In broadly the same period another use by Phoenix Group commenced on the appeal site. Mr Hedges describes the use to involve "*minibuses*" [plural] in his statutory declaration<sup>14</sup>, but told the Inquiry it included parking a 19 seat coach that was used to take older people to places like Blackpool and Brighton. In my experience the use of such vehicles to transport customers is likely to have required an operator's licence. If it were otherwise the vehicles could have been parked at a house or in a residential street. Such a use is not ancillary to a storage unit and would not fall within Class B8, but is likely to have been *sui generis* [Use 'F']. I appreciate that Mr Miller has classified it as a Class B8 use in his matrix [Document 3] but no reason is given and he gave evidence before I asked Mr Hedges about his reference to Phoenix Group Travel in his statutory declaration. It must follow that the Appellant's closing submission is wrong insofar as it claims that no new elements were introduced between 2003 and 2013. Mr Hedges said his father dealt with Phoenix Group and so the use by Phoenix Group started before 2007, but it is unclear how long it continued.
57. The statutory declaration of Mr Brittain identifies another use that took place to be: "*...a Tree Surgery company who parked their vans and chipper on site*". It is surprising that Mr Hedges does not identify this use in his written evidence and this undermines the submission made in closing for the Appellant that Mr Hedges knows: "*...what others did and do there*". If it merely involved the parking of small vans and a piece of equipment, effectively a trailer, then it is not inconceivable that it was a Class B8 use. The position is however unclear, which might be said to go to the onus of proof that falls on the Appellant.
58. The statutory declaration of Paul Stewart says that he stored catering units and bouncy castles on the appeal site from April 2012 to August 2014. Unlike most of the other statutory declarations that have been submitted in this case these dates are precise and as such it is appropriate to attach Mr Stewart's statutory

<sup>14</sup> Mrs Overthrow uses the same description in her statutory declaration.

declaration substantial weight. This use appears to be a B8 use and so it is not materially different from Use E that was also operating between those dates.

59. However Mr Stewart's statutory declaration also says: "*Throughout our time at Hyde Egg Farm there were many other businesses using the other units including a company selling sofas and mattresses...*" [my emphasis]. The existence of this company is corroborated by the letter from Mr & Mrs Galling in April 2016, which says: "*In 2012, a mattress and bed company utilised the building that is now occupied by Normandy Windows. At this time the activities on the site became a nuisance to the residents in the lane, in part due to the impact of large delivery lorries arriving and departing the site*".

60. Other statutory declarations do not refer to this company, but on the balance of probability I am satisfied that it did occupy a building on the appeal site from at least 2012, which again undermines the Appellant's closing submission. It might also suggest that Mrs Overthrow's statutory declaration is wrong insofar as it says: "*On vacating the unit [building 10] it was taken immediately by Normandy Windows who are still in occupation*". My view that this aspect of her statutory declaration is wrong is corroborated by the fact that Mr Ware told the Inquiry on oath: i) Normandy Windows first started using building 10 in September 2014, which is 4 years after the demise of Mrs Overthrow's business<sup>15</sup>; and, ii) he also told the Inquiry that building 10 was empty when he moved in<sup>16</sup>. It is clear from Mr & Mrs Galling's letter that they challenge Mrs Overthrow's version of events and that letter is appended to Mr Miller's proof of evidence, next to Mr Hedges' proof of evidence. However whilst Mr Hedges' proof of evidence disputes certain points in the Committee report, in respect of Appeal B, it is silent with regard to what Mr & Mrs Galling say in their letter.

Mr Hedges could have addressed the point at the Inquiry but did not do so.

61. A fair reading of Mr Stewart's statutory declaration suggests that the company selling sofas and mattresses were on the site from at least April 2012 [possibly earlier] to August 2014. Mrs Galling's letter suggests the company ceased to trade in November 2012 when there was a flood but her letter is not sworn and so I am only able to attach that particular claim very limited weight. However what is clear is that a materially different use, by a company selling sofas and mattresses, which caused nuisance to neighbours, took place on the appeal site from at least April to November 2012 [Use 'G'], but quite possibly for a couple of years. Even if the former this change of use would appear to have been material as whilst I acknowledge that Mr Miller has classified it as a Class B8 use in his matrix, that appears not to have taken account of Mr Stewart's statutory declaration<sup>17</sup> and I have given reasons to attach it substantial weight.

