
Appeal Decisions

Site visit made on 25 November 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

Notice 1: APP/M1710/C/18/3208154

Keepers Lodge, Basingstoke Road, Beech, Alton GU34 4AB

- 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 P O'Brien against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 28 June 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, a material change of use of the Land to storage and parking use.
- The requirements of the notice are to:
 1. Cease the use of the Land outlined in red on the attached plan 1 for storage and parking, other than when the storage and parking is incidental or ancillary to the agricultural or residential use of the Land.
 2. Remove all stored and parked items from the Land outlined in red on the attached plan 1, (excluding the storage and parking which is incidental to the agricultural or residential use of the Land) to include but not exclusive to caravans, trailers, containers, hobby vehicles, military vehicles, vehicle parts, building materials, pallets, bricks, blocks, rubble, brickettes, windows, wood and hardcore.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee was not paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is allowed and the notice is quashed.

Notice 2: APP/M1710/C/18/3208153

Keepers Lodge, Basingstoke Road, Beech, Alton GU34 4AB

- 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 P O'Brien against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 28 June 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years the erection of buildings (Shown in the approximate positions marked X on the attached plan).
- The requirements of the notice are to:
 1. Cease the use of the buildings which are shown in the approximate positions marked X on the attached plan 2, for storage and parking.
 2. Remove all the contents of the buildings from the Land.
 3. Remove all utilities from the buildings, including electricity and water.
 4. Demolish the buildings and remove all the resultant debris from the Land.
- The period for compliance with the requirements is 2 months.

- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal is dismissed and the enforcement notice is upheld as corrected.

Notice 3: APP/M1710/C/18/3211089

Keepers Lodge, Basingstoke Road, Beech, Alton GU34 4AB

- 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 P O'Brien against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 23 August 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years the erection of a fence and an engineering operation comprising of a bund.
- The requirements of the notice are to:
 - i. Remove the fencing in the approximate position marked with a heavy blue line on the attached plan and remove the resultant debris from the Land.
 - ii. Dig up the engineering operation (bund) in the approximate position marked with a heavy blue line on the attached plan and remove all resultant debris from the Land
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee was not paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the notice is upheld with correction.

Notice 1: APP/M1710/C/18/3208154

The appeal on ground (b)

1. The ground of appeal is that the matter alleged has not occurred.
2. The notice alleges the material change of use of the whole site to use for storage and parking. Since storage is materially different in nature to parking, that would be a mixed use of those two primary uses. However, I am not convinced that any parking activity taking place is not ancillary or incidental to other uses operating on the site. Whilst there were undoubtedly a considerable number of vehicles present – in particular, of a military nature - it seemed to me that most of those were stored rather than parked.
3. Be that as it may, a more fundamental problem with the notice is that it does not identify all the primary activities taking place within the area edged red. There is, for example a dwellinghouse. No residential use is mentioned. Whether that is a primary use with sufficient functional and physical separation so as to be accommodated on its own within a separate identifiable planning unit, or whether it is part of a mixed use over a wider area is not for me to determine here. But the red line area of the notice includes the dwelling and yet it fails to recognise that use at all. Similarly, there would appear to be some on-going agricultural use but that too is not included.

4. Where all or some of the land is in mixed use, as appears to be the case here, it is important that the notice should allege a change to that mixed use, specifying all the component elements (lawful or otherwise) in the allegation – that is all primary (but not incidental or ancillary uses) that go to make up the mixed use. The requirements should then specify the elements of the mixed use which the Council require to cease.
5. The allegation in the notice is clearly incorrect. The whole of the land outlined in red is not in sole use for parking and storage. The matter alleged has not, therefore, occurred as a matter of fact. It is not possible for me to correct the notice as what seems to be required is a review of the extent of the planning unit and identification of all primary uses within it which make up the mixed use.
6. The appeal on ground (b) succeeds and the notice will be quashed. In these circumstances the appeal under grounds (c), (f) and (g) does not fall to be considered.

