



Appeal Decisions

Hearing held on 10 December 2020

Site visit made on 11 December 2020

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal A Ref: APP/P1615/C/19/3230582

Appeal B Ref: APP/P1615/C/19/3230583

Land at Platwell House Farm, Platwell, Clearwell, Coleford, Gloucestershire GL16 8LG

- 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 'Act').
- Appeal A is made by Mr Charlie Rose and Appeal B is made by Ms Kathryn Graham against an enforcement notice issued by Forest of Dean District Council.
- The enforcement notice was issued on 21 May 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission, the construction of two vehicular accesses and a driveway on the Land.*
- The requirements of the notice are:-
 - 1) Permanently cease the use of the vehicular accesses.
 - 2) Demolish and remove the access gates and supports and posts approximately located within the hatched blue area shown on site location plan 1 and rebuild the stone walls at both gaps to match the existing walls in materials, coursing and height.
 - 3) Demolish the access track approximately located within the blue hatched area shown on site location plan 2.
 - 4) Regrade the land and seed with grass.
 - 5) Remove any subsequent builders' materials after compliance with steps 2 to 4 above.
- The period for compliance with the requirements is three days for step 1, and two months for steps 2 to 5.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (g) of the Act. Since appeals have been brought under ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary decision: The appeals succeed in part and permission for that part is granted, but otherwise the appeals fail, and the enforcement notice as varied is upheld as set out below in the Formal Decision.

Preliminary Matters

1. In the enforcement notice (the 'notice') the allegation refers to a 'driveway' and the requirements refer to an 'access track'. At the Hearing it was confirmed that the driveway and access track are the same entity. The parties agreed that the word 'track' would be the most appropriate term to use throughout the notice for the avoidance of doubt. I can vary the notice accordingly.
2. It is clear from the submitted evidence that enforcement investigations began when Gate B was set back a significant distance from the road. At the Hearing the Council confirmed that when it issued the enforcement notice, Gate B had

been moved to its current position aligned within the stone wall, and this is what I saw on my site visit.

3. Appeals on ground (f) – that the requirements of the notice are excessive - were not initially lodged. However, in their Statement of Case the appellants have raised issue that the requirements of the notice are excessive in requiring the removal of the track. Furthermore, if planning permission is granted, there should be a requirement to 'make good' the gaps between the gate posts and wall. The Council has seen the appellants' Statement and the matters were discussed at the Hearing and so no injustice arises from my consideration of these as a 'hidden' ground of appeal.
4. As the appeals are identical I will determine them together. I will also consider the grounds of appeal in logical, not alphabetical order. The logic is that if an appeal against an enforcement notice succeeds on ground (e), the notice is quashed and the other grounds become redundant.

Appeals on Ground (e)

5. Ground (e) is that copies of the notice were not served as required by s172 of the Act. This requires a copy of the enforcement notice to be served on the owner/occupiers and other persons having an interest in the land, and any other persons the Council considers are materially affected. Being a legal ground of appeal, the onus is on the appellants to make their case.
6. The appellants allege that the land edged red on the Plans 1 and 2 attached to the notice includes land not owned by the appellants ('extra land') and that owners of this 'extra land' have not been served with a copy of the notice.
7. The appellants have supplied a Title Plan in their Appendix 7 showing the extent of their land ownership - it clearly does not include the 'extra land'. The Council has acknowledged the administrative error and has produced revised versions of Plans 1 and 2 in their Appendix 15, that show the 'extra land' excluded.
8. However, the appellants want their Title Plan used as it also includes the whole of Field B, which Access B serves. Whilst this is not necessary for the purposes of the enforcement notice, the Council confirmed at the Hearing that it had no objection to the use of the appellants' Title Plan as a substitute for its own revised plans.
9. I have not been advised of any other persons who would be prejudiced as a result of using either the Council's revised plans or the appellants' Title Plan. I am satisfied from the evidence before me that the notice could be corrected to substitute revised Plans 1 and 2 with the appellants' Title Plan without causing injustice to either party. Furthermore, both appellants have been able to appeal, even based on the Council's erroneous plans, and hence they have not been substantially prejudiced.
10. Consequently I find that, on the balance of probability, the notice has been served as required by s172 of the Act. Therefore, appeals on ground (e) fail, but I will substitute the plans accordingly.

Appeals on Ground (a) and the Deemed Planning Applications

11. The appellants have made appeals on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

12. I consider the main issues in this case are:
- The effect of the appeal development on the character and appearance of the area,
 - The effect of the appeal development on the setting of the Grade II listed Platwell House, and
 - The effect of the proposal on highway safety.