62. When Normandy Windows moved onto the site in September 2014 the mixed use of building 10, including a showroom for a double glazing window business, which I have already analysed [Use 'H'], would have changed the mix again.

In view of my earlier analysis of the use of this building under the ground (b) head, no purpose would be served by any further analysis at this stage.

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<sup>15</sup> Noting also that Mrs Overthrow's statutory declaration says, in the fourth substantive paragraph: "Since 2013, I have continued to visit the site on a very frequent basis, usually around 4 times a week, to visit Mrs Hedges who had become a friend". A fair reading of this passage suggests that her business, even at a more informal and personal level, had completely ceased by 2013 or certainly the beginning of 2014.

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<sup>16</sup> The first is evident from his letter dated 2 February 2016, which he read out under oath at the Inquiry, and the second is taken from my record of his cross-examination.

<sup>17</sup> See Document 3 in which the evidence source for the mattress company entry is just given as "Gallings", whereas the main evidence source is Mr Stewart's statutory declaration because it comprises sworn evidence.

### **Summary of the timeline**

63. On the basis of this analysis I conclude that there was a material change of use from Use A to a new mixed use for Use A plus Use B in 1995. In the year 2000 the agricultural use ceased and there was a material change of use from Uses A + B to a new mixed use for Uses B + C + D. In 2002 there is evidence of a further material change of use from Uses B + C + D to a new mixed use for Uses B + C + D + E. Sometime before 2007 an additional use, F, was added to the mix and at some point, date unknown, use C ceased. In the absence of clear evidence as to dates it is appropriate to find that by 2007 the use of the site materially changed from Uses B + C + D + E to Uses B + D + E + F. Even if Use C continued beyond 2007 the addition of Use F would appear to have been material and the Appellant has not demonstrated that was not the case.
64. By April 2012 an additional use, G, was added to the mix and at some point, date unknown, use F ceased. In the absence of clear evidence as to dates it is again appropriate to find that by 2012 the use of the site materially changed from Uses B + D + E + F to Uses B + D + E + G. By September 2014 the mixed use of the appeal site appears to have changed to Uses B + D + E + H.
65. For these reasons it would appear that the mixed use of the appeal site has materially changed since the material date. Further I am satisfied that no particular mix of uses continued for 10 years prior to any material change. Upon detailed analysis I reject the submission made in closing for the Appellant that the components of the mixed use were constant from at least 2003-2013. Even if the Appellant were to assert that Use F was not material, the onus of proof not having been discharged, Use G appears to have commenced by April 2012 and the submitted evidence does not clearly show when Use E started in 2002, such that it has not been shown that the mix of Uses B + C + D + E subsisted for a period of 10-years without change. In the alternative even if I am wrong about Use G not being B8, Use F would interrupt any 10-year period. For this reason the last lawful use of the appeal site appears to be agriculture.

### **Is the evidence precise and unambiguous as required by the Guidance?**

66. I have already highlighted a number of instances where I have found the evidence submitted on behalf of the Appellant to be imprecise, ambiguous or, in the case of Mrs Overthrow, contradicted by other evidence that is before the Inquiry. With respect to all involved in the LDC submission, including those who drafted the various statutory declarations, and the appeals, I consider the overall standard of the submission to be poor. Whilst I would acknowledge that Mr Miller has tried to make some sense of it in his proof, that does not make up for the casual and confusing nature of the original LDC submission. In addition to the points already made I shall highlight other inconsistencies.
67. Mr Hedges says in his statutory declaration that production by Somerset Foods ceased completely in 2000. However Mrs Grigg says Somerset Foods moved to another site "*Around the year 2000...*" and her version of events is corroborated by the statutory declaration of Mr Rippon. It says: "*When Somerset Foods moved to a new manufacturing site around 2000, the Hyde Egg Farm site was still used to park/store the company vehicles*". I have already said that Mr Hedges was not a convincing witness at the Inquiry and by his own admission he cannot be relied upon in respect of dates. However this contradiction shows that his written evidence, including his declaration, also cannot be relied upon.
68. This was further illustrated in cross-examination when Mr Hedges sequence of moves around the site, from building 9 to 10, then the northern half of 5, to 4



and building 3 was shown to conflict with the statutory declarations of others. It also appears to conflict with his own declaration and proof. In this regard I accept the Council's closing submission that the Appellant cannot cherry pick evidence and rely on the evidence of some but not others to prove her case.

