

# Appeal Decision

Site visit made on 10 July 2017

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

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

**Decision date: 17 July 2017**

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## **Appeals A & B Ref: APP/J9497/C/16/3165395/6**

### **Land at East Wray Barton, Moretonhampstead Road, Lustleigh, Newton Abbot, Devon TQ13 9SN ["the Land"]**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mrs Sharon Hunt and Mr Patrick Hunt, respectively, against an enforcement notice issued by Dartmoor National Park Authority [hereinafter "the NPA"].
  - The enforcement notice was issued on 15 November 2016.
  - The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of building operations and engineering operations to: (a) Excavate the Land; (b) Construct retaining walls on the Land; (c) Construct flights of steps on the Land; (d) Change the levels and contour of the Land; in the location shown edged red on the Plan ("the Development").
  - The requirements of the notice are: (i) Permanently remove the Development from the Land, including all debris and materials; and (ii) Restore the Land to its former condition, levels and contours.
  - The period for compliance with the requirements is 6 months.
  - The appeals are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Act.
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### **Appeals A & B: Decision**

1. The appeals are allowed on ground (a) and the enforcement notice is quashed. Planning permission is granted on the applications deemed to have been made under section 177(5) of the Act for operational development consisting of building operations and engineering operations to: (a) Excavate the Land; (b) Construct retaining walls on the Land; (c) Construct flights of steps on the Land; (d) Change the levels and contour of the Land at East Wray Barton, Moretonhampstead Road, Lustleigh, Newton Abbot, Devon TQ13 9SN, subject to the condition set out in the *Condition Schedule* attached to this decision.

### **Appeals A & B: Procedural matters**

2. Section 8 of the Appellants' final comments introduce a claim that the notice is invalid which, given its timing, has not been the subject of comments by the NPA. The basis for the claim is expressly by reference to section 173(1) of the Act, which says: "*An enforcement notice shall state- (a) the matters which appear to...constitute the breach of planning control*". In that context attention is drawn to section 173(2) of the Act, which says: "*A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are*". These provisions are therefore concerned with the identification and plain understanding of the breach of planning control.
3. The Appellants say they are unclear what works the NPA: "*...wanted them to carry out*". The same paragraph [8.1] continues by referring to: "*...the*

*requirement to return the land to its former condition*". The next paragraph [8.2] says the notice is not clear and precise: "...in its description of the works required". The final paragraph [8.3] talks about: "...the ambiguity over the requirements". However these points all go to the requirements of the notice, rather than the breach. None of them are referable back to sections 173(1) and (2) of the Act, which appears to underpin the claim as to invalidity.

4. Whilst there might be issues with the requirements, given that the Appellants have lodged appeals on, amongst others, grounds (a) and (f), there appears to be a wide scope to consider these points in detail in these substantive grounds. Noting the wide power available to an Inspector under section 176(1) of the Act, if defects are identified on detailed analysis it might be possible to correct them without injustice. However there is nothing obviously wrong with the requirements that would lead to a finding of invalidity at this initial stage and this view is underlined by the fact the claim was only made in final comments.
5. Nevertheless paragraphs 8.2 and 8.3 of the Appellants' final comments express concerns about, in particular, the plan attached to the notice. Since the area edged red on that plan is referred to in section 3 of the notice, which identifies the breach, this could be said to be referable to sections 173(1) and (2) of the Act. I acknowledge there is some truth in the claim the lines on the notice plan are out of scale with the drawing. At the quoted scale of 1:500 I estimate that the line itself is over 0.5 metre wide. However the Appellants' Architect has done what in my view is a fair job of interpreting that red line and transposing it onto a more detailed plan at a scale of 1:100. It appears to me that it would be open to me to correct the notice by substituting a revised plan and I shall, as necessary, review the need to do so below. However this logically means that the Appellants have been able to understand the notice and interpret the area to which it relates. As such this is not a sound basis on which to conclude that the notice is invalid. The bottom line is that the alleged breach can be understood by reference to an identifiable area on a conventionally scaled plan.
6. The residual arguments advanced under this generic heading in section 8 of the Appellants' final comments refer to the boundary lines not according with those on planning applications and steps shown to the south-east of the enforcement plan area. However in my view neither point supports a finding of invalidity. The notice appears to have been directed to the area in respect of which the NPA has identified a breach of planning control and I note that no claim is even advanced that the breach is not spelt out in words with appropriate precision. The steps to the south east are outside the land edged red on the enforcement notice plan, which is confirmed by the Appellants' Architect's drawing entitled "TERRACE - PLAN"<sup>1</sup>, read in conjunction with the note [NB.] in section 3 of the notice. It must follow that there can be no ambiguity as to the extent of the area that is the subject of the enforcement notice allegation in this respect.
7. For the above reasons, with specific reference to the basis on which it is said for the Appellants that the notice is invalid, I find that the notice is not invalid. My finding on this point is reinforced by reference to the example notice in the Planning Practice Guidance [the Guidance]<sup>2</sup>, which bears fair comparison to what has been issued by the NPA and reveals no fundamental defects. Given

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<sup>1</sup> At Appendix A to the Appellants' grounds for appeal.

