



Appeal Decisions

Inquiry Held on 10 and 11 December 2019

Site visit made on 11 December 2019

by Simon Hand MA

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

Decision date: 02 January 2020

Appeal A: APP/P0119/C/18/3200307

Land at The Elms, Upper Tockington Road, Tockington, Bristol, BS32 4LQ

- 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 Bruce Farr against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, numbered COM/17/0201/OD/1, was issued on 13 April 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building used for commercial storage and distribution use (Class B8) on agricultural land.
 - The requirements of the notice are 1. Remove the building and all associated building operations and infrastructure from the land; 2. Restore the land to its condition before the breach took place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/P0119/W/19/3222700

Land at The Elms, Upper Tockington Road, Tockington, Bristol, BS32 4LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Bruce Farr against South Gloucestershire Council.
 - The application Ref PT18/5361/F is dated 22 November 2018.
 - The development proposed is change of use of a redundant agricultural building to B8 storage and distribution use (retrospective).
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Costs Application

1. An application for an award of costs was made by the Council against the appellant. This is the subject of a separate decision letter.

Decisions

Appeal A - 3200307

2. It is directed that the enforcement notice be corrected by substituting the plan attached to this decision for that attached to the notice. Subject to this correction 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 – 3222700

3. The appeal is dismissed.

Preliminary Matters

4. At the opening of the Inquiry, the appellant withdrew the appeal on ground (c).

The Validity of the Notice

5. The appellant argues the notice is either invalid or a nullity and advances eight grounds to that effect. Several of these involve the plan attached to the notice. It was accepted by the Council the plan showed a larger area than that actually covered by the barn and associated hardstanding, as the red line extended further south to cover a narrow strip of woodland to the rear of the barn. However, this is easily remedied by amending the plan. There is no doubt as to what barn is meant, there is only one building in the area covered by the red line and the inclusion of a small area of woodland is of no consequence.
6. The Council also accepted that in the reasons section of the notice they identified the access to the appeal site as from Upper Tockington Road. The Elms can be approached both from this road to the north and from the south, via Hardy Lane. However, the commercial complex and in particular the building subject to the notice are accessed only from Hardy Lane. However, nothing turns on this issue. There were identified problems with the Hardy Lane access but it has been agreed they can be dealt with by conditions. The other issues raised were either withdrawn at the inquiry or are better dealt with under ground (b). In my view there can be no doubt for anyone reading the notice what it alleges and what building it refers to.

The Appeal on Ground (b)

7. The appellant argues that the allegation of the construction of a new commercial building is incorrect. The building was lawfully erected as an agricultural barn and then converted into a commercial building. The background to the erection of the barn is somewhat complicated. The Elms is no longer a working farm and all the farm buildings have been converted, over many years, into commercial uses. However, Mr Farr the appellant and owner of the whole complex still owns several hundred acres of farmland, some of it directly adjacent to the Elms complex, which is let out to tenants. No farm buildings remained to service the agricultural land. In 2015 Mr Cheaker, a long standing tenant of Mr Farr, approached him with a request for a barn. According to Mr Farr, Mr Cheaker, who raises beef cattle, wanted to involve his daughter by developing a meat processing business of some sort which would involve a barn. An application for prior approval for an agricultural barn was made on 16 August 2016. The Council gave notice that no prior approval was required on 16 September 2016. Works began and the barn was completed in early 2017, exactly when is in dispute. By then Mr Cheaker had changed his mind, due to family issues, and no longer needed the barn. According to Mr Farr, Mr Anderson of Victoria Foods, a long standing occupant of another unit on The Elms, approached him and suggested that Victoria Foods relocate to the barn, which was now redundant and this happened in June/July 2017.
8. The issue is then, whether the barn was ever lawfully erected? Schedule 2, Part 6, Class A of the General Permitted Development (England) Order 2015,

allows the erection of a farm building. Specifically a building can be erected on agricultural land if it is in a unit of 5ha or more and if it is reasonably necessary for the purposes of agriculture within the unit. There is no dispute the agricultural unit is over 5ha, the other two requirements are disputed. Class A is also subject to various limitations that are relevant here. Development is not permitted if the building is not “designed for agricultural purposes” (A.1(d)) and it is permitted subject to a condition that it be removed within 3 years of the date of the agricultural use ceasing, if that cessation occurs within 10 years of when the building was substantially completed (A.2(5)). A further condition requires the developer to notify the Council when the building is substantially complete within 7 days of that fact (A.2(7)). Finally, of course, prior approval must be obtained for the siting, design and external appearance, and the resulting building must be constructed in accordance with the details submitted with the prior approval application (A.2(2)(v)(bb)).

