
Appeal Decisions

Inquiry held on 25-27 October 2016 and 9 November 2016

Site visit made on 25 October 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 16 December 2016

Appeal A - Appeal Ref: APP/X0415/C/15/3140748

Land to the West of Two Dells Lane and South of Cassett House, Two Dells Lane, Ashley Green, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Doug Mash against an enforcement notice issued by Chiltern District Council.
- The enforcement notice, Ref 2014/00182/AB/EN/2, was issued on 24 November 2015.
- The breach of planning control as alleged in the notice is without planning permission, the operations or works comprising the formation of a track leading from Two Dells Lane to redundant agricultural buildings, with associated entrance gate and posts in excess of that reasonably required in connection with the lawful agricultural use of the Land (the unauthorised development), the approximate extent of the track is shown by a thick broken line on the plan labelled 'Plan 2' (Plan 2).
- The requirements of the notice are:
 - 5.1 Take up and remove the track forming part of the unauthorised development from the land.
 - 5.2 Rip the soil from the part of the land where the hardcore part of the track has been removed pursuant to paragraph 5.1 to alleviate compression of the ground.
 - 5.3 Where the track has been created, restore the land to its former level (commensurate with the adjacent ground level).
 - 5.4 Remove from the land the entrance gate and associated posts (the approximate position of which are shown labelled with a dot on either side of the track on Plan 2).
 - 5.5 Where the entrance gates and posts have been removed either re-instate the 1.2m high picket fence to match that which exists on the boundary of the land, either side of the track, to preclude vehicular access or erect a post and wire/post and rail fence up to 1.2m in height. Thereafter retain the fencing in situ along the boundary to preclude vehicular access.
 - 5.6 Remove from the land all debris and materials arising as a result of compliance with steps 5.1 to 5.5 above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Decision.

Appeal B - Appeal Ref: APP/X0415/W/16/3148937

Three Agricultural Buildings, Two Dells Lane, Chesham, Buckinghamshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, part 3, class Q of the Town and Country Planning (General Permitted Development) Order 2015.
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- The appeal is made by Mr D Mash against the decision of Chiltern District Council.
- The application Ref CH/2016/0294/PNAD, dated 16 October 2015, was refused by notice dated 13 April 2016.
- The development proposed is the change of use of three agricultural buildings to three dwellinghouses.

Summary of Decision: The appeal is dismissed.

Application for costs

1. At the Inquiry an application for costs was made by the Rule 6 Party against the Appellant. This application is the subject of a separate Decision.

Procedural Matters

2. Prior to the Inquiry the Rule 6 Party had requested that, given that the buildings and the full extent of the track were not visible from public viewpoints, I conducted the accompanied site visit at the beginning of the Inquiry. The Appellant did not object to this request and I made the accompanied site visit after the three Parties to the appeals had made their opening remarks and before hearing any oral evidence.
3. The appeal in Appeal A (the enforcement appeal) was made on 16 December 2015 and the appeal in Appeal B (the Class Q appeal) was made on 21 April 2016. The Appellant requested that the appeals should be heard together and they were linked together. Although each appeal raised different issues there were matters that were common to both. In this regard I note that one aspect of the Appellant's case in the enforcement appeal is that the track is necessary for agricultural purposes whereas he says in the Class Q appeal that the residential use is acceptable because of the presence of the track. I will consider the appeals separately but will refer to matters that arose in each appeal as and when they are relevant.
4. Oral evidence was given to the Inquiry after the witnesses had either made an affirmation or taken the oath.
5. On 9 November 2016 judgment was given in the case of *Hibbitt and Another v SSCLG and Rushcliffe BC*¹. The case concerned development under Class Q and the extent of building works and was therefore relevant to this Class Q appeal. The case was brought to the attention of the Parties after the Inquiry was closed; the Council and the Rule 6 Party made no further submissions and I have taken the submissions made by the Appellant² into account.

The Enforcement Notice

6. In addition to the notice that is the subject of this appeal the Council had issued a notice in respect of the use of the land as a vehicular access. The Appellant had also made an appeal against this notice³. However, the Highway Authority (Buckinghamshire County Council) advised the Council that it could no longer sustain an objection to the access by reason of substandard visibility because the sight-lines had been improved. Accordingly the notice was

¹ Document 15 [2016] EWHC 2853

² Document G

³ APP/X0415/C/15/3140749

withdrawn on 3 February 2016 and the Inspectorate and the Appellant were duly notified.

7. In view of the above the Council requested that the notice in this appeal be corrected by deleting reason 4.3.2, deleting requirements 5.4 and 5.5 and the subsequent re-numbering and amendment of requirement 5.6.
8. It follows that the reference to the entrance gate and posts should also be deleted from the matters which appear to constitute the breach of planning control. There was no objection by the Appellant, the Council or the Rule 6 Party to these corrections/deletions and given that no prejudice can therefore be caused to any Party I will correct the notice accordingly⁴.
9. As a result of the corrections the entrance gate and posts no longer form part of the proposal in the ground (a) appeal and the deemed planning application.
10. It became apparent during the site visit and when oral evidence was given to the Inquiry that the track no longer followed the line shown on Plan 2 attached to the notice. Following discussions and visits by the relevant Parties a new plan was agreed⁵. This new plan, which is attached to this decision, will replace the original Plan 2 and I will correct the notice accordingly.

