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

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

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

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

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.

The Planning Inspectorate

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

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.

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*.

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[1], 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[2]. On the balance of probability it would therefore appear that the notice included the reference to "*Office*" by mistake.

[1] The title to Class B1 of the Town and Country Planning (Use Classes) Order 1987 [the 1987 Order].
[2] 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*…"[3]. 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.

[3] Quotes taken from Appendix 2 to Mr Miller's proof of evidence.

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[4], 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

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

[4] 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[5] 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

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

[5] 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[6] other than agriculture. The planning permission granted in January 1987 [Document 5], whilst described as being a change of use[7], was actually for the: "*Retention of an agricultural building*…"[8]. 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

[6] For this purpose I focus on the land edged red on the plan at Plan A, which excludes the residential use.

[7] In Table 1 to Mr Horan's proof of evidence.
[8] 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*"[9]. 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

[9] Source of quote: paragraph ID: 17c-006-20140306.

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[10]. 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[11] 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[12], 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.

[10] 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

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.
[11] This includes EG Aluminium and Edge Group, as referred to in the letter from Somerset Locks and Security.
[12] 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[13], 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.

[13] 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[14], 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

[14] 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[15]; and, ii) he also told the Inquiry that building 10 was empty when he moved in[16]. 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[17] 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.

[15] 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.

[16] 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.
[17] 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[18], 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[19], 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[20]. 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

[18] The statutory declaration needs to be read as a whole and that is the only sensible way of reading it.
[19] Inquiry timetable form dated 6 May 2016, which also indicated that Mrs Overthrow would attend the Inquiry.
[20] 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[21]. 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[22] there would appear to be time for an appeal against any refusal to be determined. Even if that

[21] 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.

[22] 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

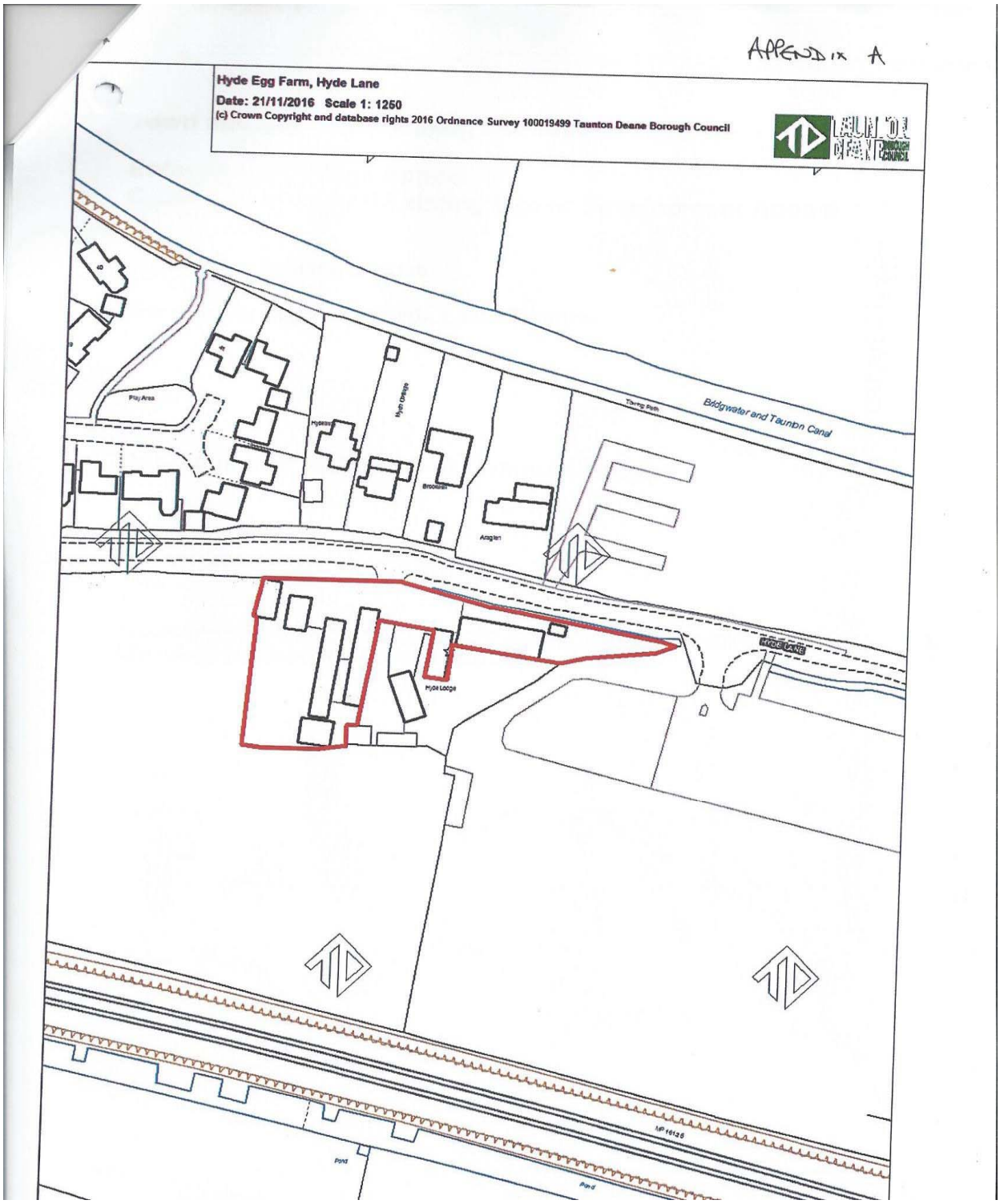
This is the plan referred to in my decision dated: 6 December 2016

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

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

Appeals A & B: APP/D3315/C/16/3144507 & APP/D3315/X/16/3149823

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.