9. Just on the brief description of events above it is clear, and this is not disputed, that the barn was never used for agricultural purposes. The first and only use has been by Victoria Foods, who operate a food based storage and distribution business, squarely within Class B8 of the Use Classes Order. This calls into question whether this was ever an agricultural building or whether it was ever reasonably necessary for agricultural purposes. However it is more complicated than that as the appellant argues that the land on which the barn was built was not in agricultural use. This represents the appellant’s fallback position for the ground (a), but obviously has implications for the ground (b) as well.

Previous use of the land

10. The Elms complex is on a north-south axis, with fields to the west and the village of Tockington to the east. The complex is bisected by two tracks that form a cross roads roughly in the middle. From at least the 1990s, around the west side of the crossroads was a large chicken shed with a hardstanding in front and some structures, possibly used for storage next to it, strung out along the westerly track. Open fields that lay either side of the track have been planted by Mr Farr to form a thick tree belt, running north-south, closely hugging the large chicken shed and bisected by the westerly track, which then ran on into the fields beyond. The appeal barn was built immediately south of the westerly track, in an area subsequently cleared of trees, adjacent to the large chicken shed and partly on land where the storage structures were placed. Once the agricultural use of The Elms ceased, the large chicken shed became a commercial use, but the lawful use of the land to the west, including the woodland and the site of the appeal barn remained agricultural.
11. Mr Farr gave oral evidence that the land where the barn was later erected had actually, since 2005, been used for a variety of commercial purposes. His son provided a tenancy agreement dated 2005 for a builder/electrician who occupied unit 4. This, according to Mr Farr was a portacabin on the land in question. A further tenancy agreement was provided showing occupation of unit H4 by scaffolders from 2015 onwards. There are photographs from this later period showing a portacabin and what looks like scaffolding being stored on the land. Mr Farr said that various uses, including a timber store, builders store, a furniture store and so on took place on the land in a variety of sheds and portacabins from 2005 up to when he asked the scaffolders to leave in order to begin works on the barn.

12. I shall deal with whether this represents a legitimate fallback for the ground (a) later, but for now all I need to note is that it completely undermines the claim that the barn was lawfully erected as the land was not being used for agricultural purposes when the prior approval was made. It is not disputed that the prior approval application is not a planning permission, that is granted by the GPDO. If development is carried out that purports to be permitted development but in fact does not meet the various criteria of whatever Class of the GPDO is relevant, then that development is not lawful. That is an entirely commonplace observation. If you build an extension to your house that is larger than allowed for by Class A of Part 2 then that extension is not lawful and can be subject to enforcement action. The prior approval process does not impact on that in any way as it is not a finding that the application is lawful, merely that on the basis of the information provided prior approval either is or is not required.
13. Class A of Part 6 requires that the development in question must be on agricultural land. For the purpose of Class A agricultural land is defined in D.1 as *"land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business...."*. Before the barn permitted by Class A was erected at least some of the land was in use by a scaffolding company. The erection of the barn was thus not permitted development. The first use of the barn was for commercial storage and distribution so the allegation is correct and for this reason alone the appeal on ground (b) fails.