Reasons

Character and appearance

13. The appeal site comprises Platwell House, set amongst a farm courtyard of traditional stone farm buildings, and surrounded by two Fields, A and B. The farmhouse is set back from the road behind an enclosed front garden. There is a walled garden to the rear of the house separated by a cobbled courtyard.
14. Field A is an approximately 0.6 acre (0.2 hectare) paddock to the north west of the house that fronts the road and with stone walls on all sides. Field B to the south east of the farm buildings is larger, approximately 8 acres (3.2 hectares) and also fronts the road behind a stone wall.
15. Along the site frontage close to the road, extending from the far edge of Field B to the far edge of Field A, is a dry stone wall with mortar in places, measuring approximately 157 metres in length and over 1 metre in height (hereafter referred to as the 'frontage wall'). The frontage wall is punctuated by the openings for the existing vehicular access into the main farm courtyard and for a metal pedestrian gate leading through the front garden to the front door, and by the two vehicular accesses the subject of this appeal. One of the stone farm buildings runs along the road and forms part of the overall frontage wall. A previous access beside the roadside barn is evident, but this has been blocked up with stone. The section of frontage wall from the pedestrian gate to Field A has a 'Cock and Hen' coping. The buildings read as a farmstead group when viewed from either road direction and also from the Public Right of Way (PRoW) that runs across Field A and along the north western boundaries of both Fields A and B.
16. The appeal site sits close to the entrance/exit of the village of Clearwell and the village name sign. I saw on my visit that in the village of Clearwell and in the vicinity of the site, including the nearby Clearwell Castle and Platwell Farm opposite, that roadside stone walls are a characteristic feature of the immediate surrounding area. As one leaves and enters the village the length and almost continuous nature of the frontage wall is visually striking. With stone walls on both sides of the road at this location, there is a strong sense of enclosure and a transition along this street scene from the open rolling patchwork of farmland to the built form of the village.

17. These observations are reinforced by the extracts submitted from the Council's Landscape Character Assessment¹. The site sits within character area '3a Tidenham Chase', described as a patchwork of arable and pasture fields amidst a gentle rolling limestone landform. A key characteristic includes a '*strong field pattern of large or moderately sized arable and pasture fields with distinctive stone walls and ancient hedgerows*'. It further mentions that in the vicinity of a large quarry to the south of Clearwell '*limestone walls demarcate field boundaries – these are distinctive in that they are dry stone walls with a 'cock and hen cope*'. I accept the character area covers a broad part of the District beyond the appeal site, but from my observations I find it appropriately describes the immediate vicinity of the appeal site.
18. The appeal development involves the construction of two new vehicular accesses (access A and access B) giving direct access from the road into Fields A and B respectively. This has resulted in the removal of two large sections of the frontage wall. Vehicles using these new accesses would no longer need to use the existing vehicular access into the main farm courtyard or use other gates into the fields that are in proximity to the farmhouse and the surrounding buildings.
19. The opening created for the access and Gate A to serve Field A measures approximately 3 metres wide (10 feet) and a timber five-bar gate has been installed with timber gate posts either side. The opening created for the access and Gate B, to serve Field B, is wider and approximately 4 metres wide and contains two timber five-bar gates meeting in the middle, with timber gate posts either side. Due to enforcement action, the gaps left between the frontage wall and gate posts have not been filled in, so the overall width of the gap created in the frontage wall is approximately 6 metres, as measured on site. Both gates sit within the alignment of the wall, with no splays or set back.
20. The creation of the two vehicular accesses has resulted in the loss of stone from the frontage wall, which is a prominent traditional roadside boundary feature, and broken up the almost continuous walled frontage, affecting a characteristic feature of the area.
21. However, there remains a considerable length of frontage wall still intact. Furthermore, due to the relatively straight alignment of the wall and the setting of the gates within it, and not set back from it, there are no long distance views of the accesses and their gates and this serves to reduce their visual impact on the rural street scene.
22. Furthermore, I noticed on my visit a number of other openings in other walls in the vicinity, including opposite at Platwell Farm, which are of different widths, serve both agricultural and domestic properties, and some are gated. There were also other field gates and openings of various widths in nearby roadside hedgerows.
23. Both appeal accesses open into agricultural fields, with simple well-designed timber gates set within the alignment of the frontage wall. As such I find they are not an alien feature in the wider agrarian rural landscape or immediate street scene. Nor do they undermine the sense of enclosure or destroy the striking entity of this simple traditional stone boundary frontage wall to an

¹ Final Draft Report November 2002

unacceptable degree. Hence I find there is no significant harm to the character and appearance of the area.