<sup>2</sup> See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/548727/17b-061-20140120\\_example-enforcement-notice-operational-development.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548727/17b-061-20140120_example-enforcement-notice-operational-development.pdf)

my findings on this point I have decided not to seek the comments of the NPA in this matter, despite the fact that it has not had an opportunity to comment.

8. An application for an award of costs has been made by Mrs Sharon Hunt and Mr Patrick Hunt against the NPA. This application is the subject of a separate decision.

### **Appeals A & B: Ground (a): Main issue**

9. I consider the main issue is the effect of the development on the character, appearance and setting of the barn and the wider area.

### **The planning policy context**

10. The Development Plan [DP] includes the Core Strategy 2006 - 2026 [CS] and the Development Management and Delivery Development Plan Document [DPD], which were adopted in June 2008 and July 2013, respectively. Relevant CS Policies that are cited on the notice include COR1, COR3 and COR4. Applying advice in paragraph 215 of the National Planning Policy Framework [the Framework] I attach these policies considerable weight. Relevant DPD Policies that are referred to on the notice include DMD1b, DMD5 and DMD7. The DPD was adopted after the Framework and should be given full weight.
11. The parties have referred to DPD Policy DMD9, but it concerns the: "*Conversion or re-use of non-residential buildings outside classified settlements*", as per the introduction/title to the policy. The deemed planning application is however for, generically, operational works within a garden and it has not been claimed at any stage that the use is unlawful. Whilst I note criterion (iii), which says the building should be capable of conversion without requiring significant changes in the relationship with existing ground levels, the NPA has permitted changes in the ground level to the north-east of the gable in order to facilitate its conversion. That is reflected in the red edge being detached from the barn. As such I reject any inference the policy is relevant to the deemed application.

### **Preliminary comments on the deemed application**

12. The Appellants' final comments refer to 8 appendices, but these were returned by The Planning Inspectorate for having been submitted at the wrong stage<sup>3</sup>. Although it is possible to understand the final comments without sight of the appendices this does mean I am only able to take them at face value. Hence, by way of example, the point about the stone fowl house is not one that I feel able to explore or comment upon without sight of the historic valuation<sup>4</sup>.
13. Nevertheless the point ultimately goes to the dispute between the parties as to whether this is a bank barn. The NPA do not refer to any definition, in the DP or other policy document, to support its contention that the converted barn to the south-west of the appeal site is a bank barn. The only, albeit unsupported<sup>5</sup>, definition before me is: "*A combination barn of usually two storeys. Through constructing the barn against a bank, both floors can be entered from ground level*". The source of this quote is said to be Historic England, which is the public body that is responsible for England's historic environment, and so it is

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<sup>3</sup> The start date letter dated 29 March 2017 says: "*You must not send your final comments instead of, or add to, your statement. No new evidence is allowed at this stage*". The 8 appendices plainly constituted new evidence.

<sup>4</sup> To the extent that I do not deal with any such points in my substantive reasoning it is therefore because I do not feel able to make any useful comment in the light of the fact that the submitted evidence was returned.

<sup>5</sup> The excerpt was returned but there is no reason to think the quote is not accurate.

appropriate to attach its definition significant weight. On the evidence<sup>6</sup> before me I consider that the building concerned is not a bank barn as defined.