Other ground (b) issues

14. I do not need to go into detail of the convoluted history of the erection of the barn, but suffice to say on his own admission, before the works to construct the barn had really begun Mr Cheaker had announced he did not need it. Mr Farr was left with contracts in place to build a barn for which there was no longer an agricultural need. He decided to go ahead anyway in the hope that either Mr Cheaker would change his mind or a different use could be found. As he said in answer to my questions, his substantial investment in building this large structure was for the long term, there would always be a use for it and as it turned out Victoria Foods wanted it, "as one door closes another opens". This is of course sound practical common-sense, but in terms of the GPDO it means that while the works were being carried out, they were not reasonably necessary for the purposes of agriculture on the unit. At best they had become a speculative agricultural venture and at worst a commercial one. This is a further reason why the appeal on ground (b) should fail.
15. I am not entirely convinced the building was not designed for agricultural purposes. The addition of windows down the long southern side would be unusual, but an extra side door and the canopy over the main doors is hardly significant. The mezzanine floor is more problematic. I have no doubt they are an historic feature of some barns in the south-west, but whether they are typical in a modern agricultural shed is another matter, but nevertheless, I do not think these changes are so egregious as to clearly make the building appear to be not designed for agricultural purposes. However, they do make it quite different from the plans submitted with the prior approval application. This shows a simple rectangle with 3 large doors evenly spaced on the northern elevation and a personnel door, and no other openings. As built, each elevation is different, there are only two doors on the north, one with a canopy

over, a new personnel door on the east, a line of windows down the southern elevation and cooling fans on the west. Taken together the barn as built is clearly quite different from that shown on the plans and so contravenes condition A.2(2)(v)(bb). This is the final reason why the appeal on ground (b) should fail.

The Appeal on Ground (a)

16. This ground is effectively for retrospective planning permission for the new commercial building that is the subject of the notice. The site is in the green belt so the first issue is whether the development is inappropriate development or not. The appellant originally argued the development represented limited infilling of previously developed land and so according to paragraph 145(g) of the NPPF was not inappropriate development. However, his planning witness admitted in cross-examination it was inappropriate development. Nevertheless this issue was returned to in closings and I shall deal with it briefly here.
17. I do not need to reach a conclusion on whether the land was genuinely previously developed land as the paragraph 145(g) explains the new development must not have a greater impact on openness than the existing development. If I assume the existing development was the scaffolding company operation and this is fairly illustrated by the photographs provided by Mr Farr, it is clear this operated from a portacabin and possibly a small shed on the land. There was some further outdoor storage, but none of this is in any way comparable with the size and bulk of the new commercial building on its own, never mind the large apron of hardstanding created in front of it. It is obvious the new building does have a greater effect on openness than the development existing immediately prior to its erection and so it does represent inappropriate development. As such it is by definition harmful to the green belt and should only be allowed in very special circumstances.

Policy issues

18. The access issue could be resolved by conditions which leaves harm to the landscape, harm to neighbours' amenities and harm to the Council's policies on the location of B8 uses. Dealing with the latter first, two policies are of direct relevance from the Policies, Sites and Places plan (2017). PSP27 deals with the location of B8 uses and PSP28 deals with the rural economy. PSP27 is quite clear that B8 uses of whatever size should be confined to certain defined locations and The Elms is not one of them. I accept that on its face the development is contrary to PSP27. However, as the appellant pointed out, there are other policies that would allow for small developments in the district, such as in redundant rural barns for example that sit outside the strict confines of PSP27. One such policy relied on by the appellant is PSP28.
19. This policy supports sustainable new development to promote a strong rural economy. The appellant argued the appeal development was entirely in accord with the various sub-paragraphs of the policy. In particular 1(f), as it was of a scale which is consistent with its function, use and rural location. This was not disputed by the Council and I agree the policy does seem to support a development of this scale in this location, except the policy also has a freestanding comment that development in the green belt is inappropriate and should only be allowed if there are very special circumstances. It is unclear exactly how this relates to the rest of the policy, but I can only assume it is a warning that in green belt locations the apparent support for new commercial

buildings will be tempered by specific green belt considerations. The appellant suggested therefore that if green belt considerations could be satisfied PSP28 would support the construction of a new commercial building on the appeal site. However, the reverse must also be true, if the development is contrary to green belt policy there would be no policy support for it. Consequently, the development is contrary to the Council's policies concerning the location of B8 uses.