The track and buildings

11. The land through which the track runs and the location of the three buildings is on the west side of Two Dells Lane about 1.2 km due south of the settlement of Ashley Green. The track is approximately 500m long; it is accessed from Two Dells Lane and runs west for some 300m adjacent to the southern boundary of land belonging to Cassett House and Cassett Spring Wood⁶ after which point it turns north and runs for about 200m adjacent to the western boundary of the neighbouring land⁷. The track terminates close to the three buildings.
12. The three buildings are located approximately 70m to the west of Cassett House and west/north-west of the track. Building 1 measures some 9.8m by 7m and is referred to as 'the apple store'; Building 2 measures some 15.7m by 6.3m and is referred to as 'the general purpose store'; and Building 3 has two dual pitched roofs, is about 15.7m by 9m and is referred to as 'the pig building'.
13. The track and the buildings are located in the Metropolitan Green Belt.

The Planning History

14. Class MB of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO 1995), which permitted the change of use of agricultural buildings to dwellings subject to specified criteria and which preceded Class Q, came into force on 6 April 2014. The Council first received information that a new access and track were being created at the appeal site in June 2014 and an initial visit, which confirmed this, took place on 19 June 2014⁸. In a letter dated 15 February 2016⁹ in connection with the now withdrawn ground (b) appeal the Appellant wrote

⁴ S.176 (1) of the 1990 Act

⁵ Document 13

⁶ The property of the Rule 6 Party

⁷ Document 13

⁸ Miss Elliot's proof paragraph 3.1 and Appendix 12

⁹ Appellant's statement with agricultural evidence Appendix PJSA 4

'When I discovered the government were prepared to allow farm buildings to be converted into residential properties I realised that the track required some improvement, from the entrance at Two Dells Lane to the farm buildings'.

15. The Appellant made an application under Class MB in about September 2014 for the change of use of agricultural buildings to three residential units which was refused in November 2014¹⁰. In about April 2015 an application was made for prior approval under Class A, Part 6 of Schedule to the GPDO for 'Creation of access from Ashley Green Road and formation of track to serve existing agricultural buildings' which was refused on 29 April 2015¹¹.
16. Also in about April 2015 an application was made for planning permission for 'the change of use of agricultural buildings to provide three independent dwelling houses and retention and completion of access track' which was refused in June 2015¹². The track in that application was the one which is the subject of the enforcement appeal and enforcement action was authorised at this time. The notice was issued on 24 November 2015.
17. In about October 2015 an application under Class Q for the change of use of the three buildings was made but withdrawn in December 2015¹³. Another application under Class Q made around November 2015 was also withdrawn in December 2015¹⁴. An application for planning permission for 'an agricultural track to access agricultural buildings' was made on 30 November 2015 but was withdrawn before validation¹⁵.
18. The application that is the subject of the Class Q appeal was made on 16 October 2015 and was refused on 13 April 2016. The Council declined to determine an application for planning permission made on 21 June 2016 for an 'agricultural track to serve three agricultural buildings (retrospective)'¹⁶.

Appeal A: The appeal on ground (a) and the deemed planning application

19. The main issue in the ground (a) appeal and the deemed planning application is whether the track represents inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the Development Plan; if the track is inappropriate development (a) its effect on the openness of the Green Belt; (b) its effect on the character and appearance of the rural area; and (c) whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the track.

Inappropriate development

20. It is not in dispute that the formation of the track was an engineering operation and, as such, the track is not inappropriate development in the Green Belt provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt¹⁷.

¹⁰ Ref CH/2014/1614/PNAD Miss Elliott's proof paragraph 2.2 and Appendix 2

¹¹ Ref CH/2015/0629/AGN Miss Elliott's proof paragraph 2.3 and Appendix 3

¹² Ref CH/2015/0506/FA Miss Elliott's proof paragraph 2.4 and Appendix 4

¹³ Ref CH/2015/2043/PNAD Miss Elliott's proof paragraph 2.9 and Appendix 8

¹⁴ Ref CH/2015/2209/PNAD Miss Elliott's proof paragraph 2.10 and Appendix 9

¹⁵ Ref CH/2015/2241/FA Miss Elliott's proof paragraph 2.11 and Appendix 10

¹⁶ Ref CH/2016/0903/FA Miss Elliott's proof paragraph 2.13 and Appendix 11

¹⁷ The National Planning Policy Framework paragraph 90 and The Chiltern District Local Plan 1997 (including Adopted Alterations 2001 and 2004) Policy GB2(f)

21. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The track exists where none has before¹⁸ and it has therefore introduced development into previously undeveloped woodland and open fields. The development is a substantial one comprising a hardcore and chalk subsurface and a porous dressing of gravel and planings¹⁹; it is some 500m long; and the majority of the track is some 3.5 to 4m wide but near the access onto Two Dells Lane it is some 13m wide.
22. The land in the immediate vicinity of the track is largely undeveloped farmland with very sporadic development. The wide expanse of the track close to Two Dells Lane has an adverse visual impact because of its extent and the appearance of its hard and dark surface in the rural landscape. One of the purposes of the Green Belt is to safeguard the countryside from encroachment and the track is an unacceptable urban form of development in the countryside.
23. Taking all of these matters into account I find that the track does not preserve the openness of the Green Belt and that it conflicts with one of the purposes of including land within the Green Belt. The track therefore constitutes inappropriate development in the Green Belt which is by definition harmful to the Green Belt. I give this finding considerable weight.