69. However in another respect I prefer the version given by Mr Hedges, who says that: "*During the time of business of Somerset Foods, all the sheds shown on the plan were used for keeping poultry and the sorting and packing of eggs for delivery*". In contrast Mr Rippon claims that: "*Throughout this time*", i.e. from 1993<sup>18</sup>, that he has stored his trailer tent, camper van and other vehicles on the hardstanding to the south of the Somerset Foods Unit and also in Unit 3.
70. Adopting the balance of probability I consider that Mr Rippon's claim is unlikely to be correct. It is clear that the area to the south of the Somerset Foods Unit was used for the parking of 6 or 7 lorries until well after 2000. That would have been a busy operational area because those lorries were hooked up to the electrical supply to keep the chiller units working overnight. The prospect of keeping things like a trailer tent in the middle of such an intensively used area seems improbable. Mr Rippon's claim that he used Unit 3 [building 5] from 1993 when the egg farm was operating directly conflicts with Mr Hedges' evidence and is less than probable. For these reasons I attach only limited weight to Mr Rippon's statutory declaration, although I acknowledge that in other respects it corroborates the existence of some of the uses on the site. The fact that Mr Rippon did not attend the Inquiry to answer such queries, despite it being said in advance that he would attend<sup>19</sup>, is not insignificant.
71. The upshot of this is that the only statutory declarations to which I am able to give substantial weight are those of Mrs Grigg, Mr Tudge, Mr Brittain and Mr Stewart. However none of those provide a complete picture of what has taken place on the appeal site over the period from 1995 or, more particularly, 2006. To illustrate the point, Mr Brittain says: "*I am not familiar in detail with all the businesses which have occupied the buildings on site...*", although he proceeds to give a fair summary, including referring to a Tree Surgeon that Mr Hedges does not mention. However it is not enough, even when taken together with other evidence, to show precisely and unambiguously what uses have taken place on the appeal site over the requisite period with which I am concerned.
72. Perhaps the most surprising omission is the complete absence of documents to support the claims made by Mr Hedges or any of those who have provided statutory declarations. I appreciate that the Inquiry was told that there are no tenancy agreements or rent books, but it would be surprising if there were no record of the monies received over such a long period. It is reasonable to think that tax returns would need to have been made, even if tax was not due, e.g. because the Appellant's income from all sources was below the tax threshold.
73. Among other things there appear to have been a number of limited companies that have operated from the appeal site over the years, including Normandy Windows Ltd, Paul's Promotions Ltd, Ponics Ltd and J and A Services Ltd, apart from Mr Hedges' own companies<sup>20</sup>. Mr Hedges' statutory declaration says that his father "*dissolved the company*" and so it might be that Somerset Foods was a limited company. It is also in prospect that companies such as Somerset Foods, Freshline Foods and/or Phoenix Group Travel would have required operator's licences to be based at the appeal site. Mr Hedges even produced a

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<sup>18</sup> The statutory declaration needs to be read as a whole and that is the only sensible way of reading it.

<sup>19</sup> Inquiry timetable form dated 6 May 2016, which also indicated that Mrs Overthrow would attend the Inquiry.

<sup>20</sup> EG Aluminium Ltd, and possibly LH Glass and Edge Group, although it is unclear if they were limited companies.

letter with regard to business rates at the Inquiry although no copy was put in and, amongst other things, the supporting statement with the grounds of appeal unambiguously says that a "*great mass*" of documents could be obtained. It must follow that written records or correspondence exist but the Appellant has chosen not to submit any of this to support her appeals.

74. Thus, even if I might be wrong about the materiality of certain uses on the appeal site over the requisite period, I consider that the evidence that has been submitted by the Appellant fails the test in the Guidance. The timeline that I have tried to pull together has been derived from an incomplete evidence base comprising a mix of unsworn letters and emails, together with almost passing references to uses in statutory declarations that, when taken together, present an incomplete and in some ways contradictory picture of the way in which the site has been used. Taken as a whole the Appellant's submission is neither precise nor unambiguous, and in my view that, in itself, is a sound reason to dismiss both Appeal B and ground (d) in Appeal A.