Noise and disturbance

20. A large number of local residents came to the inquiry and many more provided written evidence. There was considerable support for the appeal, but that mostly consisted of testimonials to the appellant's character, which, while no doubt welcome, adds little to the merits of the case. Those who opposed the development did so mainly on grounds of noise and disturbance. Several objectors provided written evidence of early morning disturbance, sometimes way before the supposed 6.30am start time, and two addressed the inquiry to that effect. There was a suggestion that they lived some way from the appeal site, but while not the closest residents they are certainly close enough to be disturbed by early deliveries at 5.30am. There was also a suggestion that they could not show the disturbance came from Victoria Foods itself, but there was no evidence that anyone else at The Elms had early morning deliveries, whereas it is a deliberate and important element of Victoria Foods operational methods.
21. I note there have only been a few official complaints, and those spread over a period of 20 years since Victoria Foods first began operating at The Elms and in principle, the issue could be resolved by a condition restricting deliveries to after 07:30. Although this would create some difficulties for Victoria Foods, Mr Anderson, the owner, accepted the business could survive with such a restriction on hours. There is no reason therefore to weigh noise against the development.

Landscape

22. On landscape harm it was a similar story. The Council agreed that in the long term the building could be screened by tree planting and this could be secured by condition. In fact it seems Mr Farr is an enthusiastic tree planter and has already planted a mix of conifers and oaks along the boundary. A public footpath runs though the fields close to the western edge of the building, and it is currently clearly visible. When the tree screen matures views will be limited to those seen through the gateway and glimpsed through the trees. But in any event the views are of a large but fairly non-descript, agricultural looking building. Although figures of 10-15 years were banded about, I would have thought within five the conifers would provide sufficient screening for the building to be largely unnoticed by passers-by. There is thus some short term but very limited harm in landscape terms.

The fallback position

23. It seems clear to me on the evidence the last use of at least some of the land prior to the erection of the building was for a scaffolding company. Other uses were mentioned such as storage of furniture and wood, but also use by builders and an electrician. Some of these may have been B1 uses, others were more likely to be B8 storage uses, a scaffolder could well be sui generis. On the

basis of the very little information I have it is difficult to reach any clear conclusions.

24. There was also dispute about the planning unit. The appellant maintained The Elms was one large planning unit, and so the area with the scaffold and other uses on it was simply part of that planning unit. In which case the planning unit as a whole had been lawful for many years through the passage of time, so these changes within it were all lawful as well. I do not need to decide the dispute between the parties as to whether The Elms really is a single planning unit or several discrete ones, as taking the appellant's arguments on face value I do not think it is as simple as is made out. Although a number of buildings within the complex may have received planning permission over the years, as far as I am aware there is no LDC or planning permission for The Elms, so there would seem to be no defined boundary for the planning unit. The last lawful use of the land was for agriculture and again as far as I am aware the various changes to commercial uses all began unlawfully. Thus even if they have now obtained immunity through the passage of time that immunity extends only to the actual land and buildings where there has been a material change of use from agricultural to commercial uses.
25. As far as the appeal site is concerned, the aerial photographs show a clear progression. In 1991 the appeal site was simply covered in trees. By 1999 there had been encroachment into the corner of the appeal site, but the area now covered by the barn was still mostly tree covered. By 2005, when the alleged storage uses began, it is clear some of those trees had been removed and there is something happening, possibly storage, in the area. By 2008 there appears to have been some regrowth of trees, but part of the site of the building is still being used. By 2014 very little seems to be happening, but there are a couple of dots of colour suggesting vehicles parked or perhaps lorry bodies used for storage, it is impossible to tell.
26. It is far from clear, therefore, that the majority of the area covered by the appeal building has ever been used for anything other than forestry. Parts of the site do seem to have been put to use, but not all of it. If those parts can be said to have achieved immunity from enforcement that does not extend to the whole of the appeal site and that has a significant effect on the potential fallback position.
27. Even if I were to take the appellants fallback on face value, there is still the issue that there is no LDC or planning permission affecting that land and the resumption of any uses, such as scaffolding, could well be challenged by the Council. The evidence I have is far from convincing that the uses have received immunity. Mr Farr was adamant, but his views are contradicted by the aerial photographs and the statements made in the prior approval application that the land was used for agriculture and the suggestion that the portacabin was used for agricultural storage.
28. Finally, even at its strongest, the fallback is for a storage use, with no permanent buildings, which is, by definition, bound to have less impact on the openness of the green belt than the substantial commercial building that has been erected and it would seem the low key use for which evidence was provided clearly did have less impact. Consequently, while I am not convinced there is a lawful fallback for storage uses on the appeal site, even if there is it

would seem to have been smaller and have less impact than the appeal building.

