APPEAL DECISIONS – 2 SEPTEMBER 2021

Site:

A - FIELD B,NEW ENGLAND, CURLAND COMMON ROAD, CURLAND, TAUNTON, TA3 5SB

B & C – LAND ADJACENT TO NEW ENGLAND, CURLAND.

D & E – LAND ADJACENT TO NEW ENGLAND, CURLAND.

F & G - LAND ADJACENT TO NEW ENGLAND, CURLAND.

Proposal:

A – Erection of 2 No. agricultural buildings (1 double storey barn, 1 single storey chicken shed) at Field B and formation of a private access drive, hard standing, alteration to access at Field B, New England, Curland (retention of part works already undertaken) (resubmission of 15/19/0004)

B & C – Alleged unauthorised use of land adjacent to New England, Curland.

D & E – Alleged unauthorised laying on the land of a track on land adjacent to New England, Curland.

F & G - Alleged unauthorised construction of a building on the land adjacent to New England, Curland.

Appeal number:

A – APP/W3330/W/20/3260067 (15/20/0001)

B & C – APP/W3330/C/20/3260068 (E/0105/15/19)

D & E – APP/W3330/C/20/3260071 (E/0184/15/20)

F & G – APP/W3330/C/20/3260073 (E/0185/15/20)

Decision:

A – Appeal Dismissed, Costs Refused

B & C – Appeal Dismissed, Enforcement Notice Upheld Corrected and Varied

D & E – Appeal Allowed, Enforcement Notice Quashed

F & G – Appeal Dismissed, Enforcement Notice Upheld

Original Decision:

A – Delegated Decision - Refused

The Planning Inspectorate

Appeal Decisions

Site visit made on 15 March 2021 **by J Moss BSc (Hons)**

DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11TH AUGUST 2021

Appeal A Ref: APP/W3330/W/20/3260067 Land at Field B, New England, Curland TA3 5SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr William Allen against the decision of Somerset West and Taunton Council.
- The application Ref 15/20/0001, dated 25 March 2020, was refused by notice dated 14 July 2020.
- The development proposed is the installation of an access track and yard, and the erection of two agricultural buildings. Building A – a double storey barn and Building B – a single storey chicken/sheep/cattle shed.

Appeal B and Appeal C Ref: APP/W3330/C/20/3260068 and 3260069 Land at New England, Curland, Taunton, Somerset TA3 5SB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr William Allen (Appeal B) and Mrs Patricia Allen (Appeal C) against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice, numbered E/0105/15/19, was issued on 21 August 2020 (Notice 1).
- The breach of planning control as alleged in the notice is: The mixed use of the land for agriculture and for the open storage of vehicles, vehicle parts, a caravan, building materials, UPVC windows, metal sheeting and other miscellaneous items not connected with the agricultural use of the land.
- The requirements of the notice are:
  1. Cease the use of the land for the open storage of vehicles, vehicle parts, a caravan, buildings, materials, UPVC windows, metal sheeting and other miscellaneous items not connected with the agricultural use of the land; and
  2. Remove from the land all vehicles, vehicle parts, a caravan, buildings, materials, UPVC windows, metal sheeting and other miscellaneous items not connected with the agricultural use of the land.
- The period for compliance with the requirements is two months from the date on which to the takes effect.
- Appeal B is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal C was proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed. Accordingly, Appeal B is proceeding only on the ground set out in section 174(2)(b), (c) and (g) of the Act.

Appeal D and Appeal E Ref: APP/W3330/C/20/3260071 and 3260072 Land at New England, Curland, Taunton, Somerset TA3 5SB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr William Allen (Appeal D) and Mrs Patricia Allen (Appeal E) against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice, numbered E/0105/15/19, was issued on 21 August 2020 (Notice 2).
- The breach of planning control as alleged in the notice is: the laying on the land of a track in the approximate position shown edged black and an area of hardstanding in the approximate position shown edged blue on the plan annexed to the notice.
- The requirements of the notice are:
  1. Break up the track and hard surfacing; and
  2. Remove from the land all materials and debris resulting from such breaking up.
- The period for compliance with the requirements is two months from the date on which the takes effect.
- Appeal D is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal E was proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed. Accordingly, Appeal E is proceeding only on the ground set out in section 174(2)(c) and (g) of the Act.

Appeal F and Appeal G Ref: APP/W3330/C/20/3260073 and 3260074 Land at New England, Curland, Taunton, Somerset TA3 5SB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr William Allen (Appeal F) and Mrs Patricia Allen (Appeal G) against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice, numbered E/0105/15/19, was issued on 21 August 2020 (Notice 3).
- The breach of planning control as alleged in the notice is: The construction of a building on the land in the approximate position shown edged green on the plan annexed to the notice.
- The requirements of the notice are:
  1. Demolish the building referred to in paragraph 3 of the notice; and
  2. Remove from the land all building materials and debris resulting from such demolition.
- The period for compliance with the requirements is two months from the date on which the takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: Appeal A is dismissed. Appeal B and Appeal C are dismissed and the enforcement notice is upheld as corrected and varied.
Appeal D and Appeal E are allowed and the enforcement notice is quashed. Appeal F and Appeal G are dismissed and the enforcement notice is upheld.

Application for costs

1. An application for costs was made by Mr William Allen against Somerset West and Taunton Council in respect of Appeal A. This application is the subject of a separate Decision.

Procedural Matters

2. Whilst the appeals were not all linked, they all relate to the same site and there are matters common to all seven appeals. In view of this, the appeals have been determined within this single decision letter. However, in view of the number of appeals, I have set out my decision in what I consider to be a logical order. I have firstly considered the legal grounds made on each of the appeals against the enforcement notices (grounds (b) and (c)), dealing with each notice and its related appeals in turn. I have then considered Appeal A followed by the ground (a) appeals and deemed planning applications made against Notice 1 and Notice 2. This is followed by my findings with regard to the remaining grounds of appeal (grounds (f) and (g)) against the enforcement notices.

3. Whilst I acknowledge the objections to developments that are the subject of the enforcement notices, I am not able to consider the planning merits of the alleged development in determining the legal grounds of appeal. Accordingly, many of the points raised are not relevant to the decisive matters in those legal grounds. Representations that relate to the planning merits have, however, been considered under the section 78 appeal, as well as the ground (a) appeals and the deemed planning applications.

4. Notice 1 includes an allegation of the laying of a track. The track is referred to by the Council in its evidence as a private way, which is a description used in The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). The appellants' initial case was that the works to lay a track do not require the benefit of planning permission. However, in their final comments the appellants have suggested that the works at the entrance to the site do not constitute a private way. I have, therefore, considered this matter as a ground (b) appeal under section 174(2)(b), which is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred.