Openness

24. From my finding above, because of the existence of significant development where there was none before, it follows that the formation of the track results in a loss of openness which conflicts with this essential characteristic of the Green Belt. I give this finding significant weight.

Character and appearance

25. I have commented above on the adverse visual impact of the track on the character and appearance of the area. In addition, photographs provided by the Rule 6 Party show part of the land prior to the formation of the track²⁰. The land comprised arable fields and woodland, albeit with tractor tracks which are a usual agricultural feature in the rural area. The beginning of the track now sits in a wide swathe of cleared land in close proximity to Two Dells Lane²¹ and land has been cleared to accommodate the remainder of the track through the fields²² to the detriment of the landscape. The track has the appearance of a domestic track, not an agricultural one, and I noted that agricultural access onto the Appellant's land at other locations had tractor tracks but no laid and engineered track as is the case here.
26. The track, because of its materials, length and width is an incongruous, urban and unattractive feature in this rural landscape and it has a harmful effect on the character and appearance of the rural area.

Other considerations

27. The Appellant's case, as put by Mr Smith in his evidence, was that the track was required for agriculture and that this was a very special circumstance that

¹⁸ The Appellant withdrew his appeals on grounds (b) and (c)

¹⁹ Document E paragraph 34

²⁰ Mr Winter's statement Appendix A W.9, R.4 and R.7

²¹ Mr Winter's statement Appendix A R.8

²² Mr Winter's statement Appendix A R.13B

justified its retention. However, Mr Smith also said in evidence to the Inquiry that 'tractors can go anywhere' and he acknowledged that there were tractor tracks through the field adjacent to the buildings directly leading to the buildings rather than following the line of the track²³. Mr Smith accepted that the track was not necessary for agricultural purposes and there was no evidence that the track was being, or had been, used for agricultural purposes.

28. At the time of my visit I noted, among other things, some bags of fertiliser in Building 2, miscellaneous pieces of farming equipment in the open to the north and north-west of Building 2²⁴, cattle in the field adjacent to the buildings, and track marks across the field. Mr Smith in cross examination said that the resumption of agricultural use took place 'about a year ago' and in answer to my question said that the fertiliser and the machinery had been there for a few months. Taking Mr Smith's evidence into account together with the photographs provided by Miss Elliott and Mr Winter and their evidence it is apparent that any current agricultural use of the buildings and the surrounding yard is very recent and minimal. The photographs show that the land through which the track now passes was farmed without the necessity of any engineered track²⁵.
29. Whilst I accept that an Appellant's intention is not a material test, the timing of the apparent resumption of the very limited agricultural use of the buildings and yard and the creation of the track with the coming into force of Class MB and the planning history as set out above seem to me to be more than coincidental. The Appellant has not shown any agricultural need for the track, and even if he had, I do not consider its retention would amount to a consideration that would clearly outweigh the harm to the Green Belt that I have found.

Conclusions

30. I have found that the track is inappropriate development, that there is a loss of openness to the Green Belt and harm to the character and appearance of the rural area. The Framework advises that substantial weight has to be given to any harm (which includes harm by reason of inappropriateness) to the Green Belt. Therefore, on balance, I conclude that the other considerations in this case do not clearly outweigh the harm I have identified and that the very special circumstances necessary to justify the formation of the track do not exist.
31. The appeal on ground (a) fails and the deemed planning application is refused.

Appeal A: The ground (f) appeal

32. In an appeal on ground (f) the Appellant is saying that the steps required by the notice exceed what is necessary to remedy the breach of planning control. The Appellant says that the second requirement, that is, the requirement to rip the soil from the part of the land where the hardcore part of the track has been removed to alleviate compression of the ground is excessive. He seeks the deletion of this step and does not propose any lesser step.

²³ This track is visible in Mr Smith's proof Appendix PJS6 at page 46 and in Document 5 photographs 2, 3 and 4

²⁴ Photograph 7 in Document 5

²⁵ Mr Winter's statement Appendix A W.6, W.8, W.9 and R.6

33. A description of the materials of the track formed part of the discussion about conditions at the Inquiry and in an email²⁶ Mr Smith described the track as follows: 'The bottom 8 inches of chalk was from Bovington Airfield which is a disused WW2 airfield that forms part of the agricultural holding. The Appellant salvaged concrete from Moor Farm, crushed it and laid 2 inches over the chalk. The planings were from a rutted tarmac top coat that was on concrete at the Airfield, which was scraped off and crushed into small stones. This was laid as the top 2 inch layer of the track'. These are the materials that are required to be removed by step 1. Photographs taken by the Rule 6 Party of the construction of the track show that prior to the chalk being laid the line of the track was compacted and levelled²⁷.
34. The purpose of the requirements is to restore the land to its condition before the breach took place and the requirements may require the removal of any building or works²⁸. The compaction of the land was an element in the formation of the track and the step that requires it to be 'undone' complies with the statutory provisions and is not excessive.
35. Compliance with a notice does not prevent an Appellant developing his land in future as he is lawfully entitled to do and it may well be that, after the notice has been complied with, the Appellant chooses to use the line of the track for agricultural purposes and the agricultural vehicles may compact the ground to form an earth track similar to one that appears in the aerial photographs of a neighbouring field track²⁹. This would be a matter for the Appellant, however, I am unable to form any opinion of whether this is likely to take place or not as the Appellant himself gave no evidence to the Inquiry.
36. The appeal on ground (f) fails.