Notice 2: APP/M1710/C/18/3208153

Preliminary matters

7. The notice contains an error in that the first sentence in paragraph 4 refers to 10 years when it should be four years. The Appellant is, however, aware that four years, as set out in paragraph 3, is the correct timescale and I am, therefore, satisfied that I can correct the notice without any injustice arising.
8. The notice alleges operational development only; that is the erection of buildings. That being the case, steps 1 and 2 in paragraph 5 are excessive. Step 1 requires a use to cease when no use is alleged. Step 2 requires the removal of all the contents of the buildings from the land but that could only be required if the content was present in connection with an unlawful use which was being attacked.
9. As a notice describing operational development only and not use, the first two steps should be deleted. They are excessive as they go beyond remedying the alleged breach.
10. Subsequent to the issue of the notice, the Council has granted planning permission for one of the alleged buildings, an extension to the stable block. That being the case, by virtue of s180 of the Act, the notice has ceased to have effect insofar as it is inconsistent with that permission. However, since I intend to correct the notice in other respects, I shall delete that building from the notice.
11. The Appellant criticises the notice, claiming that the crosses on the plan attached to the notice are insufficient to identify what is being attacked. At my visit, it was clear that one, intended to identify a caravan site waste disposal unit was very inaccurately positioned. It seems to me that for ease of reference the Council might have numbered the crosses and briefly described each structure as I intend to do. I am satisfied that no injustice will arise from so doing as it is clear from the Appellant's appeal statement that he is aware of each structure attacked and has been able to address all relevant arguments relating to them. I shall from hereon refer to each building by the number as indicated on the substitute plan attached to this decision.

The appeal on grounds (b) and (c)

Building X1 – waste disposal unit

12. The Appellant claims that the structure is not a building and that it is, in any event, permitted by way of Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). I find that to be incorrect on both counts. Firstly, s336 of the Act defines “building” as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. As it is a structure of permanence, it thus comprises a building. Secondly, Class B of Part 5 of Schedule 2 to the GPDO includes as permitted development “Development required by the conditions of a site licence for the time being in force under the 1960 Act”. As there was no site licence in force when the unit was constructed, it was not permitted by way of the GPDO.

Buildings X2 & X3 - tents

13. The Appellant says neither tent comprises a building and so their installation does not amount to development within the meaning of the Act. Whether the installation of the structures amounts to a building operation requiring planning permission depends on three established relevant primary factors: size, permanence and physical attachment; although no one factor is decisive.
14. Whilst I was not able to see the tents at my visit as both had been removed, it is clear from the photographs provided, and from my inspection of the footprints where they had been, that both were of a considerable size and both would have had to have been erected on site. The Council describes them as ex-army tents. Whilst the Appellant claims they were moved every 8 months or so, no evidence was provided in support of that contention. The Council, in contrast, says they did not move from the original positions observed following site inspections in 2017. The Appellant also claims the tents simply rested on the ground and were not physically attached by means such as guy ropes. Whilst that might be so, they clearly remained securely in position for some one to two years, presumably by their own, not inconsiderable, weight.
15. On the evidence before me, and as a matter of fact and degree, I find both tents amount to buildings as defined by s336 of the Act and that their installation involved operational development within the meaning of s55 of the Act for which planning permission was required. No such permission has been granted. The Appellant says the Council has failed to set out why the tents constitute building operations, but on legal grounds of appeal such as this, the onus is on the Appellant to make out his case. On my assessment he has failed to do so, and I find a breach of planning control has occurred.
16. Although both tents had been removed that does not mean the alleged breach has not occurred. Rather, the requirements of the notice have been complied with insofar as they relate to these two structures.

Building X4 – barn

17. No argument under grounds (b) or (c) have been brought in relation to this building.

The appeal on ground (a)

18. The ground of appeal is that planning permission should be granted for the matters alleged. In this respect, the Appellant says that all the structures are reasonably necessary for the uses of the land being carried out.
19. Policy CP19 of the East Hampshire Local Plan: Joint Core Strategy, operates a policy of general restraint outside settlement policy boundaries to protect the countryside for its own sake. Development is only allowed where there is a genuine and proven need for a countryside location. Core Strategy policy CP29 requires all new development to achieve a high standard of design. Criterion (c) requires development to reflect national design policies whilst criteria (a), (d) and (e) are all concerned with the quality of design and respect for setting.