5. Finally, the during the determination of the appeal a revision to the National Planning Policy Framework was published. The comments of the parties were, therefore, sought with regard to the National Planning Policy Framework (20 July 2021)(the Framework). I have had regard to all comments received in determining this appeal.

Appeal B and Appeal C - The notice

6. Notice 1 alleges a mixed use of the land for agriculture and for the open storage of vehicles, vehicle parts, a caravan, buildings, materials, UPVC windows, metal

sheeting and other miscellaneous items not connected with the agricultural use of the land.

7. Part 1 of the enforcement notice states that there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any **material** change in the use of any building or other land'.

8. Whilst the notice refers to 'a mixed use of the land' it does not allege that a **material change** in the use of the land has occurred. It therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.

9. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.

10. However, having regard to the appellants' case and their appeals under grounds (c) and (b), they have clearly understood that the allegation was intended to refer to a **material change of use**. As such, I am satisfied that a correction of the notice to include reference to a material change of use would not cause injustice in this case.

11. In addition to this, it is common ground that the normal use of the land is for agriculture. Indeed, this is an element of the alleged mixed use. As such, a correction to include reference in the notice to an agricultural use from which the material change of use has been made would again not cause injustice to any party.

<u>Appeal B and Appeal C</u> - Grounds (b) and (c)

12. The appeals on ground (b) are that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. The ground (c) appeals are that the matters alleged in the notice do not constitute a breach of planning control. In both cases the test of the evidence is on the balance of probability and the burden of proof is on the appellants.

Ground (b)

13. Notice 1, as I intend to correct it, alleges a material change of use of the land from a use for agriculture to a mixed use for agriculture and open storage. A mixed use is one where two or more primary uses occur within a single planning unit, but where it is not possible to say that one is incidental to the other or where, as a matter of fact and degree, the uses are not physically and/or functionally separated.

14. I am satisfied that the entirety of the land outlined in red on the plan attached to the notice may properly be regarded as a single unit of occupation. The southern part of the site was, however, where the items listed in the enforcement notice had been placed. In addition to this, I noted that some means of enclosure have also been erected on the land. Notwithstanding this, I noted the size of the appeal site, which is not extensive, and the extent of

the area now occupied by the items listed in the notice, which appears to be greater than that shown in the photographs attached to the Council's evidence. All of this considered, I am satisfied that, as a matter of fact and degree, the land outlined in red is the planning unit in this case.

15. With regard to the uses alleged within this planning unit, one is for 'open storage of vehicles, vehicle parts, a caravan, buildings, materials, UPVC windows, metal sheeting and other miscellaneous items not connected with the agricultural use of the land'. In their appeal statements the appellants confirm and list items that are on the land, these include most of those referred to in the enforcement notice. As such, and having observed these items on site, I am satisfied that an open storage use has taken place on the land.

16. As for the other use alleged, I observed that the stored items were amongst new features that included two enclosed poultry runs, one of which was occupied at the time of my visit. Furthermore, the northern portion of the site had also been divided with stock proof fencing ready for the keeping of animals. Indeed, there is no dispute that the lawful use of the site is for agriculture and that this use continues.

17. Having regard to the above, I am satisfied that both an agricultural and a storage use have taken place alongside each other within the planning unit (i.e. the appeal site). Whilst the appellant suggests the storage use is part of the lawful agricultural use of the site, these uses are distinctly different in character and cannot be regarded as the same use. They are two primary uses of the land. Furthermore, having observed the interaction of the storage use with the agricultural use on site, I am satisfied that these uses are not physically and/or functionally separated.

18. What is in dispute between the parties is whether or not these uses form a mixed use of the site, as alleged in the notice. The appellants state that the items are on the site for the purposes of agriculture. In this regard it is the appellants' case that the storage use is incidental to the agricultural use, and not part of a mixed use.

19. The appellants indicate that items stored on the land are to allow the expansion and running of their small holding. They suggest that building materials are being stored on site (including recycled materials such as a dismantled agricultural building) in anticipation of the grant of planning permission for the erection of buildings on the site. Indeed, I observed the dismantled building, lengths of timber, timber pallets, concrete blocks and corrugated metal sheets. I understand that this material might have a use in the construction of a building on the site in the future and that the building itself might have an agricultural use. However, I am not persuaded that the storage of building materials on the site serves the everyday agricultural activities that take place within the site.

20. Notwithstanding my findings above, as well as the open storage of building materials and metal sheeting, the allegation specifically includes UPVC windows in the list of items stored. The appellants maintain that such an item has not ever been stored on the site. Whilst I did not see any UPVC framed window units on my visit, I acknowledge that this does not mean that such an

item has never been stored on the land. Nevertheless, neither the Council nor interested parties have provided any further evidence to contradict the appellants' claim in this regard. For example, photographs from the officer's site visits showing the UPVC windows in question might have assisted. Whilst the storage of such items is not likely to have been ancillary to the agricultural use of the site (for

the reasons given above), I am not satisfied that the storage of UPVC windows has on the balance of probability occurred.

21. With regard to other items stored, I acknowledge that some items might well be used for certain agricultural activities on the site. In this regard the appellants point to machinery, vehicles and equipment that is currently used for moving other items of equipment, feed and animals. Provided these items are used in connection with or to facilitate the agricultural activities on the site, I am satisfied that the use of the land for the storage of these items would be incidental to the agricultural activities. Indeed, the tail end of the allegation in the notice (i.e. '........not connected with the agricultural use of the land') is a qualification for the items listed in the notice and would, therefore, allow for the storage of items, such as machinery, vehicles and equipment, that are connected with the agricultural use of the land.

22. Notwithstanding this, the appellants refer to their vehicle repair business and suggest that certain items that they say are at the end of their life, have been brought onto the site with the view to repairing them in the future. I acknowledge that a typical farm might well have items stored that were once used on the farm, but are no longer useful or are in need of repair. However, the appellants' evidence suggests that such items (i.e. items that would have otherwise been discarded as waste) have been brought onto the site and are, therefore, stored on the land whilst they are awaiting repair. These items cannot, in my judgement, be regarded as facilitating the agricultural activities on the site. In these circumstances the site simply provides a place for these items to be stored before they are repaired and brought back into beneficial use. Indeed, I observed a large tractor being stored within what is described as a building in Notice 3. There are no doors or obvious openings in the building and, as such, there would be some difficulty in moving the tractor from the building. Accordingly, I consider it unlikely that it is in active use on the site.

23. With regard to the caravan, the Council acknowledge that a material change of use would not have occurred if it had been used as a rest facility in connection with the agricultural use. However, the Council suggest that at the time of its visits to the site access to the caravan was difficult and that it did not appear to be in regular use. Nevertheless, the appellants describe the caravan as a welfare unit and maintain that it provides toilet facilities and a place to take refreshments whilst they are working on the land. I observed the caravan on site and noted that, whilst its condition was poor, it was still capable of providing some form of shelter. All of the above considered, I am satisfied that the storage of a caravan has not on the balance of probability occurred.