Appeal A: The ground (g) appeal

37. In an appeal on ground (g) the Appellant is seeking a longer period of time in which to comply with the notice. The Appellant says that it will take longer than two months to comply with the notice because in addition to removing the track he will have to import materials which will be dependent on weather conditions and the availability of materials and he was also concerned about inclement weather which could lead to mud on the road. He asks for a period of twelve months³⁰.
38. The undisputed evidence from Mr Winter and Miss Elliot was that the track was formed over the period June 2014 – November 2015 with some works being undertaken in the winter months³¹. It therefore seems to me that the possibility of inclement weather is not one that has concerned the Appellant in the past so far as the track is concerned. I have no evidence at all about the availability of relevant materials.
39. I do, however, appreciate that, given the date of this decision, a two month period would include the festive season and on this basis I will vary the period for compliance to three months. In varying the period I also note that the

²⁶ Dated 8 November 2016 to the Council and the Inspectorate

²⁷ Mr Winter's statement Appendix A for example R.8, R.8A, R.9, R.11, R.11B, R.24 and R.26

²⁸ S.173(4) and (5) of the 1990 Act

²⁹ Mr Winter's statement Appendix A W.4, W.5A and W.5B and Mr Smith's proof Appendix PJS5

³⁰ In his oral addition to his closing submissions Mr Shadarevian advised that if 12 months was too long, six months would be acceptable

³¹ Mr Winter's statement Appendix A R23, R24, R25 and R26

Council has powers to extend the period for compliance should the works prove to be unexpectedly difficult³².

40. To this limited extent the appeal on ground (g) succeeds.

Appeal A: Conclusions on the Enforcement Appeal

41. For the reasons given above I conclude that a reasonable period for compliance would be three months and that the appeal should succeed on ground (g) to that extent. I shall uphold the enforcement notice with corrections and a variation and I refuse to grant planning permission on the deemed application.

Appeal A: Decision

42. It is directed that the appeal is allowed on ground (g), and the enforcement notice is varied by:

- (a) the deletion of two months and the substitution of three months as the period for compliance.

And corrected by:

- (b) In part 3 the deletion of the words 'with associated entrance gate and posts'.
- (c) In part 3 the deletion of the words 'by a thick broken line on the plan labelled 'Plan2' ('Plan 2')' and the substitution therefor of the words 'on Drawing No TO158-03 A attached to appeal decision APP/X0415/C/15/3140748'.
- (d) The deletion of paragraph 4.3.2 in its entirety.
- (e) The deletion of requirement 5.4 in its entirety.
- (f) The deletion of requirement 5.5 in its entirety.
- (g) The consequent re-numbering of requirement 5.6 as 5.4.
- (h) The reference to 'step 5.5' in the new 5.4 being amended to 5.3.

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

Appeal B: The Class Q appeal

The main issue and Class Q

43. The main issue in the Class Q appeal is whether or not the proposal is permitted development within Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 as amended (the GPDO) and, if it is, whether prior approval should be granted.

44. Class Q permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling

³² S.173A(1) of the 1990 Act

within Class C3 (dwelling house) of the Schedule to the Use Classes Order (Class Q (a)), and building operations reasonably necessary to convert the building (Class Q (b)). This permitted development right is subject to a number of criteria listed under Q.1 which set out where such development is not permitted and to conditions in Q.2 which set out the circumstances when an application to the local planning authority for the determination as to whether the prior approval of the authority will be required.

The areas of dispute

45. From the Council's notice of refusal and its evidence, the Council's case is that the Appellant has not identified an established agricultural unit and therefore Q.1 (b), (c), (f) and (h) are not met and because the nature of the building works to facilitate the change of use includes the creation of the track the criterion in Q.1(i)(i) is also not met. The Council also considers that the location of the buildings makes it impractical and undesirable for the change of use and thus condition Q.2(1)(e) is not satisfied.
46. The Rule 6 Party supports the Council and also raises the question of the extent of the works required to effect the change of use. Class Q.1(i) states that development is not permitted by Class Q if the development under Class Q (b), that is, building operations necessary to convert the building, would consist of building operations other than: the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out building operations allowed by Q.1(i)(i).
47. There is also a dispute about whether Building 3 was originally two separate buildings.

The building operations reasonably necessary to convert the buildings

48. Class Q permits the change of use of a building and building operations reasonably necessary to convert the building to a Class C3 use. Building operations that fall within Q.1(i)(i) consist of the installation or replacement of roofs or exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse and partial demolition to the extent reasonably necessary to carry out building operations as defined.
49. There has been no full structural survey of the three buildings. Mr Smith, a Chartered Surveyor, assessed the buildings with a Chartered Architect in the same consultancy to show a possible construction method for the building envelopes of the buildings to function as three separate dwellings³³. In essence, these possible specifications envisaged the timber frames of each building remaining with the corrugated steel sheets that form the walls being removed and the proposed 'build up' between the timber studs being either insulated plasterboard or timber sheeting and insulated plasterboard. The existing asbestos concrete tiles/sheets would be removed from each roof and replaced with plyboard and a waterproof membrane on which a lightweight aluminium standing seam system would be fixed.
50. However, this possible construction method is so qualified by Mr Smith and his colleague by terms such as 'a final specification will be completed if this appeal

³³ Mr Smith's proof Appendix PJS8

is allowed' and 'the designs, materials and specifications are not suggested to be the final Building Regulation submission' that it is not possible to discern with any certainty what building operations are actually proposed or indeed whether the reasonably necessary building operations as provided for by Class Q would be sufficient to convert the buildings.