14. There appears to be what the Appellants have called a “*relatively lengthy*” planning history and whilst I have been provided with some documents I do not have, by way of example, the NPA’s reports on any of the applications. The NPA says that no works were permitted in the area that is the subject of this appeal and whilst the application site for 0352/14, 0290/15 and 0581/15 includes the current appeal site I have no clear basis to dispute that assertion<sup>7</sup>. Amongst other things I note that condition 8 of 0352/14 removed permitted development rights for, generically, curtilage structures and hard surfaces. Whilst 0581/15 contains a similar condition, No 1, given the date of the grant it would appear from paragraph 1.11 of the NPA’s statement that the works that are the subject of this appeal had been undertaken, if not completed<sup>8</sup>, by then.
15. In reaching this view I have noted reference to drawing No 528/PR/001 A and, in particular, the ground levels on the north-west elevation. In my view what is most significant about this drawing are the levels shown on the north-east elevation, which reveals the level of the path reduced so as to facilitate the installation of the ground floor window in that elevation. When one compares the magnitude of the reduction<sup>9</sup> with the difference between the lowered level of the path and the ground level beyond what is said to be a low granite wall<sup>10</sup>, they are broadly the same. What I take from this is that the ground levels were only shown, and hence permitted, to be reduced along the line of the path<sup>11</sup>. There is no dashed line, or equivalent, to show a reduction in levels elsewhere and thus no indication that any change in ground levels was being proposed.
16. For completeness drawing No 528/WD/039C, which was approved pursuant to 0581/15, shows the permitted double doors in the north-east gable. When read with the ground floor plan on drawing No 528/WD/001I, it is clear that a further reduction in ground levels in the area at the rear of the gable was

<sup>6</sup> Including, but not limited to, the historic image of the gable of the unconverted barn on page 4 of the Landscape Appraisal Report at Appendix H to the Appellants’ grounds for appeal.

<sup>7</sup> Condition 3 of 0290/15 required a landscaping scheme to be submitted, but there is no evidence that it went beyond the immediate vicinity of the car park thereby permitted, which is outside the deemed application site.

<sup>8</sup> Paragraph 2.3 of the NPA’s statement says the retaining walls were “later” to be faced in stone, and since the date on which this work was done is unclear I cannot be certain the works were completed by the end of 2015. In any event paragraph 4.4 of the Appellants’ grounds for appeal say the works remain incomplete.

<sup>9</sup> The dashed black line with the red line on the north-east elevation.

<sup>10</sup> Red line showing the ground level on the north-west elevation.

<sup>11</sup> The existing levels survey does not reveal any significant difference in ground levels in the vicinity of the gable of the barn. Relevant spot heights include 53.53 and 53.55 on what are said to be stone slabs adjacent to the gable above the concrete steps and 53.54 rising to 53.75 on what are said to be stone slabs within what is now the appeal site. The north-west elevation on drawing No 528/PR/001 A is ambiguous as to precisely where it lies, in the sense that it is not along an identified section, but given it shows the external elevations it appears to be somewhere in the vicinity of the levels that I have identified above. Unless the position of the granite lintel at the ground floor level has changed, which seems unlikely, the levels shown on section AA do not readily correspond to those shown on drawing No 528/PR/001 A. This view is supported by the 3 steps up on the right hand side of the blue hatched line annotated “approved 0352/14 blue line” on that section, the top of which appears to correspond, relative to the lintel, with the level demarcated by the dashed black line on the north-east elevation on drawing No 528/PR/001 A, which is below what is now said to be the “original ground level” on section AA. Thus the levels on the permitted plan might be materially out, which would explain why the right hand end of the steps on the blue hatched line annotated “approved 0352/14 blue line” on section AA finish somewhat randomly well below what is now claimed to be the “original ground level”. In the circumstances I am unconvinced by the blue dashed line on section BB and the specific levels that are set out on that line on the section. The fact is that the permitted drawing[s] contain the clear caveat “Do not scale this drawing” and so I reject the claim that it is possible to transpose the line shown on the permitted plan to the level of detail now claimed, e.g. 53.083 m. However, even if there might be some discrepancies, ultimately I must focus on what the permitted drawing shows and for the reasons I have given, specifically that the red line showing ground levels within what is now the appeal site on the north-west elevation corresponds with the hatched black line showing existing ground levels on the north-east elevation, drawing No 528/PR/001 A does not permit alterations to any of the ground levels within the appeal site as that was shown, rightly or not, to be the existing ground level on that drawing.