Building X1 – waste disposal unit

20. Notwithstanding that there was no caravan site licence in force at the time the unit was constructed, it was clearly provided to serve an intended caravan site use. Subsequently, land at the appeal site became a certified site by the Camping and Caravanning Club without the need for a licence and, as such, would have been a use permitted by way of Part 5 of Schedule 2 to the GPDO. Whilst the Certificate submitted for the Appellant expired at the end of February 2019, I saw that the use continues, but it might well be that a further certificate has been issued.
21. Although located in an open and exposed position of the site, the waste disposal unit has little visual impact having a very limited floor area and being no more than some 7/8 brick courses high. It appears well constructed in dark blue engineering bricks and has a surfaced area to the front, two paving slabs wide.
22. The waste disposal unit is clearly required to serve the caravan site in this countryside location and, given its function, it is difficult to see how the design might be improved upon. In my view, this very small structure has minimal impact on the rural character or appearance of the area. I therefore conclude that it does not conflict with Development Plan policies requiring justification for countryside development, nor with those seeking a high standard of design. Nonetheless, without the need arising from the caravan site use, the structure would not be justified and so would fail to comply with policy CP19. A condition would, therefore, be necessary to require the demolition of the structure should the caravan site use cease.
23. In respect of building X1, the appeal on ground (a) succeeds. Conditional planning permission for this building will be granted. There is no need for the notice to be altered to delete reference to this building however, since s180 is clear that the notice will cease to have effect insofar as it is inconsistent with the permission granted.

Buildings X2 & X3 - tents

24. I was unable to assess the tents first hand as they had been removed but the photographs provided indicate substantial structures of a poor quality and utilitarian nature. Their presence resulted in a significant and alien intrusion, eroding openness and rural character and contributing to the developed nature of the property. In my view, they resulted in significant harm to the character and appearance of the countryside. I am aware that the appeal property is

well screened so that the tents would not have been visible from outside the site. However, that they would not have been visible from public viewpoints is no justification for allowing unacceptable development in the countryside, as the cumulative effect would be to seriously erode the undeveloped nature of the rural area.

25. I am told that the tents were used to provide covered storage for some of the Appellant's vehicles and vehicle parts. Given the outcome of Notice 1, the lawfulness or otherwise of such a storage use is not before me although I note that an LDC relating to the property is confined to primary uses of a dwellinghouse and for agriculture only. Be that as it may, the fact that the two tents have been removed strongly suggests that there is no genuine and proven need for their location on the appeal site as required by policy CP19.
26. But even if need for covered storage to the extent provided by the two tents had been demonstrated as required by policy CP19, the tents would not have been an appropriate means of providing that storage given the damage caused to the character and appearance of the rural area by the poor-quality structures. The conflict with the policies of the Development Plan requiring a high quality design with respect for the particular setting would not have been outweighed by the need for storage when other, more appropriate design solutions, might be available.
27. In relation to buildings X2 & X3, the appeal on ground (a) fails.

Building X4 - barn

28. A planning application for the barn was refused by the Council and an appeal against that decision subsequently dismissed (ref: APP/M1710/W/18/3207627). The Inspector recognised that the building was dug-in to the rising land towards the west but found that it still protruded as a visual intrusion into the open countryside appearance of the site, causing harm to the intrinsic character and beauty of the countryside in this location. I find no reason to disagree with that conclusion.
29. The Inspector further concluded that a genuine need for the building as required by policy CP19 was not proven on the balance of probability. At my visit I found the site to be littered with an assortment of structures capable of providing covered storage although how many are lawfully present is not clear. Furthermore, whilst there is a LDC relating to, at least part if not all, of the site;¹ that certifies lawfulness for only two primary purposes, that is as a residential dwelling and for agriculture².
30. At my visit the only evidence of an agricultural undertaking was the presence of five Highland cattle. With such a limited number of livestock, the need for bulk storage of hay is not essential albeit that it might be more economical to buy in bulk when the price is lower. Moreover, it has not been demonstrated that the Appellant's own description of "numerous buildings and chattels on the site"³ and to the eastern end "a wide variety of buildings"⁴ do not provide sufficient space for ancillary activities (such as storage or workshop) to the two certified lawful residential and agricultural uses. Indeed, the Council has

¹ This is a matter in dispute between the parties, but its resolution is not before me.