### **Overall conclusion on Appeal A, Ground (d) and Appeal B**

75. For the reasons I have discussed above I conclude that the Appellant has not discharged the onus of proof to show that the mixed use of the land as alleged in the corrected notice, commenced prior to the material date and continued. Although, despite the paucity of the submission, I have gone to some lengths to analyse the evolution of the site to explore the Appellant's contention that the requirements of the notice should not require a reversion to agriculture, that appears to be the last lawful use of the appeal site<sup>21</sup>. Reasons have been given for finding that no mix of uses was settled for a period of 10-years prior to the introduction of a material change in the mix. Moreover I have given reasons for finding that even if I take the submitted evidence in combination, it is not sufficiently precise and unambiguous to justify allowing Appeal B and ground (d) in Appeal A on the balance of probability. In concluding that they should fail I have taken account of all of the evidence that has been submitted.

### **Appeal A: Ground (g)**

76. In my agenda, circulated ahead of the Inquiry, I signalled that it would be extraordinary for me to agree to a 2-year period for compliance, let alone the 3-years that Mr Miller seeks to justify in his proof of evidence. Such periods would be tantamount to a temporary planning permission in circumstances where the Appellant has not even lodged ground (a). There is no residential component where such a lengthy period might be justified in an exceptional case to meet the personal needs of a family potentially facing homelessness.

77. The Supplemental Statement of Common Ground records that the 15 month period for compliance agreed between the parties would be long enough to allow for the preparation and determination of a planning application. Although a work programme has been outlined that suggests a longer period might be required, some of the assumptions underpinning that seem excessive, e.g. a total of 5 months consultation. I cannot accept that it would take 12 months to submit a planning application. Indeed, allowing for a more condensed period to prepare an application and 2 months for determination<sup>22</sup> there would appear to be time for an appeal against any refusal to be determined. Even if that

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<sup>21</sup> In passing it is worth noting that no ground (f) appeal was lodged but I have explored the position because of the effect of section 57(4) of the Act, having particular regard to the Appellant's submissions in closing.

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<sup>22</sup> Noting that the application subject of Appeal B appears to have been decided in an impressive 16 days.

proves to be optimistic the Council has the power to extend the compliance period under section 173A of the Act where any appeal decision is pending.

78. The other basis upon which the ground (g) is advanced is the need to find and relocate to suitable premises. However again 15 months appears to be a reasonable period in order to conduct the search and I see no sound basis why the respective tasks of pursuing the planning application/appeal and exploring the potential for alternative sites should not be undertaken contemporaneously. For these reasons the ground (g) fails beyond that which has been agreed.

## **Conclusion**

79. For reasons given above, and having regard to all other matters raised, I conclude that the appeals should be dismissed and I shall uphold the corrected and varied enforcement notice in Appeal A.