- permitted<sup>12</sup>. However this only serves to reinforce my view that none of these permissions permitted works within the area that is the subject of this appeal.
17. Allied to the latter point, there is a dispute between the parties as to whether that planning permission authorised a retaining structure. When one looks at approved drawing 528/WD/001I the ground level in front of the double doors is constant with what I shall call the side passage around to what is identified as a timber gate. By way of contrast steps on the other side of the red line boundary are clearly identified but none are shown within the application site.
18. Given the absolute terms of condition 1 of 0581/15 it is inconceivable that the planning permission did not expressly permit a means of enclosure along the line shown parallel with the rear gable. Confusingly the proposed floor plans show a gap whereas the existing plans do not<sup>13</sup> and this might have been in anticipation of a set of steps or similar<sup>14</sup>. The NPA could have required details of any retaining structure to be submitted and approved but it did not. There can be no scope in this exercise for implying anything. The planning permission expressly permitted the: *"Conversion of former barn to single dwelling with external alterations"* [*my emphasis*]. The decision notice expressly incorporates: *"the application dated 22 October 2015, together with drawings"*, including No 528/WD/001I, which relate to the development as described. It is inevitable that a retaining structure would be necessary along this line to achieve the reduced ground levels in front of the double doors and in my view, since no condition required prior approval of such details, planning permission was granted for any such retaining structure that was reasonably necessary.

### **Reasons**

19. Dealing initially with character, it is trite to record that the barn conversion has granite walls with a slate roof and what are said to be oak window frames and doors. This palette of materials has been used immediately at the rear of the barn where there is a granite retaining wall and steps. In the context of my finding that the NPA has permitted but not sought to control the materials of a retaining feature at this point, this has a positive effect on the area's character.
20. In terms of the principal of a terraced garden the Appraisal says: *"The garden has been terraced in the past and is still terraced, though at different locations and to create larger, more level areas of garden"*<sup>15</sup>. Based on the original levels survey and the limited historic photos before me it is hard to disagree. What I shall call the upper terrace, said to be at 54.68 m<sup>16</sup>, appears to be broadly at a similar level to the ground levels shown on the original levels survey<sup>17</sup>. This has a neutral effect. At the time of my inspection planting had taken place at this level. It was agreed during my inspection that the granite retaining wall that stands to the north-east of this terrace is outside the appeal site but, taking account of the planting and the removal of the slab patio from part of the site, the upper terrace has a positive effect on the landscape character of the area.
21. Turning to the main terrace, it would appear the ground levels have changed quite considerably in this area. This terrace is said to be at 52.41 m<sup>18</sup>, which

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<sup>12</sup> As shown by the red line on section AA on drawing No 528/WD/032.

<sup>13</sup> Compare drawing Nos 528/WD/001I and 528/WD/041.

<sup>14</sup> At the time the way forward on what is now the appeal site was yet to be determined.

<sup>15</sup> Source of quote: page 10 of the Landscape Appraisal Report, Appendix H to the Appellants' grounds for appeal.

<sup>16</sup> See TOW level stated on Appendix A to the Appellants' grounds for appeal.

<sup>17</sup> These vary between 54.08 and 55.35 m.

<sup>18</sup> See TOW level stated on Appendix A to the Appellants' grounds for appeal.

is significantly below the ground levels shown on the original levels survey<sup>19</sup>. This would suggest the ground levels have been reduced on the south-western half of this area typically between 1.1-1.4 m and on the north-eastern half of this area by typically more than 2 m. The scale of the excavation, together with the consequential size of the retaining walls and steps, and the associated timber panels on the retaining walls to the south-east of the courtyard, has a negative effect on the setting of the barn and the character of the immediate area. In reaching this view I have taken account of the historic character of the garden including, among other things, the removal of the concrete steps<sup>20</sup>.

22. Nevertheless given that the NPA has permitted a main habitable [sitting] room with double doors facing north-east towards this part of the garden I consider that it was inevitable that some changes in ground levels were destined to be agreed at some stage in this area of the site<sup>21</sup>. Whilst one option might have been to have a further intermediate level of terracing that option has not been canvassed in the material before me. Noting that even the Appellants' own Appraisal contains criticisms of the "*urban character*" of the courtyard and the choice of some of the materials, the issue I must address is whether this aspect of the development could be ameliorated by imposing a planning condition.
23. The Appraisal identifies the scope for raised planting beds of local granite to be constructed and planted at the base of each retaining wall. Given that the rendered retaining walls are approximately 2.3 m high it is in prospect that a suitable landscaping scheme would have the potential to reduce, but not fully mitigate, the identified harm. This finding is wholly in line with the fact that the Appraisal says this will reduce the harm from negative to a minor negative effect. The Appraisal also identifies the scope for new paving at the courtyard level, including: "*...a mix of flags, reclaimed stone and cobbles*"<sup>22</sup>. This too could be achieved by the imposition of a [hard] landscaping condition.
24. Turning to visual impact, there are no public vantage-points from which the development, the subject of the deemed application, can be seen. In the light of my site inspection there is no question that views of the development are limited and restricted to the neighbour's drive and from the hotel garden path and kitchen window. Although the Appellants own both the hotel and the barn conversion at present it is plainly appropriate to look to a day when they might be owned or occupied separately. However even in such close views the visual impact is assessed to have, at worst, a very minor negative effect; I agree.
25. The views from the neighbour's drive reveal the restored gable end of the barn conversion and whilst the timber panels can be seen they are a very minor feature in this narrow and fleeting view. The removal of the modern slab patio<sup>23</sup> and the associated circular washing line, and its effective replacement with a lawn set above the new granite retaining wall<sup>24</sup> is a clear enhancement.