² "ancillary storage" is part and parcel of those primary uses

³ Para.4.6 Appeal Statement

⁴ Para.6.19 Rebuttal

recently granted planning permission for an extension to the existing stable block providing significant additional covered floorspace.

31. The permitted extension to the stable block does not reduce the identified harm arising from the new barn and neither does it provide any justification for even more buildings on the site. Indeed, I would suggest it does quite the opposite since any further built development will add to the proliferation of structures, exacerbating the urbanising intrusion. Further, with that very recent planning permission which, as I understand from the decision notice, is to be used for agricultural storage, there is likely to be a reduced need for further floorspace on the site overall especially given the very limited agricultural activity taking place at the time of my visit. I find no reason to reach any different conclusion from that of the previous appeal Inspector that no genuine need for the building has been demonstrated on the balance of probability.
32. In relation to building X4, the appeal on ground (a) fails. There is conflict with policies CP19 and CP29 by way of lack of demonstrated need and harm to the character and appearance of the rural area.

The appeal on ground (f)

33. The Appellant's arguments brought under this ground have been dealt with in paragraphs 8 and 9 above.

The appeal on ground (g)

34. The Appellant claims that six months is needed to comply with the requirements of the notice but has provided no justification as to why the period specified falls short of what is reasonable. Only the barn remains to be removed, and I find no reason why that should not be completed within the two months allowed.

Notice 3: APP/M1710/C/18/3211089

Preliminary matters

35. Although the appeal was proceeding only on grounds (b) and (g), the Appellant's statement addresses grounds (b), (c), (f) and (g). I shall address all the arguments brought.
36. As with Notice 2, this notice contains the same error in that the first sentence in paragraph 4 refers to 10 years when it should be four years. Once again the Appellant is aware that four years, as set out in paragraph 3, is the correct timescale and I am, therefore, satisfied that I can correct the notice without any injustice arising.

The appeal on ground (b)

37. The Appellant criticises the notice in that he says the blue line depicting the location of the fence and bund is inaccurate. The blue line extends right up to the northern boundary of the site and I saw that, in reality, neither the fence nor the bund do so. It could be argued, therefore, that not all of the matter alleged, has occurred – that is the erection of the northern part of the bund and fencing.
38. However, the blue line clearly indicates that a bund and fence have been constructed along the eastern boundary of the site. Given the considerable

extent of both the fence and bund along this boundary; and given the inclusion of the words "in the approximate position"; there does not seem to me to be any room for misunderstanding what is being addressed. A reasonable reader of the notice would be in no doubt as to what is being attacked, despite the blue line extending too far to the north.

39. The Appellant has provided a plan which he says is based on a site survey and so more accurately depicts the extent of the fence and bund. However, I inspected the fence and bund with the Council and Appellant who, between them, agreed the extent of each. It does not correlate with the Appellant's plan; both the bund and fence are longer. Since there is no misunderstanding on the Appellant's part that it is the entire length of the fence and bund along the eastern boundary which is attacked, there is no need for the precise extent to be depicted on a plan. It is sufficient for the notice to describe the general location of the fence and bund along the eastern side of the site to avoid arguments of hair-splitting technicality regarding the precise extremities. I intend to correct the notice accordingly and given the Appellant's clear understanding of what is attacked, no injustice can arise from so doing.
40. To the limited extent that the appeal on ground (b) succeeds as indicated in paragraph 37 above, this can be addressed by correcting the notice. As corrected, the appeal on ground (b) fails in that the matter as alleged has occurred as a matter of fact.