24. In summary, I have found that the use of the land to store a caravan and UPVC windows has not on the balance of probability occurred. Furthermore, I am satisfied that the storage of some items on the land can be regarded as

being incidental to the agricultural use of the site. I am not, however, satisfied that the same could be said for the storage of all items on the land, when considered as a matter of fact and degree. For this reason I conclude that, subject to the variation of the allegation and requirements of the notice to remove reference to the caravan and UPVC windows, the material change of use of the land from agriculture to a mixed use for agriculture and open storage has on the balance of probability occurred. Accordingly, the ground (b) appeals fail insofar as they relate to a mixed use for agriculture and open storage of vehicles, vehicle parts, building materials, metal sheeting and other miscellaneous items not connected with the agricultural use of the land.

Ground (c)

25. As I note earlier in this decision, section 55(1) of the 1990 Act defines development as including the making of any material change in the use of any land. Furthermore, section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land.

26. The use alleged in the notice is a mixed use for agriculture and open storage. Having the benefit of aerial images of the site prior to the use commencing, and noting the character of the surrounding agricultural land, I can see that the mixed use has resulted in a definable change in the character of the appeal site. In particular, the storage element of the mixed use is at odds with the character of the site in its former agricultural use. For this reason, it is more likely than not that the change in the use of the land from agriculture to the mixed use alleged is material. The appellants have given me no reason to conclude otherwise. Accordingly, I find that the material change in the use of the appeal site is development for the purposes of section 55(1) of the 1990 Act.

27. I have not been made aware of any reason why the material change of use of the land in question would not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act, and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the material change of use alleged in the enforcement notice, as I intend to correct it, constitutes a breach of planning control. For this reason the ground (c) appeals must fail.

Appeal D and Appeal E – Grounds (b) and (c)

28. I set out in the section above an explanation of the ground (b) and (c) appeals, as well as the relevant test of the evidence and the burden of proof. Notice 2 alleges the laying of a track and an area of hardstanding. The enforcement notice plan indicates that the track runs from an existing entrance to the site off the adjoining highway, towards the southern part of the site. The hard surfaced area is indicated on the enforcement notice plan as being at the southern end of the site.

Ground (b) - The laying of a track

29. I have noted in the procedural matters above that the appellants' position in their later appeal submissions is that the works undertaken at the entrance to the site do not constitute the formation of a private way. The appellants describe the works at the entrance to the site as a simple operation and

    suggest that the ground level has not been raised by a sufficient degree to render it an engineering operation. This part of the appellants' case was made following the Council's appeal statement, which refers to the laying of a track **and** the raising of ground levels at the site entrance.

30. At the site visit I observed that an area close to the site entrance had been hard surfaced with loose gravel or aggregate, as shown in the photographs provided. I also observed a raised bund either side of the hard surfaced area. Both parties have referred to engineering operations in their evidence, which might well be the raised bunds I observed. However, there is no reference in the enforcement notice to engineering operations or to the changing of ground levels. The notice only alleges the laying of a track. Accordingly, whatever the parties' position is with regard to whether or not works at the site entrance can be regarded as an engineering operation, this is not a matter that is before me to consider. My

consideration is confined only to the laying of a track and not to any other works undertaken at the site entrance.

31. With regard to the appellants' point, that the works do not constitute the formation of a private way, as noted above I observed a hard surfaced area that runs in a strip from the site entrance towards the southern part of the site. It is mostly the width of a large vehicle and has clearly been used for vehicular access to the southern part of the site from the site entrance. Whilst at the site entrance the hard surfaced area is wide enough for two domestic size vehicles to pass (or for one vehicle to park and another to pass it), the hard surfaced area has the character of a track. For these reasons, I am satisfied that the development described in the notice as the laying of a track in the approximate position shown edged black on the plan attached to the notice has, on the balance of probability, occurred. The ground (b) appeals fail in so far as they relate to the allegation of the laying of a track.

Ground (c) – the laying of a track and hardstanding

32. It was the appellants initial position that the track and hardstanding were permitted by the Order, although the relevant section of the Order was not specified. Nevertheless, it is common ground that both classes A[1] and B[2] of Part 6 (agricultural and forestry), Article 3 of Schedule 2 of the Order permit the formation or provision of a private way and the provision of a hard surface on agricultural land comprised in an agricultural unit where the development is reasonably necessary for the purposes of agriculture within the unit. Where development is permitted by the order, that permission is granted following the completion of the development.

33. Whilst there is no dispute that the appeal site is agricultural land comprised in an agricultural unit, it is the Council's case that the laying of track and hardstanding were not permitted by the Order as they are not development that is reasonably necessary for the purposes of agriculture within the unit. In this regard the Council suggests that, at the time the works were undertaken, the appellants did not have an agricultural trade or business and that the agricultural activity was a hobby.

34. Although not defined in the Order, the meaning of agriculture should be taken from section 336(1) of the 1990 Act. This includes such activities as the breeding and keeping of livestock and the use of land as grazing land or meadow land. The appellants maintain that they farm the appeal site and third parties have confirmed that the land is used for the keeping of chickens and sheep. Indeed, I observed an occupied poultry run on the site at my site visit. Furthermore, in their evidence the appellants have referred to a letter from the Council dated 13 August 2019, which follows a visit to the site by the Council's enforcement officer and refers to a lawful agricultural use of the land, as well as a hard standing and track.

35. Having regard to the above, it is in my judgement more likely than not that at the time the works to lay the track and hardstanding were undertaken, the appeal site was being used for agriculture and that this use continues. Whilst my conclusions with regard to the ground (b) appeals on Appeal B and Appeal C are that there has on the balance of probability been a mixed use of the land, the mixed use includes a use for agriculture. That one of the appellants is a mechanic and tyre fitter

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[1] Class A - Agricultural development on units of 5 hectares or more.

[2] Class B - Agricultural development on units of less than 5 hectares.

operating a tyre service facility elsewhere does not alter my conclusion with regard to agriculture taking place within the agricultural unit.

36. When land is used for agricultural activities, such as those described above, it would not be unusual for vehicles, trailers or other such machinery to be brought on to the site and used in association with those activities, as described in the appellants' evidence. In addition to this, the appellants also describe the conditions on site to be difficult prior to the laying of the track and hardstanding. Indeed, I noted the gradient of the site and the ground conditions during my site visit. Accordingly, I have no reason to dispute that access to the site and parking on the site with any type of vehicle would be difficult without the hard surfaced track and hard standing area.