24. Accordingly, there is no conflict with Policy CSP.1 of the Core Strategy² (CS) and Policies AP1 and AP4 of the Allocations Plan³ (AP), which collectively seek to ensure new development is sustainable and takes account of important and traditional characteristics of the local character and history.

Setting of the listed building

25. Platwell House is a Grade II listed building, which is a designated heritage asset. It is a substantial house and according to Historic England's listing it includes a late 18th century front on a late 16th century core. It is 3 storeys with a single range, a 2 storey wing to the right and 2 projecting gables at the rear all 16th century. At the front there is a central 6-panel door with gabled doorcase with ogee window above and circular window over on the second floor. At the rear there is scattered fenestration with stone mullioned windows.
26. From the submitted evidence and what I heard at the Hearing, Platwell House Farm is a prominent and well-designed group of buildings comprising the substantial listed farmhouse and complex of curtilage listed farm buildings, whose design and appearance reflect its importance, high status and wealth as a prosperous farmstead. The complex is read as a whole and has been designed to make a visual impact on leaving and entering the village of Clearwell. Due to its age and being an example of local vernacular the building has historic, social and architectural significance, as well as group value with the curtilage listed farm buildings.
27. The buildings sit within a rural landscape surrounded by pasture fields, which have a functional association, context and importance linked to the setting of Platwell House as part of the farmstead. The stone frontage wall, as well as those around Field A and the walled garden, provide a variety of purposes including delineation and enclosure.
28. Moreover, the use of walls instead of hedges demonstrates wealth and status. The almost continuous length of the stone frontage wall, save for the main entrance and pedestrian gate, would have been the obvious visual embodiment of wealth and status to anyone passing by and leaving/entering the village. The stone frontage wall makes an important contribution to the setting of Platwell House and the other curtilage listed buildings and their status as part of a prosperous farmstead.
29. Access B is wider than access A and creates a more significant gap and openness in the frontage wall, although it is further away from the farm complex. Both appeal accesses, alone and in combination, together with the installation of timber gates, has reduced the amount of stone frontage wall and lessened its almost continuous nature. This in turn has diminished the significance of the wall and caused harm to the setting of the listed farmhouse.
30. The appeal development also includes a metaled gravelled track that has been laid leading from Gate B in an arc through part of Field B back to the

² Adopted February 2012

³ Adopted June 2018

complex of buildings and the main farm courtyard, passing beside the concrete apron in front of the 'milking shed'.

31. The track will weather down with time, as has already happened to some degree when comparing the track I saw on my visit with submitted photographs of the track soon after it had been laid. I saw that the track is not visible from within the farm complex. Notwithstanding this, the formation of a track alters a potentially simple agricultural field gate into something more substantial and expansive, particularly as access B and its gate are much wider. I am more persuaded by the Council's case that the introduction of the track set some distance away from the tightly grouped farm buildings disrupts the functional relationship of the farm to its farmland by creating a new approach and access to the farm buildings. Hence I find the significance of the surrounding farm land and its relationship to the farmstead has been eroded and the setting harmed.
32. Overall I find the creation of the two vehicular accesses and a track harm the significance and setting of the Grade II listed Platwell House. In failing to preserve the setting of this designated heritage asset the appeal development is contrary to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
33. In accordance with paragraph 193 of the National Planning Policy Framework (the 'Framework') I attach great weight to conserving this designated heritage asset. There is no dispute between the parties that the harm to the setting of the listed building would be 'less than substantial'. Where there is less than substantial harm, paragraph 196 of the Framework advises that the harm caused should be weighed against the public benefits of the proposal.
34. Even if the heritage harm is low, the courts have held that the Framework's division of harm into "substantial" and "less than substantial" is adequate to carry out a weighted balance, with no obligation to place harm somewhere on a spectrum. Public benefits, as described in the national Planning Policy Guidance (PPG), can be anything that delivers economic, social or environmental objectives. Benefits do not have to be visible or publicly accessible and can include works to a listed private dwelling which secure its future as a designated heritage asset. The Courts have also held that where a proposal contains a mixture of elements that would both harm and improve the heritage asset, then those that would be beneficial should be included in the planning balance where heritage is a consideration under paragraph 196.
35. I am aware that the appellants are not farmers and intend to rent out Fields A and B. Consequently, there would be tenants and other third parties needing to access the fields at various times throughout the year.