51. Mr Edelsten on behalf of the Rule 6 Party prepared a report on the structural condition of the three buildings. The report was limited in that Mr Edelsten had had no access to the buildings prior to the site visit and his report was based on photographs and from what he could see from Mr Winter's property using binoculars. He confirmed in evidence to the Inquiry that what he had seen on the site visit had not caused him to change his conclusions which were in essence that all three buildings would require extensive building work to upgrade them to residential use which he considered would be tantamount to constructing new buildings and that in particular the roof structure of Building 2 appeared to have failed and would require either complete reconstruction or extensive strengthening to make it viable. In addition he considered that the foundations of the buildings are not fit for the purpose of dwellings.
52. From what I saw of the three buildings and their neglected and dilapidated condition the possible construction method proposed by Mr Smith, involving the removal of the current walls and roofs and the installation of completely new walls and roofs with modern materials, would in my opinion amount to new buildings with very little of the original buildings remaining. On the basis of the proposed, heavily qualified, method only by replacing the walls and roofs in their entirety would the buildings be able to function as dwellings and this, as a matter of fact and degree in my opinion goes beyond building operations reasonably necessary to convert the buildings. I consider that, on the basis of this method the proposal does not accord with Class Q which does not permit rebuilding.
53. Further guidance in respect of Class Q is provided within the Planning Practice Guidance (PPG). The PPG states that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right. It is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right³⁴.
54. Mr Smith says in relation to the concrete slabs and foundations that they could be underpinned which he says is normally a work of maintenance and repair to existing foundations and which does not require permission, but that is not the issue here. The issue is whether the buildings are structurally sound enough to take the loading required for residential use. The dictionary definition of underpinning is 'support from below with masonry; support, strengthen'. I therefore consider that if underpinning is required to the buildings that would

³⁴ PPG Ref: ID13-105-20150305

be a new structural element which would be outside the rights permitted by Class Q.

55. The evidence about what building operations would be reasonably necessary for the change of use of the buildings is uncertain and qualified, in addition the question about whether the buildings are structurally sound enough to take the loading required for residential use has not been answered. In the absence of such evidence I am not satisfied that the change of use of the agricultural buildings to dwellinghouses would accord with the permitted development rights provided by Class Q of the GPDO.
56. I therefore conclude that the permitted development right for the change of use these three agricultural building into Class C3 use does not apply. Thus the change of use of the buildings to a dwellinghouses cannot be addressed by the prior approval process.

Other Matters

57. As mentioned above in the areas of dispute, a number of other matters were the subject of evidence to the Inquiry. I have found that the proposal is not permitted development on the basis of the lack of evidence relating to the building operations that would be reasonably necessary to convert the buildings to a use falling within Class 3. But even if I had not so found, for the reasons set out below I would have found that the proposal was not permitted development and that prior approval could not be granted.

The repairs to the buildings

58. W(11) of Part 3 of Schedule 2 to the GPDO ('Procedure for applications for prior approval under Part 3') provides that development must not begin before, in effect, permission for the development has been granted. It was common ground that the buildings had not been actively used for many years and photographs taken by Mr Winter in mid-2014 show extremely dilapidated and neglected buildings³⁵. Works of maintenance or repair are not development, but as Mr Shadarevian confirmed in his closing remarks, repairs and the strengthening of an existing structure to give effect to the conversion are only permitted after permission has been granted.
59. There was also no dispute that, among other things, the land had been cleared around the buildings³⁶; some repair work had been undertaken to Building 2 in that a brick wall on the west elevation had been removed³⁷ and replaced, some interior roof joists had been repaired and the deformation of the roof has been remedied. There was dispute about what work had been done Building 3 and whether the gully between the two parts of Building 3 had been repaired (as stated by the Appellant) or inserted (as alleged by the Rule 6 Party).
60. I mentioned above in the enforcement appeal the recent, minimal and apparently agricultural use of the buildings and yard and I cannot ignore the planning history of the many applications to change the use of the buildings and the Appellant's letter. An Appellant's intentions are not material and I do not know what the Appellant's intentions were or are because he did not give evidence to the Inquiry. However, it seems to me more likely than not that the

³⁵ Mr Winter's statement Appendix A W.8, S1.1, S2.1 and S3.3

³⁶ Mr Winter's statement Appendix A W.8 and W.17

³⁷ Mr Winter's statement S2.13

repairs were not carried out for an agricultural purpose but were part of the proposed conversion. They were carried out in advance of the determination in breach of W(11).