37. I acknowledge that there might have been a low level of agricultural activity on the site (described by the Council as a hobby) at the time of the works being undertaken. Nevertheless, I can see that there would have been, and continues to be, a reasonable need for a hard surfaced track and hard surfaced area to safely bring vehicles and machinery onto the site in association with agricultural activity taking place on the land. In my judgement, therefore, the development consisting of the laying of a track and hardstanding would have been reasonably necessary for the purposes of agriculture within the unit at the time of their construction.

38. The parties dispute whether the works to lay the track and hardstanding fall within Class A or Class B of Part 6, Article 3 of Schedule 2 of the Order. It is the appellants' case that the track benefits from the planning permission granted under Class A. They suggest that, whilst the appeal site is clearly not more than 5 hectares, it is part of a wider agricultural unit of more than 5 hectares. In this regard the appellants state that their agricultural unit comprises 2 hectares of land that they own (the appeal site and a parcel of land to the south), together with a further 3.5 hectares on which they have a 15 year lease, and an intention to buy a further 3 to 5 hectares. In support of their case the appellants point to the August 2019 letter from the Council, which states that 'the hard standing and track and small bunds adjacent to the track are considered permitted development and do not required planning permission'.

39. On the other hand, the Council state that at the time the hard standing and track were constructed, the appellants had not obtained the 15 year lease on the 3.5 hectares of land referred to above and, as such, the agricultural unit was less than 5 hectares. In their view, the relevant Class of Part 6 of the Order is B and not A.

40. The Council's case in this regard is corroborated by the appellants' initial evidence in which they refer to the August 2019 letter from the Council's enforcement officer and state that at this time they 'only had the 2 hectares of land'[3]. The letter refers to both a hard standing and a track. There is no suggestion that the track and hardstanding that are subject of the notice are not those referred to in the letter. It is, therefore, probable that at the time the track and hardstanding were constructed, the agricultural unit was less than 5 hectares. This is important for a number of reasons.

41. Firstly, the conditions of the permission granted under Class B for the provision of a private way on the appeal site do not require the developer to follow the prior approval process before beginning the development, contrary to the Council's

[3] Page 2 of the appellants initial appeal statement.

suggestion. Unlike the prior approval condition[4] of the permission granted under Class A, the prior approval condition[5] of the permission granted by Class B for the provision of a private way would not apply in this case as the appeal site is not within an area identified in Article 2(4) of Part 2 Schedule 1 of the Order. Furthermore, there is no prior approval condition for the permission granted under Class B for the provision of a hard surface.

42. There is no dispute that the works to lay the track and hardstanding would not fall within any of the criteria set out in Class B.1. of Part 6, Article 3 of Schedule 2 of the Order. In particular, even if the appeal site were considered to be a separate parcel of land forming part of the appellants' agricultural unit, the development consisting of the track and hardstanding would not fall foul of Class B.1. (a)[6] as there is no dispute that the appeal site is more than 0.4 hectares in area.

43. Whether or not Class B of Part 6, Schedule 2 of the Order permits development consisting of engineering operations is not relevant to the appeals as this is not a matter alleged in the enforcement notice.

44. Having regard to all of the above, I am satisfied that on the balance of probability the development consisting of laying of a track and hardstanding is permitted by Class B, of Part 3, Article 3, Schedule 2 of the Order. As such, the development does not constitute a breach of planning control. For this reason the ground (c) appeals succeed and Notice 2 will be quashed. Ground (a) and (g) for Appeal D and Ground (g) for Appeal E do not, therefore, fall to be considered.

Appeal F and Appeal G - Ground (b)

45. In order to succeed, the appellants must demonstrate that on the balance of probability the matters stated in the enforcement notice have not occurred. Notice 3 alleges the construction of a building. To use a neutral term I have referred to the alleged building as a unit.

46. It is the appellants' case that the unit that is the subject of this appeal is a temporary sheeted or covered area and not a building. In its evidence the Council point to the definition of a building provided in section 336 of the 1990 Act, which includes 'any structure or erection'. The Council also refer to the case of *Save Wooley Valley Action Group Ltd v Bath and North East Somerset Council (2012).* The appellants have referred to the case of *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2) [2000] EWCA Civ 5569.*

47. Both of the above cases refer to the three primary factors that have been identified in settled caselaw (*Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385*) as decisive of what is a building. These are: (1) that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; (2) there would be physical attachment to the ground; and (3) it would cause a physical change of some permanence. None of the factors are necessarily decisive.

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[4] Class A.2.(2) of Part 6, Article 3 of Schedule 2 of the Order.

[5] Class B.5.(2) of Part 6, Article 3 of Schedule 2 of the Order.

[6] Class B.1.(a) of Part 6, Article 3 of Schedule 2 of the Order - Development is not permitted by Class B if - (a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 0.4 hectares in area.

48. With regard to the first of the above-mentioned factors, whilst the unit has a varied height that steps down in its rear section, it has a fairly low profile. Its size is modest within the wider context of the site, but it is comparable to that of a workshop or shed often found on such sites or field parcels of this size. In terms of construction, the unit does not have any of the usual window or door openings one would usually find on a building. I also note the appellants' suggestion that the unit only provides a covering for valuable items within. However, I saw that the unit has a structure provided by an internal timber frame. I could see that this structure provides its own support for the external materials of the unit, which consist mainly of solid side elevations and a solid roof covering in part, overlain with a flexible tarpaulin type sheeting.

49. The unit provides a fairly solid internal space for storage. Although the means of its construction appears organic, and is a response to the need to provide cover for items on site, there is no suggestion that it was prefabricated off site and brought to the site in whole or in sections.

50. Whilst I could see no means of physical attachment to the ground, the unit is fixed in position partly by external additions of timber pallets and other side coverings that add weight to the unit and secure the flexible roof covering. This does not in my view give the unit a temporary appearance, rather a solid yet unplanned appearance that has caused a physical change of some permanence to the site.

51. Whilst the size of the unit may not compare to that considered in the *Skerritts* case, the character of the unit before me is different to that of a marquee,

which in most cases has a lightweight appearance and is designed to be dismantled and moved to be re-erected elsewhere.

52. Having regard to the unit's means of construction, degree of permanence, character and size, I find that it is, as a matter of fact and degree, a building that falls within the meaning of development in section 55(1) of the 1990 Act. For this reason I conclude that on the balance of probability the construction of a building on the land has occurred. Accordingly, the ground (b) appeals fail.

Appeal A - The appeal against the refusal of planning permission

Main Issues

53. Although not referred to in the reasons for refusal, in its appeal statement the Council have brought to my attention an additional matter relating to the effect of the development on protected species. The Council state that the appeal site is located within the drainage catchment of the Somerset Levels and Moors Special Protection Area (SPA) and RAMSAR site. It says that, in light of recent caselaw, referred to as the 'Dutch N' case, it is necessary for a greater degree of scrutiny of the effect of development on the protected site. The appellant has provided a comprehensive response to this in his final comments on the appeal. Accordingly, I have included this matter as a main issue in this case.