Impact on Victoria Foods

29. The positive benefits put forward involve the future of Victoria Foods. It is clear if the appeal is lost and the building pulled down than Victoria Foods will have to relocate. There is nowhere else on The Elms they can go. The issue is therefore whether they can relocate elsewhere. Mr Anderson said he'd looked around and proper, serviced commercial units were much too expensive. The Council suggested his business was not really viable if he couldn't afford a market rent on a commercial estate, but I agree with the appellant this argument misunderstands the commercial reality where different qualities of premises are available for different types of businesses. I have no reason to doubt Mr Anderson's word, but nevertheless, no actual evidence was provided one way or the other.
30. Assuming the company will cease trading that would lead to a loss of jobs that would have a concomitant negative impact on the local economy. Victoria Foods employs 11 people of whom Mr Anderson accepted 6 were relatively young and should be able to find other work. His clients should also be able to source foodstuffs from his competitors. The immediate impact on the locality would be a loss of spending in the shops in Olveston, which is the nearest village with services.

Conclusions

31. I have found the building represents a new commercial structure which has been constructed in the green belt. It is inappropriate development. In addition there is harm to green belt by way of its impact on openness. Significant weight should be given to any harm to the green belt and this is reinforced by the additional harm to openness. I do not give any great weight to the fallback position, but even if I did, at its strongest it reduces the impact on openness by only a small amount. There is still substantial harm to the green belt. There is also minor landscape harm, to which I attach only a little weight. The development is also contrary to the Council's policies. There should be no harm to residential amenity by way of noise. However, to balance the substantial harm to the green belt and other harms is the fact that Victoria Foods might close and 5 or 6 people might lose their jobs. This is obviously serious for them, but, even with the small loss of local spending, it does not outweigh the harm I have identified. If it did, then this would be a green light for any number of unlawful commercial uses in the green belt. As the harm I have identified is not outweighed it follows there are no very special circumstances to warrant allowing a new commercial building on this site. The appeal on ground (a) fails.

The Appeal on Ground (f)

32. This ground is that the requirements are excessive. The appellant argues the barn should be allowed to be retained as to remove it would be a waste of resources. I note the steel frame can be reused, but I agree it would be a waste to knock it down when it is a perfectly serviceable building but that is to rather miss the point. The barn was erected using the permitted development rights granted by Class A of Part 6. This allows significant exceptions to the normal policy protecting the countryside and the green belt from inappropriate

buildings purely for the benefit of agriculture. This exceptionality is recognised by the condition mentioned above that requires the building to be pulled down if it ceases to be used for agricultural purposes within 10 years. This is an attempt to stop, exactly what has happened here, the erection of a barn ostensibly for genuine agricultural purposes that is then actually used for another use. The simple fact is that Mr Farr would never have got planning permission for a large commercial unit in this location had he applied for it.

33. It was suggested the barn might be used agriculturally in the future, and another local farmer had enquired of Mr Farr whether this might be possible. There is no hard evidence for this and no guarantee it will ever happen. Given that the much firmer commitment from Mr Cheaker evaporated I can give little weight to this latest suggestion. There needs to be a realistic prospect of an agricultural use materialising, otherwise, if the building is legitimised by allowing the ground (f), there will almost inevitably be a later application for conversion to commercial use as there will now be no green belt objection. It is in order to protect the green belt that the notice was issued in the first place.
34. A secondary issue is the requirement to restore the land to its condition before the building was erected. The state of the land, from the photographs provided, would seem to be a mix of gravel hardstanding and grass. It is suggested this would prejudice the resumption of the lawful B8 use on the site. I am not sure how that can be the case, even if that use is lawful, and I suggest the latter is something Mr Farr will need to sort out with the Council. In any event, I can see no reason why such a requirement would be excessive. The appeal on ground (f) fails.