The established agricultural unit

61. Rights under Class Q are dependent on the building being part of an established agricultural unit and development is not permitted if, among other things, development under Class A(a) or Class B(a) of Part 6 of Schedule 2 to the GPDO has been carried out on the established agricultural unit since 20 March 2013.
62. The application included a location plan³⁸; a proposed site plan³⁹; and a planning statement that stated 'WJ & M Mash Limited have farmed the surrounding land for four generations and the land extends to over 1,800 acres (728 ha). This land is a combination of arable and pasture. The farmer breeds pedigree Limousin cattle, many of which have won prizes and achieved premium prices at auction. The arable land is a rotation of wheat, barley, beans and oil seed rape. The land surrounding the buildings in question was an orchard until the 1980s and these buildings served this enterprise together with a pig building. In the 1980s the orchards were grubbed up and converted to arable land, in a cereal rotation'⁴⁰. No plan showing the land farmed by the Appellant, who is a Director of WJ & M Mash Limited, was submitted at the time of the application.
63. Additional information about the extent of the agricultural unit has been provided by the Appellant since May 2016, some as late as at the Inquiry⁴¹. There are some differences in the evidence, both written and oral, about the extent of the agricultural unit but confirmation has been given that it comprises one entity for which one claim is made to the Rural Payments Agency⁴².
64. The Planning Statement says no development under the relevant Classes had been carried out on the Appellant's land holding⁴³ and Mr Smith confirmed this in his evidence to the Inquiry.
65. Amongst other things, W.(3) of Part 3 of Schedule 2 to the GPDO ('Procedure for applications for prior approval under Part 3') states that the local planning authority may refuse an application where, in the opinion of the authority, 'the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in this Part as being applicable to the development in question'. In addition, W.(9) states that the local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application.
66. It seems to me that the information submitted by the Appellant at the time of the application could, and should, have been more comprehensive, particularly as the Appellant was represented by an experienced agent. I consider that the lack of information to identify the established agricultural unit at that time is surprising. Whilst I do not consider that the onus is on Council to conduct

³⁸ No 2DL-JS-04 Rev A

³⁹ No MA-EW-1.0

⁴⁰ Planning Statement dated February 2016 paragraphs 1.5.1 and 1.5.2

⁴¹ Document 9

⁴² Document 9

⁴³ Planning Statement dated February 2016 paragraph 2.6.1

research into whether there had been any applications under Class A(a) and Class B(a) of Part 6 of Schedule 2, the Council could have requested specified additional information to enable it to consider the proposal and I note that when asked, the Council's witnesses were unable to specify what additional information was required from the Appellant.

67. Taking into account the information and evidence that the Appellant has now provided I am satisfied that the Appellant's land holding is an established agricultural unit but the requirement is that the buildings are agricultural buildings used as part of an established agricultural holding. It is common ground that the buildings had not been used for many years. The latest date provided by the Appellant is the 1980s; the farmhouse, which is now Cassett House and land around it was sold in 2002 and at that time the historic access to the buildings was severed. It would appear that even in 2002 the buildings were derelict and disused⁴⁴.
68. There is, however, no suggestion that the buildings have been put to any use other than agriculture and on this basis it seems to me that the buildings were used as part of an established agricultural unit – whatever the extent of that unit may have been. The provisions in Class Q that refer to an established agricultural unit are satisfied to that extent.

Building 3

69. Building 3 is described by Mr Edelsten as a building with 'a double duo-pitched asbestos cement type corrugated roof with an approximately 1m wide felted valley between the two pitches. External elevations are vertically orientated painted galvanised corrugated steel with timber feather edged boarding above the gables. The elevations are punctured with a series of window apertures with the sill at approximately 1.5m above external ground level'. Mr Winter said that he saw a clear gap between the two parts of the building prior to the land being cleared, that is, there was no valley gutter between them and that his photographs show this gap and a tree growing between the two parts⁴⁵; the tree can also be seen in the aerial photograph dated 2006⁴⁶. Later photographs taken by Mr Winter show the valley gutter⁴⁷.
70. The Appellant says in his letter 'The buildings consisted of two gas stores for the fruit ... a pig shed, chicken shed, machinery shed and various storage buildings ... Today they are mainly used for agricultural storage'⁴⁸. From this description it would appear that there were at least five buildings which, according to the letter, were still in use, albeit for agricultural storage.
71. Mr Smith has no personal knowledge of Building 3 before early 2014 and at that time the Appellant was repairing the buildings. Mr Smith described in his evidence that he saw a dilapidated valley gutter at Building 3. He described the building as a classic pig building where pigs were housed on each side of the central alleyway and feed and water would be put into troughs facing the central walkway through a swinging wall. Ms Scrivener, however, said that she had not come across such a building in her many visits to farms over the years.

⁴⁴ Mr Winter's statement paragraph 2.5

⁴⁵ Mr Winter's statement Appendix A S3.2A, S3.3, S3.4 and S3.5

⁴⁶ Mr Winter's statement Appendix A W.6 and W.7

⁴⁷ Mr Winter's statement Appendix A S3.7 and S3.8

⁴⁸ Letter dated 15 February 2016 Appendix PJSA 4 Appellant's statement with agricultural evidence