54. Having regard to the above, the main issues in this case are:

- Whether or not the location of the development is acceptable, having regard to local planning policy on the location of such development;

- The effect of the proposed development on the character and appearance of the site and surrounding area, with particular regard to the site's location adjacent to the Blackdown Hills Area of Outstanding Natural Beauty (AONB);
- The effect of the proposed development on surface water drainage; and
- The effect of the development on protected species and habitats.

Reasons

55. The proposal is for an access track and yard, and the erection of two agricultural buildings, one of which is described as a double storey barn (labelled building A on the submitted plans) for a tractor and lorry store with a mezzanine floor described as a hay loft. A second building is described as a single storey chicken/sheep/cattle shed (labelled building B).

Location

56. Part 4 a. of Policy DM2 (Development in the Countryside) of the Adopted Taunton Deane Core Strategy 2011 – 2028 dated September 2012 (TDCS) supports agricultural development that is outside of the defined settlement limits, provided that any buildings are commensurate with the role and function of the agricultural unit. Although the appellant refers to nearby development, he does not suggest that the site is within any defined settlement limits for the purposes of this Policy.

57. The appellant has provided information with regard to the land comprised in his agricultural unit, which includes 2 hectares of land he owns together with a further 3.5 hectares of land on a 15 year lease. Whilst he states he has an intention to obtain a further 3 to 5 hectares, I have not been advised that this land is within the agricultural unit at present. The unit therefore comprises some 5.5 hectares at present.

58. In order for the development to comply with policy DM2, it is important to understand the role and function of the agricultural unit on which the development is to be located. Whilst there is evidence of the use of the appeal site for the keeping of chickens and sheep, there is little information on current stock numbers and how the unit as a whole functions at present. Nevertheless, the document entitled 'Cost Information and Projections' provides a forecast of how the appellant proposes to expand his enterprise to include the keeping of 120 sheep, 8 milking cows and 750 chickens.

59. Having regard to the above, whilst I cannot be satisfied that the existing agricultural activities necessitate the development proposed, the same cannot be said for the proposed expansion of the enterprise within the existing unit. The evidence suggests that the quantum of development would be necessary for the appellant to expand his enterprise as proposed. Internal areas would be required to keep sick or vulnerable cattle or sheep. Secure dry storage would also be required for hay and feed storage, as well as the storage of machinery used on the unit. An area for workers to rest and take shelter would also be reasonable, along with a safe and durable yard area and access through the site.

60. I acknowledge the comprehensive representations from interested parties, in particular those that cast doubt on the appellant's ability to expand the enterprise as suggested. There is, nevertheless, an intention to grow the agricultural enterprise in some form and I note that the appellant has already invested in this. Any further development necessary to expand the enterprise as suggested would, in all likelihood, be subject to further scrutiny.

61. Having regard to the above, I am satisfied that the quantum of development proposed would, on balance, be commensurate with the role and function of the agricultural unit in this case, having regard to the intentions for the unit. For these reasons I find that the location of the development would be acceptable and that it accords with Part 4 a. of Policy DM2 of the TDCS.

Character and Appearance

62. The appeal site is a linear agricultural field parcel running north to south. The site slopes west to east; its western boundary is shared with the adjoining highway and its eastern boundary is shared with a watercourse. The appeal site contains areas of hard surfacing, a building and stored items, all of which have been referred to earlier in this decision. Due to the gradient of the site and the elevated level of the adjoining highway, there are almost uninterrupted views from the highway over the appeal site.

63. Whilst the site is south of a settlement, it is within a rural location characterised by field parcels, predominantly bound by hedgerow with occasional dwellings and agricultural type buildings. There is a detached building in the field parcel immediately to the south of the site. The highway adjoining the appeal site provides access to a public right of way (PROW) that starts just south of the site. The start of the PROW also marks the boundary of the AONB which continues to the south and west of the site.

64. The scheme proposes the construction of two buildings positioned in an 'L' shape at the southern end of the site, together with an associated yard area and access track to the buildings. Due to the gradient of the site, the plans indicate the need for substantial engineering works to almost level the site in the location of the proposed buildings. Building B would sit at the lowest level of this area and its ridge height is shown to fall level with, or just below the adjoining highway. Building B would have a two storey height and, whilst it would appear single storey when viewed from the adjoining highway, the floor level at first floor would be almost level with the highway.

65. Due to the elevated level of the highway, the building, the finished height of which would itself be elevated above the highway, would appear as a particularly prominent structure within the immediate vicinity of the site. Its close proximity to the western boundary of the site would exacerbate its prominence further. In addition, it is likely that the building's full (two storey) height and the extent of excavations necessary will be appreciated from the public vantage points along the highway. This elevated position would be at odds with other development I observed to the north and south of the site. The slab levels of nearby buildings were set low within the site and in a position set back from the highway.

66. When building A is considered together with building B, the proposed engineering works, the area of new hard surfacing and the proposed access track, the scheme would result in a substantial amount of development in a particularly narrow and confined parcel of land. The extent of development proposed is not comparable to the smaller pockets of development I observed in the close vicinity. In my judgement the development would, therefore, be at odds with the grain of development in the area, and would result in harm to the character and appearance of the site and its setting. I am not persuaded that this harm would be overcome with the landscaping proposed on site, particularly having regard to the extent of new development proposed.

67. Having viewed the site from within the AONB (from the PROW), whilst views of building B and the proposed yard would be screened by landscape features and the existing building to the south of the site, in my judgement building A would be prominent. Although the proposed development would form a cluster with the building on the adjoining site, it would add substantially to the built form within the setting of the AONB. Furthermore, the lighting that is likely to be necessary for such an agricultural yard area would add to the visual intrusion of the development into the landscape, particularly as it would introduce new sources of light where these are currently limited. The development would, therefore, cause harm to the character and setting of the AONB in this location and would, therefore, conflict with the purpose of the designation, to conserve and enhance the natural beauty of the area.

68. Having regard to the above, the proposed development would, in my judgement, have an adverse effect on the character and appearance of the site and surrounding area, in particular the AONB. The development would have a harmful effect on the landscape, and would neither conserve nor enhance the natural environment. The development would not, therefore, accord with Policies DM1 (General Requirements) and CP8 (Environment) of the TDCS. Furthermore, the development would also fail to comply with part 8 of Policy DM2 of the TDCS as it would be of a scale, design and layout that is not compatible with the rural character of the area.

69. In accordance with paragraph 176 of the Framework, I must give great weight to the conservation (and enhancement) of the landscape and scenic beauty of the AONB. Accordingly, in view of the harm I have identified with regard to the character and setting of the AONB, the proposed development would also conflict with paragraph 176 of the Framework, as well as the policies contained within the Blackdown Hills Area of Outstanding Natural Beauty Management Plan 2019 – 2024, which requires development to conserve and enhance the natural beauty and special qualities of the AONB.