*Pete Drew*  
INSPECTOR

## Plan A

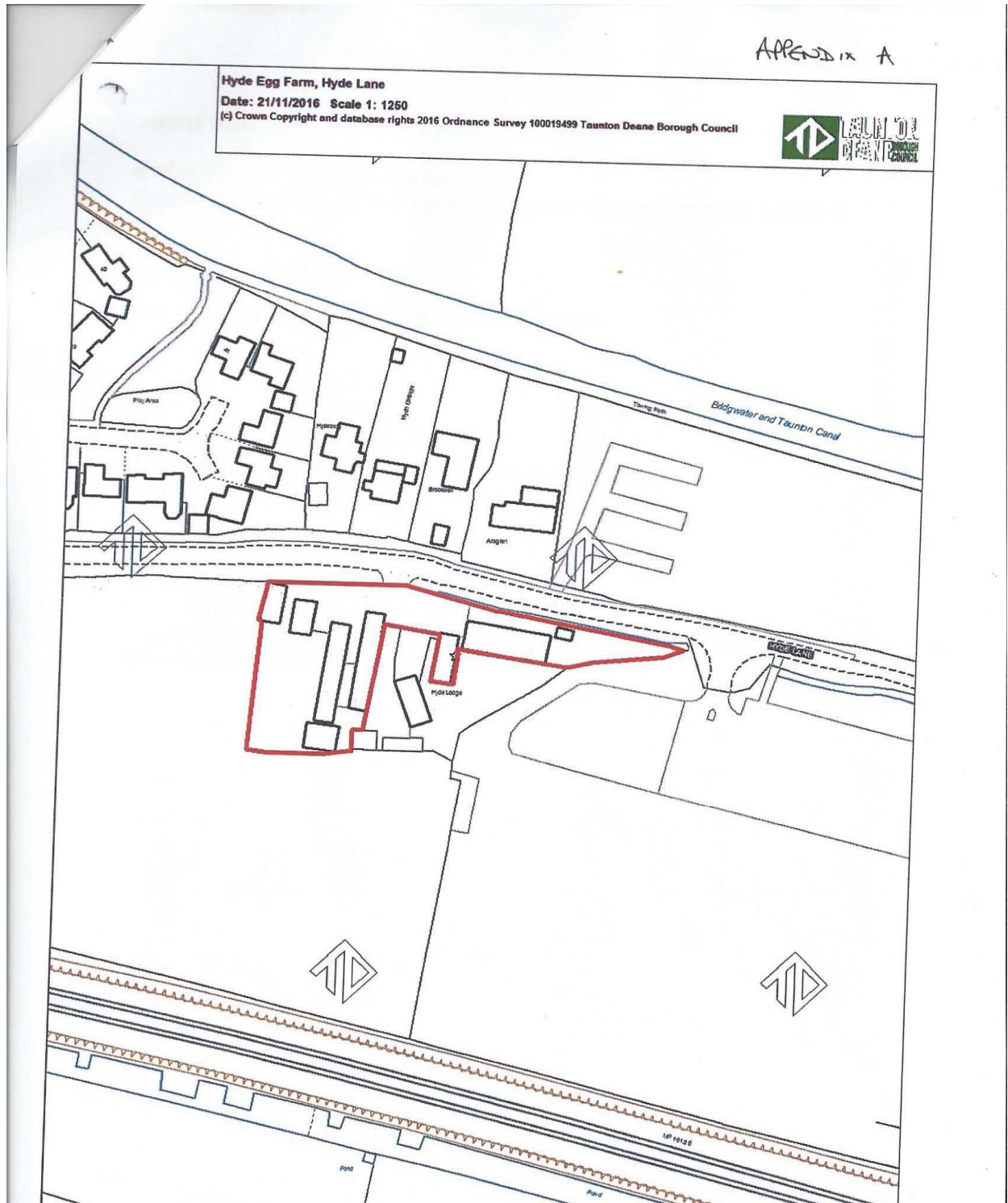
This is the plan referred to in my decision dated: 6 December 2016

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Hyde Egg Farm, Hyde Lane, Bathpool, Taunton, Somerset TA2 8BU

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Scale: Do not scale as original plan has been transferred which might cause variations.



## APPEARANCES

### FOR THE APPELLANT:

David Stephens

Solicitor, Battens Ltd.

He called:

Clive Miller BA (Hons), Dip  
TP, MBA (Dist)

Managing Director, Clive Miller & Associates Ltd.

Lee Hedges

Appellant's son.

Ian Ware

Proprietor Normandy Windows Ltd.

### FOR THE LOCAL PLANNING AUTHORITY:

Gavin Collett

Counsel.

He called:

Matthew Bale BA (Hons),  
MA, MRTPI

Area Planning Manager, Taunton Deane Borough  
Council.

Christopher Horan BREP

Planning Enforcement Contractor, Taunton  
Deane Borough Council.

### Documents submitted at the Inquiry

1. Supplemental Statement of Common Ground.
2. Bundle of 4 documents, which were submitted at the Inquiry by the Appellant, comprising appeal decision and 3 High Court judgements.
3. Analysis of evidence, which was submitted at the Inquiry by Mr Miller.
4. Analysis of evidence, which was submitted at the Inquiry by Mr Horan, which comprises of a good copy of Appendix 3 to his proof of evidence together with a sheet of A4 that is, in effect, a numbered key.
5. Planning permission 4/48/86/035, which was submitted at the Inquiry by the Council.
6. Copies of photographs, which were submitted at the Inquiry by the Council.
7. Closing submissions on behalf of the Council.
8. Closing submissions on behalf of the Appellant.