72. The Officer's Report in respect of the first application in September 2014 states that 'building No 3 previously comprised two separate buildings that have recently been extended via a roof link'⁴⁹. The second application for a change of use was for planning permission and this point was not addressed by the Appellant in the Planning Report and Appraisal⁵⁰ but the Officer's Report stated that 'the flat roofed link between the two parts of building 3 appears to be a new addition undertaken in 2014'.
73. In the Planning Statement dated November 2015⁵¹ the Appellant says that 'an independent Structural Engineer has confirmed that the Pig Unit, which is a duo-pitched building is one building' and 'evidence can be presented to show the original valley gutter which was over the feed alley which gave access to both sides of the building as a central alley'. It transpired that the 'Independent Surveyor' was Mr Edelsten and no evidence about the original valley gutter has been presented to the Inquiry.
74. Mr Winter provided high resolution photographs of the photographs attached to his statement⁵². No valley gutter is apparent to me in photographs S3.2A and S3.3 between the two buildings although I accept that the whole length of the gap between the buildings is not visible. I do, however, note the large tree that is growing between the buildings which is clearly visible in S3.3 and the trunk of which is visible in S3.5. This photograph shows the swing walls and troughs referred to by Mr Smith and a similar swing arrangement can be seen at the corner of the adjacent 'pig' building. But from the light between the buildings and the presence of the tree trunk it seems to me that there is no gutter joining them. Photographs S3.7 and S3.8 show what appears to me to be new wood and roof covering on the flat roofed element between the two pitched roofs. Mr Shadarevian says this is conjecture based on the fact that since the first photos were taken the building has had a gully inserted beneath the roof valley⁵³ and I note the use of the word 'insert' rather than 'repaired'.
75. Taking all of the above matters into account, it seems to me more likely than not that Building 3 was originally two buildings and the flat roof element was inserted as part of the repairs to the buildings that began in 2014. As Building 3 therefore came into existence as one building after March 2013 it does not benefit from permitted development rights by virtue of Q.1(a)(ii) and (iii).
76. Even if Building 3 was one building as claimed by the Appellant, my comments above in respect of the repairs to the buildings also apply to Building 3 given the 'repair' to the valley would have been extensive and, from the photographs akin to a replacement.

The buildings and their curtilages

77. Class Q permits the change of use of a building and its curtilage, that is, a piece of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building⁵⁴. Class Q is silent in respect of the change of use of any other area of land including use of any area

⁴⁹ Miss Elliot's proof Appendix 2 page 101

⁵⁰ Miss Elliot's proof Appendix 4 page 139

⁵¹ Miss Elliot's proof Appendix 9 page 429

⁵² Document 14

⁵³ Document E paragraph 12

⁵⁴ Class U Part X

of land outside the curtilage for a purpose other than, in this case, agriculture. There is no application before me for the change of use of any other land within the vicinity of the buildings.

78. Although they are only representations of the proposal the images submitted by the Appellant⁵⁵ show cars parked outside the curtilages and the enclosure of what is currently the yard for residential use. The Appellant's planning statement says that 'the curtilages are of ample size to accommodate the required number of parking spaces for each dwelling'⁵⁶ whereas Ms Chapman, who provided the Appellant's transport evidence, refers to seven vehicles that 'could be parked on site for residents close to each dwelling' and three visitor spaces 'informally behind or next to each dwelling's parking area'⁵⁷. The accompanying plan⁵⁸ shows seven vehicles parked outside the curtilages. In this case the 'site' is the buildings and their curtilages⁵⁹ not the land around the buildings and no provision has been made for parking within the curtilages by Ms Chapman.
79. None of the appeal decisions referred to me⁶⁰ consider this point and Mr Shadarevian has not provided any authority to support Mr Smith's evidence that 'the strict regime of parking, turning and track width [are] something that the Class Q Order did not consider important. ... Whilst it is important that traffic movements are not impractical, this only becomes an issue if there is slavish adherence to the status of the land along the track and around the converted buildings'⁶¹ and 'that Class Q allows flexibility in the use of land surrounding the converted building and fenced curtilage (garden) for such matters as traffic manoeuvring, deliveries, bin lorries and parking'⁶².
80. Mr Shadarevian's submission was that the issue of parking does not render the location or siting of the buildings impractical or undesirable given the ordinary meaning of these words. The dictionary meaning of impractical is 'not practical' and the meaning of practical includes 'suited to use or action and concerned with what is actually possible'; undesirable means 'not desirable, objectionable' and desirable means 'worth having or wishing for'.
81. I cannot speculate whether parking for seven cars plus three visitors' cars could be accommodated within the curtilages or not but from the plan⁶³ if such parking were to take place there would be no room within the curtilage for any use other than parking. This would mean that the dwellings would have no outside space which I consider would render the siting and location of the proposed dwellings to be undesirable and impractical.
82. There was some discussion at the Inquiry whether conditions could be imposed either preventing commencement of the development until planning permission had been granted for the proposed parking or requiring parking to be within the curtilages of the buildings. The first would be dependent on the Council granting permission and there is no evidence that such permission would be granted, indeed in all likelihood it would not be, therefore rendering the

⁵⁵ Mr Smith's proof Appendix PJS 13 pages 105 and 106

⁵⁶ Planning Statement dated February 2016 paragraph 4.1

⁵⁷ Ms Chapman's proof paragraph 4.2.3

⁵⁸ Ms Chapman's proof Appendix 6

⁵⁹ Class U Part X and Document 11

⁶⁰ Miss Elliott's proof Appendices 21, 23 and 24; Document 7

⁶¹ Mr Smith's proof paragraph 13.2

⁶² Mr Smith's proof paragraph 13.5

⁶³ Ms Chapman's proof Appendix 6

condition uncertain and unreasonable⁶⁴ and the second would not meet the test of necessity⁶⁵ because parking outside of the curtilage would be a breach of planning control.