70. I have had regard to the examples of other similar development that have been brought to my attention and I was able to view one of these on my site visit[7]. Whilst these examples are noted, I have not been provided with the full circumstances that resulted in their construction, including the details of any relevant planning applications. As such, I am unable to make an informed comparison between the development in those cases and that subject of this appeal. Nevertheless, in the case that is before me I have identified harm in respect of the main issues, having considered the particular circumstances of the case.

Flood Risk

71. Policy CP8 of the TDCS states that 'development sites will need to ensure that flood risk is not exacerbated from increased surface water flows by ensuring that existing greenfield rates and volumes are not increased off-site'. It suggests that this should be achieved through the adoption of multi-functional sustainable drainage systems (SUDS). These requirements are supported by Policy CP1 (Climate Change) that requires the design and construction of development to reduce the effects of flooding in the interests of addressing climate change.

72. The Council say that surface water from the site currently flows into the adjoining watercourse, which runs through the village of Curland and then feeds into a river

[7] The southernmost existing farm unit circled in yellow on the aerial photograph at the appellant's appendix E.

network. It acknowledges that the appeal site is not in an area where there is a high risk of flooding (the Council say that it is in flood zone 1), but suggest that surface water discharge from the development would add to the 'loading on the stream and on the downstream watercourses'.

73. The development proposes new areas of hard surfacing and new buildings that would be less porous than the existing surfacing on site. As such, it is likely that the development would result in a greater volume of surface water running off the site and into the watercourse. In this regard, paragraph 167 of the Framework identifies a need to ensure that development does not increase flood risk elsewhere. Whilst I note the Council's objections to the development in this regard, it has not suggested that the areas downstream, including the village of Curland, are at risk of flooding such that the development would increase any existing risk. Neither has it been suggested that the development would fall within one of the categories identified in footnote 55 of the Framework where a site-specific flood risk assessment should accompany applications.

74. In view of the above, I have considered the use of appropriate drainage conditions requiring all non-permeable areas to drain to SUDS, as suggested by the appellant. However, I note the Council's evidence with regard to the ground conditions and the possible use or effectiveness of SUDS on the site. As the appellant has not provided an assessment that would alleviate these concerns, I cannot be certain that the use of SUDS would effectively mitigate the effect of the development with regard to surface water run-off and that the development would not increase flood risk elsewhere. Without the necessary site specific assessment, I am unable to conclude that the development would have an acceptable effect with regard to surface water drainage and that it would comply with TDCS policies CP1 and CP8, or with the Framework.

Protected Species and Habitats

75. There is no dispute that the appeal site is within the catchment area of the SPA and RAMSAR site. For the purposes of the Framework, these fall within the definition of habitat sites. The SPA is designated for its international waterbird communities, whilst the RAMSAR Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches, which is shared as a designated feature of the underpinning Sites of Special Scientific Interest[8].

76. The Council have provided a letter from Natural England, which sets out the implications for recent caselaw. This prompted its representations with regard to the implications of this for the site and the development proposed. In short, Natural England consider the interest features of the SPA and RAMSAR site as 'unfavourable, or at risk from the effects of eutrophication caused by excessive phosphates'[9]. They indicate that, in such circumstances, the possibility of authorising activities which may subsequently compromise the ability to restore the site to favourable condition and achieve the conservation objectives is 'necessarily limited'. It is suggested that the 'Dutch N' ruling has resulted in a

[8] Taken from the Natural England letter dated 17 August 2020 and attached to the Council's appeal statement.
[9] Natural England letter dated 17 August 2020.

need for greater scrutiny of plans or projects that will result in increased nutrient loads that may have an effect on protected European Sites[10].

77. The Council says that the development would result in an intensification of agricultural activity, in particular an increase in the number of animals kept on the site. They suggest, therefore, that there is a potential for an increase in pollutants (phosphates and ammonia) entering the watercourse that flows through the protected sites. It is as a result of the recent advice from Natural England that the Council suggest I undertake an appropriate assessment in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations), but that further information is required in order for the assessment to be undertaken.

78. In response to this, I note the appellant's reference to the habitats regulations assessment undertaken by the Council in relation to the TDCS[11]. That the Council has fulfilled its duty under Regulation 63 with regard to the TDCS does not remove the same duty in relation to individual proposed developments, even if they would comply with policies within the TDSC.

79. I acknowledge the appellant's position, that the duty under Regulation 63 falls to the Council alone. However, the advice contained in the Natural England letter represents a material change to the background evidence considered by the Council when it would have undertaken its initial assessment as to the likelihood of any significant effect of the development on the National Sites Network (NSN)[12]. This is acknowledged by the appellant[13]. For this reason it is necessary for me to exercise the duty under Regulation 63, having regard to the most up to date information provided. Furthermore, for the purposes of determining this appeal, I am the competent authority.

80. Considering first the likelihood of the development having a significant effect on the NSN, the appellant suggests the effect would be neutral as it would not intensify the use of the site; he says it would merely support the current level of use. However, this contradicts the appellant's case with regard to his intentions for the enterprise to grow[14]. The development proposes an internal area for the keeping of animals and the appellant forecasts a growth in the enterprise to accommodate up to 750 chickens, 120 sheep and 8 milking cows[15]. Whilst I acknowledge that not all animals will be kept on the appeal site, the appellant indicates that the new buildings are required for an intended use for the keeping of livestock[16].

81. Having regard to the above, it is likely that the development would result in an increased number of animals being kept at the appeal site. For this reason, and having particular regard to the up to date advice of Natural England, it is also likely that the development would have a significant effect on the NSN. In these circumstances an appropriate assessment (AA) is required in accordance with Regulation 63(1) of the Habitats Regulations.

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[10] Now referred to as the National Sites Network following the Conservation of Habitats and Species (Amendment)(EU Exit) Regulations 2019.

[11] Extract of the document entitled the Taunton Deane Core Strategy Somerset Levels and Moors Habitat Regulations Assessment May 2011.

[12] The initial 'screening' in accordance with Regulation 63(1)(a) of the Habitat Regulations.

[13] Section 4 of the appellant's document entitled 'Additional Appeal Notes'.

[14] As set out in the appellant's 'Cost Information and Projections' document.

[15] As set out in the 'Cost Information and Projections' document.

[16] Conclusion in the design and access statement.

82. I note the requirements of Regulation 63(2), that a person applying for permission must provide such information as the competent authority may reasonably require for the purposes of the assessment. I am not satisfied that the limited information before me is sufficient for me to properly undertake an AA. Whilst the appellant's case is that the scheme includes appropriate mitigation measures that can be controlled by way of condition, before I can determine whether or not the effects of the development would be adequately mitigated, I must first understand the nature and extent of any adverse effects upon the integrity of the NSN.