The appeal on ground (c)

41. The Appellant suggests that the bund and fence are permitted by way of Part 2 of Schedule 2 to the GPDO. On this site, Part 2 would permit the erection or construction of a fence or other means of enclosure up to 1 metre in height where adjacent to a highway used by vehicular traffic and up to 2 metres in height elsewhere.
42. The Appellant says the fence is not adjacent to a highway and is less than 2 metres in height and that the bund is a means of enclosure less than 1 metre in height.
43. As the fence has been erected on top of the bund, the two taken together form a single means of enclosure and the whole is regulated by the height restriction imposed by the GPDO. But even if it was not, a measurement taken at my visit of the height of the fence on its own demonstrated that, in itself, it exceeds 2 metres in height. There is no merit in the Appellant's argument that only parts of the fence and bund exceed 2 metres in height. If any part of the overall development falls foul of the limitations imposed in the relevant part of Schedule 2 to the GPDO, then the whole development is unlawful and not just the element in excess of the limitation.
44. The Appellant's claim that the fence and bund are no longer over 2 metres in height, even if they were previously, is not a good argument. Permitted development rights cannot be claimed retrospectively by reducing parts so as to comply with certain limitations and, in any event, the claim is not borne out by measurements taken at my visit.
45. Of more importance, however, is that I find the fence and bund to be located adjacent to a highway used by vehicular traffic where, in order to benefit from permitted development rights, the means of enclosure would be limited to

1 metre in height. The Appellant says there is an intervening tree/hedgerow belt between the enclosure and the carriageway but the GPDO says "adjacent" and not "adjoining" and, in any event, it seems to me that the verge forms part of the highway. The bund with fence atop is clearly intended to secure the boundary between the appeal site and adjoining busy road. As a matter of fact and degree I find it to have been constructed adjacent to the highway. The Appellant has not demonstrated otherwise.

46. For all of the above reasons any appeal brought on ground (c) was bound to fail.

The appeal on ground (f)

47. The Appellant says the plan attached to the notice should be substituted by the plan prepared on his behalf. I shall, however, correct the notice as described in paragraph 39 above.

The appeal on ground (g)

48. The Appellant argues that the time to dig up the bund should be extended to four months as it cannot start until the fence has been removed. In my view however, the two months as given should be sufficient to enable both operations to be carried out. No justification has been provided as to why that could not be achieved.

Conclusion – Notice 3

49. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decisions

Notice 1: APP/M1710/C/18/3208154

50. The appeal is allowed and the enforcement notice is quashed.

Notice 2: APP/M1710/C/18/3208153

51. It is directed that the enforcement notice be corrected by:

- a) The substitution of the plan attached to the notice by that attached to this decision;
- b) The deletion from the first sentence of paragraph 4 of the words "10 years" and the substitution therefor of the words "4 years";
- c) The deletion of the content of paragraph 5 and the substitution therefor of the following: *Remove all utilities from the buildings, including electricity and water; demolish the buildings and remove all the resultant debris from the Land.*

The appeal is allowed insofar as it relates to the waste disposal unit building shown as X1 on the plan annexed to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the waste disposal unit building X1 subject to the following condition:

- 1) When use of land at Keepers Lodge as a certified site by the Camping and Caravanning Club ceases, the building shall be demolished and all resultant debris removed from the land.

52. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to buildings shown as X2 and X3 (tents) and X4 (barn) on the plan annexed to this decision, and planning permission is refused in respect of the tents, X2 and X3, and the barn, X4, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Notice 3: APP/M1710/C/18/3211089

53. It is directed that the enforcement notice be corrected by:
- a) The substitution of the plan attached to the notice by that attached to this decision;
 - b) The deletion of the content of paragraph 3 of the notice and the substitution therefor of the following: "Without planning permission, along the eastern side of the site and within the length A to B on the attached plan, the erection of a fence and the construction of a bund".
 - c) The deletion from the first sentence of paragraph 4 of the words "10 years" and the substitution therefor of the words "4 years"; and
 - d) The deletion of the content of paragraph 5 and the substitution therefor of the following: "Demolish the fence and dig up the bund and remove all the resultant debris from the land".