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<sup>19</sup> These typically vary between 53.54 and 54.82 m; although it does rise to 55.02 at one point, this appears to be unrepresentative because it is on a linear feature identified as a loose stone wall.

<sup>20</sup> See photograph on page 5 of the Landscape Appraisal Report, at Appendix H to the Appellants' grounds for appeal. So whilst the levels survey [Appendix F to the Appellants' grounds for appeal] refers to the steps within the appeal site as being "Wooden steps", these photographs give me a sound basis to dispute that description.

<sup>21</sup> For the reasons set out in paragraph 4.4 of the Appellants' grounds for appeal.

<sup>22</sup> Source of quote: page 15 of the Landscape Appraisal Report, Appendix H to the Appellants' grounds for appeal.

<sup>23</sup> Perhaps two thirds of which was within the appeal site according to the levels survey at Appendix F to the Appellants' grounds for appeal.

<sup>24</sup> See photograph on page 4 and compare with View 2 on page 12 of the Landscape Appraisal Report at Appendix H to the Appellants' grounds for appeal which, whilst from a slightly different position, is broadly the same view.

26. Although the timber panels are somewhat imposing when seen from the hotel garden path it is plain that with the introduction of a new dwelling in the barn conversion that a means of enclosure along this boundary would be required. Its open slatted design reduces its dominance and wood is an appropriate material, which the Appraisal says is "*rural in character*". The Appellants have offered to accept a landscaping condition and it might be possible to soften its visual impact by climbing plants, whether from raised beds or pots, including potentially some elements of evergreen climbers. As the beech hedge matures it will also reduce the impact of the panels when seen from the neighbour's drive. On balance I consider that the development would have a neutral effect on the visual appearance of the area if a planning condition were imposed.

**Summary of findings on main issue including an assessment against policy**

27. I agree with what in my view is a fair Appraisal that the impact on character is mixed, with some positive effects, some negative effects and some neutral effects. I find that the excavation for the courtyard has not caused an adverse visual impact outside of the site's immediate visual envelope. So whilst the substantive reason for issue of the notice identifies an adverse effect on the character and appearance of this part of the National Park and describes it as "*a harmful visual intrusion*", I disagree. I find no conflict with the policy in paragraph 115 of the Framework because the development would, at a minimum, conserve the National Park's landscape and scenic beauty.
28. The weight that I attach to the identified harm to the setting of the barn is moderated by my finding that this is not a bank barn, as defined. Moreover the NPA has permitted a significant excavation<sup>25</sup> at the rear of the barn, which is reflected in the fact that the appeal site is not adjacent to the gable. Given that the character of the barn, insofar as it was: "*...traditionally built into the side of the hill with the land sloping to the rear of the Barn*"<sup>26</sup>, has already been lost, I consider that this is not a point that weighs against this development. There would be no public benefit in reinstating the original ground levels in these circumstances, the only practical effect of which would be to compromise the reasonable living conditions of the future occupiers of the barn conversion.
29. In assessing my findings against relevant DP Policies I observe the following:
- CS Policy COR1: paragraph 3.4 of the NPA's statement refers, in particular, to criterion h). On balance I consider that the development does respect the character, quality and tranquillity of the local landscape and has no material effect on the wider countryside. I have found aspects of the development have resulted in enhancement and, overall, I find no conflict with the policy.
  - CS Policy COR3: given that the development has a very limited zone of visual influence, I consider that it does conserve, and in certain respects enhance, the characteristic landscapes and features of Dartmoor, having particular regard to the penultimate bullet-point in the light of paragraph 3.5 of the NPA's statement. For these reasons I find no conflict with the policy.
  - CS Policy COR4: I have found an issue with the scale of the main terrace but with the imposition of a condition and taking account of the positive aspects of the development I find that it would not be inappropriate to the site or its surroundings. The development would otherwise, at a minimum, conserve the quality and distinctiveness of the built environment and local landscape character. Noting that render is used for part of the barn façade, and other

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<sup>25</sup> The GL level stated on Appendix A to the Appellants' grounds for appeal is 51.19, whereas the original levels were of the order of 53.53 [see Appendix F to the Appellants' grounds for appeal], which is a difference of 2.34 m.