Location of the buildings

83. Q.2(1) requires consideration to be given to whether the location or siting of the buildings makes it otherwise impractical or undesirable for the buildings to change from agricultural use to dwellinghouses. The Planning Practice Guidance advises that 'When considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval. There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals'⁶⁶.
84. Because the ground (b) and (c) appeals in the enforcement appeal were withdrawn there is no dispute that the track that has been formed leading from Two Dells Land to the buildings is a new track. I found in the enforcement appeal that the track was unauthorised. The buildings are located some 500m from Two Dells Lane and there is no vehicular access to them from any road. Therefore they are isolated with no means of access other than across fields and through woodland. The formation of the track cannot be justified on residential grounds because it is an engineering operation which is outside the building operations that are permitted by Q(i)(i).
85. Even if there was an agricultural track leading from Two Dells Lane to the buildings formed by agricultural vehicles compressing the ground, Mr Smith's evidence was that such a track would be impractical and potentially impassable for agricultural vehicles because of mud and ruts⁶⁷ let alone useable by domestic vehicles. Mr Smith also conceded in cross examination that a site that cannot lawfully be accessed is not a practical location for new housing.
86. I also note that the buildings currently have no services although a water supply has recently been installed near to Building 1 and I was told that there is an electricity supply available from the adjacent field. There is currently no drainage and foul drainage is proposed into a septic tank or tanks but no information has been provided about the proposed location of this tank or tanks. In the circumstances I conclude that the location or siting of the buildings makes it impractical or undesirable for the buildings to change from agricultural use to dwellinghouses.

⁶⁴ National Planning Policy Framework paragraph 206

⁶⁵ National Planning Policy Framework paragraph 206

⁶⁶ Paragraph: 109 Reference ID: 13-109-20150305

⁶⁷ Mr Smith's proof paragraph 4.7

Matters raised by the Rule 6 Party

87. In addition to the matters above, many matters were raised by the Rule 6 Party including the unneighbourliness of the proposal, traffic generation, the living conditions of future residents of the dwellings with regard to privacy and living standards and space standards for housing. I have taken these matters into account insofar as they are relevant to my determination of the main issue.

Appeal B: Conclusions on the Class Q appeal

88. For the reasons given above and on the evidence before me and taking all matters into account I conclude that the proposed change of use of three agricultural buildings to three dwellinghouses is not development pursuant to Class Q of Part 3 of Schedule 2 to the GPDO 2015. Consequently, it is development for which an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO.

Appeal B: Decision

89. The appeal is dismissed.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr P Shadarevian Counsel

He called

Mr P Smith Chartered Surveyor, Planning and Property Consultant
MRICS ACI Arb PJSA Ltd

FOR THE LOCAL PLANNING AUTHORITY

Mr S Stemp Counsel

He called

Ms K Elliot Senior Planning Enforcement Officer

BA (Hons) MSc

Ms J Scrivener Agriculture, equine and rural land use consultant,
BIAC Bourne Rural Planning Consultancy Ltd

FOR THE RULE 6 PARTY

Mr R Walton Counsel

He called

Mr C Winter Rule 6 Party and adjacent land owner

Mr P Hughes Principal of PHD Chartered Town Planners

BA(Hons) MRTPI Dip Man MCIM

Mr N Edelsten Consultant Engineer, Chess Structural Consultants Ltd
CEng MStructE MFPWS

DOCUMENTS SUBMITTED AT THE INQUIRY AND AFTER

Document 1 - The Council's letter of notification of the Inquiry and list of
persons notified

Document 2 - Statement of Common Ground

Document 3 - Bundle of photographs dated 22 June 2015, submitted by the
Council

Document 4 - Bundle of photographs dated 5 November 2015, submitted by

- the Council
- Document 5 - Bundle of photographs dated 13 October 2016, submitted by the Council
- Document 6 - Suggested Conditions, submitted by the Council
- Document 7 - Appeal decisions APP/P1133/A/14/2223350, APP/B3410/W/15/3005883 and APP/R3325/W/15/3130657, submitted by the Appellant
- Document 8 - Plans of the Appellant's agricultural holding, submitted by the Appellant
- Document 9 - Email from Bidwells dated 26 October 2016, submitted by the Appellant
- Document 10 - Location plan 2DL-JS-04 Rev B, submitted by the Appellant
- Document 11 - Proposed site plan MA-EW-1.0 Rev A, submitted by the Appellant
- Document 12 - Site access visibility splays, TO158-10, submitted by the Appellant
- Document 13 - Existing track layout TO158-03 Rev A, submitted by the Appellant
- Document 14 - Bundle of high resolution photographs, submitted by the Rule 6 Party
- Document 15 - *Hibbitt and Another v SSCLG and Rushcliffe BC* [2016] EWHC 2853, submitted by the Council

DOCUMENTS SUBMITTED BY THE ADVOCATES AT THE INQUIRY AND AFTER

- Document A - Opening submissions on behalf of the Appellant
- Document B - Opening submissions on behalf of the Rule 6 Party
- Document C - Closing submissions on behalf of the Rule 6 Party
- Document D - Closing note on behalf of the Council
- Document E - Closing submissions on behalf of the Appellant
- Document F - *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466
- Document G - Submissions on *Hibbitt and Another v SSCLG and Rushcliffe BC* on behalf of the Appellant

Plan

This is the plan referred to in my decision dated: 16 December 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

Land to the West of Two Dells Lane and South of Cassett House, Two Dells Lane, Ashley Green, Buckinghamshire

Reference: APP/X0415/C/15/3140748

Scale: Not to scale