83. Having regard to the above, I cannot conclude that the effect of the development on protected species and habitats would be acceptable, and that the development would accord with the requirements of the Framework with regard to habitat sites, paragraph 180 in particular.

84. Whilst the appellant has referred to another case where phosphate discharge was considered, I have not been provided with any details of this in order to compare it with the case before me. This does not, therefore, change my conclusions above.

85. Notwithstanding the above, I have not been provided with the relevant extracts of the development plan that relate to protected species and habitats. I cannot, therefore, conclude whether or not the development would be at odds with the development plan in relation to this matter. Nevertheless, given that I am dismissing the appeal on other grounds, I have not considered this matter further.

Other Matters

86. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

87. I have already noted the appellant's plans to expand the agricultural enterprise and the role the development will play in this. In this regard the development will result in some benefit to the rural economy, although I note that this has not been quantified by the appellant. Added to this is the employment of a farm worker later in the expansion plans. Similarly, the supply of produce locally from the enterprise would contribute to the objective of moving to a low carbon economy.

88. I acknowledge the appellant's efforts to gather, repair and reuse machinery and tools that would otherwise be regarded as waste. However, I have difficulty in linking these efforts to the development proposed, which the appellant states is required for the functioning of his agricultural enterprise within the unit. Accordingly, as a benefit of the scheme this would carry minimal weight.

89. Whilst I have no reason to doubt the appellant's ability to care for the animals he keeps or properly manage the land, such matters would be expected in this case and would, therefore, have a neutral effect in the planning balance.

Planning Balance

90. Having regard to the purpose of the development proposed in this case, I have concluded that it is acceptable in terms of its location. However, I have found that

the proposed development would cause harm to the character and appearance of the site and surrounding area, in particular the AONB. I have also been unable to conclude that the development would be acceptable with regard to surface water drainage and its effect on protected species and habitats. For these reasons the development would conflict with the development plan. I have had regard to all material considerations, including the suggested benefit of the scheme, but find these of insufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Neither can I be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. Accordingly, I conclude that planning permission ought not to be granted.

Conclusion

91. Having regard to my findings above and all matters raised, I conclude that the appeal should be dismissed.

Appeal B: Ground (a) and the deemed application for planning permission

Main Issues

92. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The matters stated in Notice 1, as I intend to correct it, relate to a material change of use of the land to a mixed use for agriculture and for the open storage of vehicles, vehicle parts, building materials, metal sheeting and other miscellaneous items not connected with the agricultural use of the land.

93. I note the substantive reasons for issuing the enforcement notice and from these I have identified the following main issues:

- Whether or not the location of the development is in accordance with local planning policy; and
- The effect of the development on the character and appearance of the site and the area, with particular regard to the site's location adjacent to the AONB.

Reasons

Location

94. As noted earlier in this decision, Policy DM 2 of the TDCS sets out the uses that will be supported outside of the defined settlement limits. In support of his ground (a) appeal, the appellant refers to the provisions of part 4 of the Policy, which relates to agriculture, forestry and related uses. However, I have concluded earlier in this decision that the open storage element of the mixed use is not the same use as the lawful use of the site for agriculture. The mixed use alleged should not, therefore, be considered under part 4 of the Policy.

95. I note that part 2 of Policy DM 2 sets out the circumstances where 'Class B business uses' will be supported. Regardless of whether or not the mixed use in this case includes a Class B business use, as referred to in the policy, the development in question is not taking place within a building and is not the erection or extension of a building. It would not, therefore, benefit from the provisions of part 2 of Policy DM 2.

96. There are no other parts of Policy DM 2 that would provide support for the mixed use alleged in the notice and no other policies of the TDCS have been brought to my attention in support of the appeal. For these reasons I conclude that the location of the mixed use alleged in the notice is not in accordance with local planning policy.

Character and Appearance

97. I have already described the character and appearance of the site and surrounding area earlier in this decision. I have also noted that the area of the site on which the open storage element of the mixed use is taking place is within the southern part of the site, although this appears to occupy a greater area than shown in the Council's photographs.

98. The items stored on the site are highly visible from the adjoining highway. The number of vehicles stored on the land, together with the other items listed, give the site a particularly cluttered appearance. The sprawl of stored items has changed the character of the site from one of an undeveloped paddock to that of a storage yard. The stark change in the character of this site has caused harm in this case, particularly the storage is not in and amongst existing farm buildings, as might be the case on other farm yards described by the appellant. The mixed use including open storage is at odds with the character of the surrounding area and the appearance of the site causes harm in this regard.

99. I acknowledge that the area of the site where the majority of the open storage currently takes place is screened from view from the AONB by the adjoining building and boundary trees. Nevertheless, I was able to view some stored items from the PROW within the AONB and I could also see the wider area of the planning unit within which the alleged mixed use is taking place. Having regard to the harm already identified, as set out above, the storage element of the mixed use causes harm to the AONB and the purpose of its designation, for which I must give great weight[17].

100. Whilst I have not been provided with details of the screening landscaping suggested by the appellant, having noted the elevated vantage point of the adjoining highway, I am not persuaded that landscaping would adequately mitigate the visual harm caused by the use of the site.

101. Having considered all of the above, I conclude that the material change of use of the land to a mixed use for agriculture and open storage has an unacceptable effect on the character and appearance of the site and surrounding area, in particular the AONB. For these reasons the development would conflict with policies DM1, DM2 and CP8 of the TDCS as the use harms the landscape, neither conserves nor enhances the natural environment, and is of a scale and layout that is not compatible with the rural character of the area.

102. Furthermore, as the development causes harm to the character and setting of the AONB, the proposed development would also conflict with paragraph 176 of the Framework.

Other Matters

103. As noted in my reasoning on Appeal A, section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the

[17] Paragraph 176 of the Framework.

development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. As my conclusions above are that the breach of planning control alleged in Notice 1 is contrary to the development plan, I now consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

104. I acknowledge the appellant's suggestion that the storage of some of the items on the site is temporary whilst planning permission is obtained to erect the buildings for which the materials are required. However, I intend to refuse permission for the scheme of development that is the subject of Appeal A and I have no certainty of permission being granted for an alternative scheme.

105. Similarly, I also acknowledge that some of the items may be stored on site in anticipation of them being repaired and brought into beneficial use for farming purposes. Whilst I note the appellant's efforts to reuse and recycle otherwise unusable items, any benefits of the use of the site in this regard do not outweigh the harm I have identified.