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

B M Campbell

Inspector



Plan

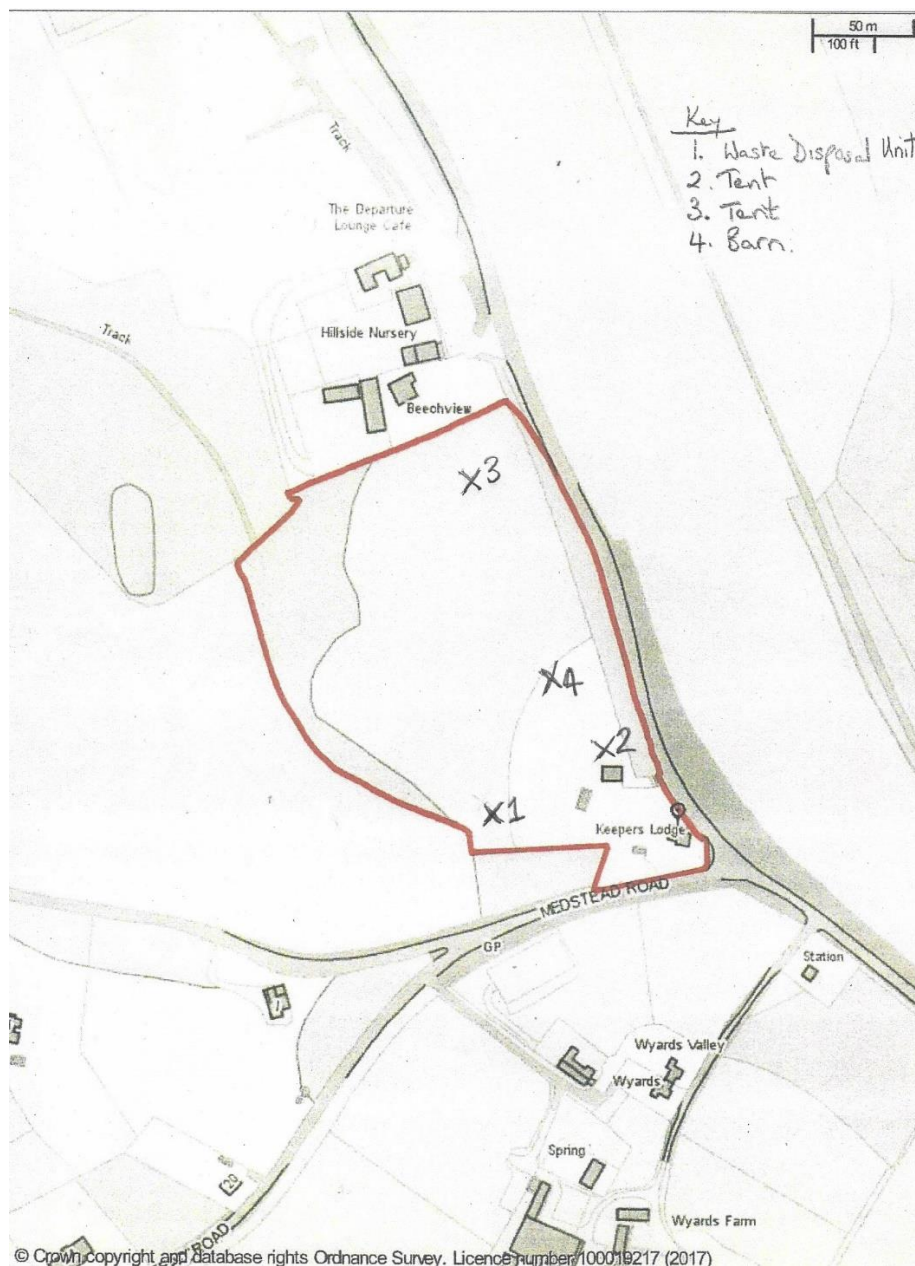
This is the plan referred to in my decision dated: 6 January 2020

by **B M Campbell BA(Hons) MRTPI**

Land at Keepers Lodge, Basingstoke Road, Beech, Alton GU34 4AB:

Reference: Notice 2: APP/M1710/C/18/3208153

Not to scale





Plan

This is the plan referred to in my decision dated: 6 January 2020

by **B M Campbell BA(Hons) MRTPI**

Land at Keepers Lodge, Basingstoke Road, Beech, Alton GU34 4AB:

Reference: Notice 3: APP/M1710/C/18/3211089

Not to scale