<sup>26</sup> Source of quote: paragraph 5.11 of the NPA's statement.

enhancements of materials can be achieved by imposition of a condition, I find compliance with criterion (b). The development would help to make the best sustainable use of the site and the adjacent barn conversion, and would ultimately provide an attractive and functional development. There is no basis to find a conflict with criterion (e) or any other criteria of the policy.

- DPD Policy DMD1b: noting again the limited zone of visual influence, I find that the development would conserve, and in some respects enhance, the natural beauty of Dartmoor. Conditions could achieve further landscaping for the benefit of wildlife and the setting of the barn, the intrinsic character of which has already been changed by what the NPA has permitted at the rear of the gable. For these reasons I find no conflict with the policy.
- DPD Policy DMD5: the development would have no impact on the special qualities of the Dartmoor landscape and to the limited extent that changes would be seen there would be enhancement; see paragraph 20. There would be no harm to the wider landscape and so the scale and design of the development does, at a minimum, conserve what is locally distinctive about landscape character. For these reasons I find no conflict with these or any other criteria set out in the policy.
- DPD Policy DMD7: I consider that, with the imposition of a condition with regard to hard and soft landscaping, that the development would achieve a high standard of design and construction. Taking this and the positive aspects of the development that I have identified into account, I find compliance with relevant criteria (i), (ii), (iv) and, since no conflict is alleged with the NPA's Design Guide, (vi).

30. In summary my slight concerns about the scale of the excavation for the main terrace, together with the associated retaining walls and screen panels, are outweighed by the positive aspects of the development and the prospect of imposing a landscaping condition to address the very localised harm. In the circumstances I conclude on the main issue that, subject to the imposition of a planning condition, the development respects the character, appearance and setting of the barn and the wider area. As such, for the reasons given, it broadly complies with CS Policies COR1, COR3 and COR4, DPD Policies DMD1b, DMD5 and DMD7, and the Framework.

### ***Conclusion on the deemed applications***

31. For the reasons given, and having regard to all other matters raised, I conclude that the ground (a) appeals should be allowed.

### **Conditions**

32. The Council has not put forward any suggested conditions and have not commented on the wording suggested by the Appellants. For reasons evident in my substantive reasoning I consider that there is a clear need to impose a condition to require a landscaping scheme. The details to be submitted in order to discharge this condition should include both hard and soft landscaping. For the avoidance of doubt this is not an opportunity to revisit the basic parameters of what is being permitted and hence the condition that I shall impose will expressly refer back to the discussion in this appeal decision and those components that have been offered by the Appellants. However the wording suggested by the Appellants is inadequate in terms of failing to identify a timescale or providing any remedy in the event of non-compliance. The condition that I shall impose therefore addresses these failings and provides a right of appeal in the event that matters cannot be agreed between the parties.

**Appeals A & B: Grounds (f) and (g)**

33. Given my findings on the deemed applications, since the enforcement notice will be quashed these grounds do not fall to be determined.

**Appeals A & B: Other matters**

34. In the light of my conclusion that the ground (a) appeals should succeed and the notice quashed, whilst I have previously indicated that I would review the need to substitute a revised plan, see paragraph 5 above, in the circumstances I find no reason to correct or otherwise vary the notice.

**Appeals A & B: Conclusion**

35. For the reasons given, and having regard to all other matters raised, I conclude that the appeals should be allowed and the enforcement notice quashed. I shall grant planning permission on the applications deemed to have been made under section 177(5) of the Act, subject to the identified planning condition.

*Pete Drew*

INSPECTOR

### ***Condition Schedule***

1. The operational development hereby permitted shall be demolished, all resulting materials and debris removed and the Land, as defined, restored to its former condition, levels and contours, as shown on the "ORIGINAL GROUND LEVEL SURVEY" dated "07/15", within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
  - i) within 3 months of the date of this decision a scheme for hard and soft landscaping of the Land, having specific reference to those components identified in this appeal decision, shall have been submitted for the written approval of the NPA and the scheme shall include a timetable for its implementation and maintenance.
  - ii) within 11 months of the date of this decision, if the NPA refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be maintained in accordance with the approved details.