106. I have had regard to the appellant's representations; that planning policies ought not to stifle any necessary change in the landscape, and that the provisions of the Order permit certain development in rural locations, such as the appeal site. I have, however, concluded that this is not an acceptable location for the mixed use. There is also no suggestion that the development in this case benefits from any provisions of the Order. The use of the site for open storage (as part of a mixed use) is not, in my judgement, similar to the type or character of development that might be permitted by the Order within an agricultural unit.

107. Whilst the appellant refers to Objectives 1 and 2 of the TDCS, I have not been provided with a copy of these. Nevertheless, having regard to the findings above, I have no reason to conclude that the need for the development in this location outweighs the harmful effects on the site and surrounding area.

Planning Balance and Conclusion

108. The determination of this ground (a) appeal and the deemed planning application must be in accordance with the development plan unless material considerations indicate otherwise. All things considered, I have no reason to conclude that my determination of the appeal should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted and that the ground (a) appeal fails.

Appeal B and Appeal C - Ground (g)

109. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. Notice 1 specifies a period of 2 months from the date the notice takes effect.

110. The appellants have suggested a period of 6 months to comply with the requirements of the notice as they say that the weather conditions at the time the notice was issued (August 2020) are such that the ground conditions would render the removal of items dangerous. I have no reason to dispute the difficulty posed by the ground conditions on site in winter. Indeed, at my visit to the site in March the ground was particularly muddy between the hardstanding and the access track. However, having regard to the date of my decision, the period for compliance with

Notice 1 would fall within the summer months, were on site conditions are likely to be the more favourable.

111. Furthermore, whilst the appellants suggest that an extended period would allow for alternative storage arrangements to be made, I have no evidence to conclude that there would be any difficulty in finding an alternative.
Accordingly, I cannot find the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeals fail.

<u>Appeal F and Appeal G</u> - Grounds (f) and (g)

112. These appeals relate to Notice 2, which alleges the construction of a building.

Ground (f)

113. For the appeals to succeed on ground (f), I must be satisfied that the steps required to comply with the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control.

114. I note the appellants' suggestion that the agricultural enterprise will expand as intended and that the removal of the building, along with other items, is unreasonable. In this regard, the appellants' case appears to be that the building ought to be retained until such time as permission might be obtained for its replacement. However, the retention of the building as an alternative to its removal, even if for a temporary period, would not achieve the purpose of remedying the breach of planning control as the building would still remain on site.

115. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach of planning control in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are reasonable and proportionate. For these reasons, the appeals under ground (f) fail.

Ground (g)

116. Notice 2 requires the demolition of the building and the removal of all resulting materials and debris within two months. Whilst the appellants have not suggested a longer period for compliance, their case under the ground (g) appeals is that the building should be allowed to remain until permission has been granted for a replacement. However, as I have already noted, permission will be refused for the scheme of development that is the subject of Appeal A and I have no certainty that permission will be granted for a replacement building.

117. The appellants have not provided any substantiated evidence to show that the requirements of the notice cannot be complied with within 2 months. As such, I have no reason to conclude that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeals fail.

Conclusions

118. For the reasons given above, I conclude that Appeal D and Appeal E should succeed and Notice 2 will be quashed.

119. However, I conclude that Appeal A should be dismissed; that Appeal B and Appeal C should not succeed and Notice 1 will be upheld with corrections; and that Appeal F and Appeal G should not succeed and Notice 3 will be upheld.

Formal Decision

Appeal A Ref: APP/W3330/W/20/3260067

120. The appeal is dismissed.

Appeal B and Appeal C Ref: APP/W3330/C/20/3260068 and APP/W3330/C/20/3260069

121. It is directed that the enforcement notice is corrected and varied by:

- Deleting the paragraph after the heading in part 3 of the notice and replacing it with the words 'The material change of use of the Land from a use for agriculture to a mixed use for agriculture and for the open storage of vehicles, vehicle parts, building materials, metal sheeting and other miscellaneous items not connected with the agricultural use of the Land'.
- Deleting the words 'a caravan,' and 'UPVC windows,' from requirement 5. 1. of the notice.
- Deleting the words 'caravans,' and 'UPVC windows,' from requirement 5. 2. of the notice.

122. Subject to the corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Appeal D and Appeal E Ref: APP/W3330/C/20/3260071 and APP/W3330/C/20/3260072

123. The appeals are allowed and the enforcement notice is quashed.

Appeal F and Appeal G Ref: APP/W3330/C/20/3260073 and APP/W3330/C/20/3260074

124. The appeals are dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 15 March 2021 **by J Moss BSc (Hons)**

DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th AUGUST 2021

Costs application in relation to Appeal Ref: APP/W3330/W/20/3260067 Land at Field B, New England, Curland TA3 5SB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr William Allen for a full award of costs against Somerset West and Taunton Council.
- The appeal was against the refusal of planning permission for the installation of an access track and yard, and the erection of two agricultural buildings. Building A – a double storey barn and Building B – a single storey chicken/sheep/cattle shed.

Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. The applicant has referred to paragraph 38 of the National Planning Policy Framework (February 2019) in his costs application. Since making the application, the National Planning Policy Framework has been revised (on 20 July 2021). However the paragraph referred to by the applicant has not changed. I did not, therefore, consider it necessary to seek the parties' views with regard to the publication of the revised National Planning Policy Framework (20 July 2021)(the Framework).

Reasons

3. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

4. The grounds for the costs application are summarised as follows:

(i) The Council did not give suitable or fair consideration of the planning application; and

(ii) The Council failed to comply with their duty under paragraph 38 of the Framework as they did not act in a positive or proactive way to look for solutions to enable the grant of planning permission.

5. Much of the applicant's case refers to the Council's conduct during discussions that took place regarding the proposed scheme for the site. It is suggested that the Council failed to honour an agreed position.

6. I have considered the correspondence referred to by the applicant[1] and can see from this that the Council responded to the applicant's correspondence and provided advice with regard to the scheme on several occasions. In particular, whilst the Council were positive with regard to a chicken shed, it remained concerned about the visual impact of a second larger building and recommended a single poultry building with 'minimal attached storage'. Despite this, the scheme before me proposes what is described as a double storey barn, in addition to a single storey chicken/sheep/cattle shed.

7. Paragraph 38 of the Framework informs that local planning authorities should work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. The Council gave advice on how the scheme should be amended to reduce its visual effect and, as such, sought to secure development that would improve the environmental conditions of the area. Having regard to the evidence before me, I cannot conclude that the Council failed to comply paragraph 38 of the Framework.

8. Furthermore, the Council has provided sufficient evidence to support its reasons for refusal of the scheme. This evidence is consistent with the officer's report prepared in respect of the planning application. In this regard, I am satisfied that the Council properly considered the planning application subject of the appeal. As I have dismissed the appeal, in refusing the application the Council did not delay development that should be permitted.

9. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR

[1] Appendix B (pt2) of the applicant's evidence.