The Appeal on Ground (g)

35. The notice gives 6 months for the building to be removed and the land restored. Removal of the building should not take more than a few days, although some time needs to be set aside to allow this to be arranged. Of greater concern is the need for Victoria Foods to relocate. Although they have argued they cannot relocate, and theoretically therefore I can set this aside completely, it is sensible to allow a reasonable period for a possible relocation. However, 6 months seems plenty of time, even if in reality it will effectively be 5 months with a month over for demolition. The appeal on ground (g) fails.

Conclusions

36. The s78 appeal B is for the change of use of a redundant agricultural building and this is predicated on success on ground (b) in Appeal A. As there is no redundant agricultural building then this appeal cannot succeed and it will be dismissed.
37. I shall correct the notice in Appeal A by substituting a new plan, but otherwise that appeal fails and the notice is upheld.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Peter Wadsley of counsel

He called

Bruce Farr – Appellant

Mark Anderson – Victoria Foods

Nigel Cant – Agent

FOR THE LOCAL PLANNING AUTHORITY:

Horatio Waller of Counsel

He called

Neil Howat – enforcement officer

INTERESTED PERSONS:

Supporters

Rodney Williams

Peter Hanks

Rosemary Arkell

Michael Wright

Matthew Bullock

Jason Cavill

James Farr

Opponents

Calvin Dix

Phillip Tellwright

Carol Tellwright

DOCUMENTS

- 1 Statement of Common Ground
- 2 GPDO – interpretation of 'agriculture'
- 3 Block plan of 2016 prior approval application
- 4 E-mails concerning the 2016 prior approval application
- 5 Victoria Foods profit figures
- 6 LPA's opening
- 7 Appellant's opening
- 8 3rd party written statements
- 9 Appellant's landscape evidence
- 10 Map of location of certain 3rd party houses
- 11 List of employees of Victoria Foods
- 12 Core strategy definition of infill
- 13 LPA's closings



Plan

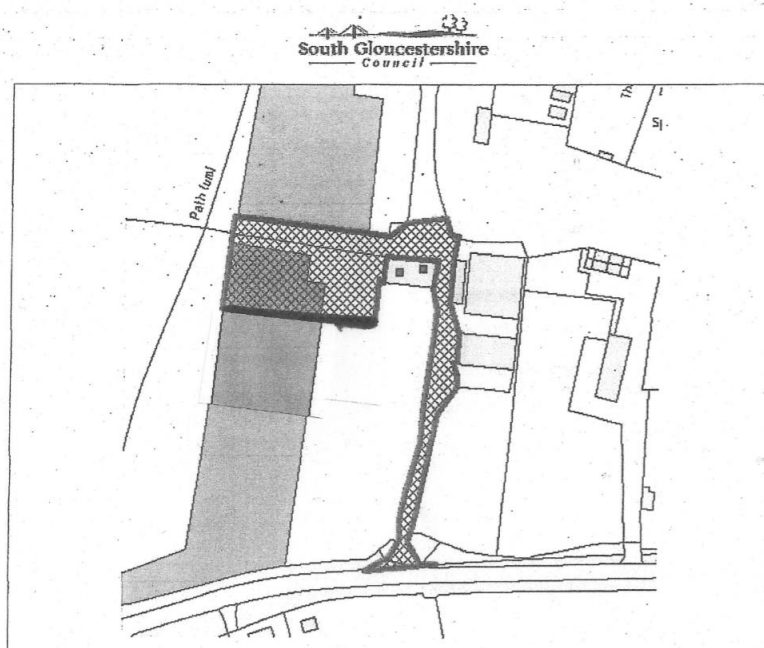
This is the plan referred to in my decision dated:

by Simon Hand MA

Land at: The Elms, Upper Tockington Road, Tockington, Bristol, BS32 4LQ

Reference: APP/P0119/C/18/3200307

Scale: not to scale



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COM/17/0201/OD/1

The Elms
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Enforcement Notice