Cobbled courtyard

36. A justification for the installation of access and Gate A is to prevent farm vehicles crossing and damaging the 17th century cobbled courtyard that is directly to the rear of the farmhouse and in close proximity to its doors and windows. It has been revealed during the restoration of the property and I have been advised of its rarity, because they can be easily damaged and don't often survive, and that there are only two other examples in the village.

37. The cobbled courtyard has to be crossed to access the walled garden and Field A. One of the motivations for creating a new access into Field A is to retain the cobbled courtyard as a residential space as part of a sequence of domestic spaces distinct from the agricultural spaces.
38. From the submitted evidence, the small size of Field A would mean that use and traffic generation to this field would be low and infrequent. Even if contracts with tenants or third party users of Field A could be suitably worded so as to restrict use of the cobbled courtyard to particular days or times, it would nonetheless cause inconvenience and disruption to the appellants' family and cause potential conflict between children and third party vehicles and even animals. However, I saw on my visit that the front garden lawn is surrounded by stone walling such that the property is not without a secure domestic garden immediately adjacent to the house.
39. There is some dispute between the parties about whether modern farm vehicles with their wider tyres cause less damage than older agricultural carts and wagons with their solid wheels and small load points, and whether the damage from modern vehicles would be less of an issue than the appellants suggest. Despite their rarity, cobbled courtyards like this were designed to be easily repaired, with new cobbles laid where and when needed and assimilated into the uneven surface that is created by the cobbles. On the site visit signs of damage and rutting were pointed out to me, but they were not easy to see as most these areas had been repaired or covered with various garden accessories and planters.
40. I have no doubt that the protection of the cobbled courtyard would be of public benefit. Nonetheless, from the evidence and what I saw I do not share the appellants' award of 'significant' weight to their protection, nor do I share the Council's award of 'no' weight. For the reasons above I find the protection of the cobbled courtyard merits limited weight.

Previous access to Field A

41. A further justification of a new access into Field A is that the previous access from the cobbled courtyard was too narrow for farm vehicles. The appellants' evidence from John Amos & Co describes the access into Field A from the cobbled courtyard as being just 1.2 metres wide. For clarification on site the appellants indicated what the width of this access had been before they reduced it to a pedestrian-sized access and installed the timber gate, and approximate measurements were taken on site (3 metres /10 feet). Therefore, it seems that John Amos & Co is describing the width of the existing pedestrian access with timber gate in situ.
42. This leads me to conclude that the previous access from the cobbled courtyard would have been of a similar width to the newly installed Gate A. The opening from the cobbled courtyard into Field A would now obviously have to be widened and the walls either side of it dismantled for any vehicles to use it. Therefore, from the evidence presented of the types and frequency of vehicles likely to need to access Field A and what I saw on site, there is some doubt in my mind as to whether the previous access into Field A from the cobbled courtyard was as inadequate as alleged. Consequently, I attach limited weight to the appellants' case that the previous access into Field A was too narrow for farm vehicles so as to necessitate the creation of a new access A in the frontage wall, directly onto the road.

Reuse of stone elsewhere around the appeal site

43. The stone taken from the frontage wall has been used to repair other walls around the appeal property, which the appellants consider have wider heritage benefits. I inspected the four repaired walls during the site visit.
44. An approximately 11 metre section of stone wall at the far end of the walled garden has been reinstated and repaired to complete its enclosure. This is clearly of benefit to the future protection of the heritage asset. However, I noted that the rebuilt section of wall represents a comparatively minor proportion of the overall walled curtilage of the garden and in my view the existing sense of enclosure was not in jeopardy.
45. Two other walls – the opening already described leading from the cobbled courtyard into Field A, and a low wall between the main farmyard and cobbled courtyard – have both been altered to reduce the width of their openings to prevent vehicular access, as confirmed by the appellants on site. A fourth low wall, to a vehicular access leading into Field B from the main farm courtyard, has also been repaired and a small kink introduced in its alignment, and a timber five-bar gate has also been installed in the opening.
46. The appeal property was a working farm with land either side of the farmhouse that could be accessed from within the farm complex as a whole and passing in close proximity to the farmhouse. From what I saw and what was explained to me on site, some of the walls have been reconfigured from what were there previously. I acknowledge that over time it is likely that some boundaries get altered, but I am not persuaded by the appellants' argument that the alterations they have made to demarcate domestic/agricultural compartments are a heritage benefit to justify the harm to the frontage wall.
47. Regular maintenance and repair of property boundaries is part and parcel of responsible property/estate management, even more so for an heritage asset. On this basis the Council gives no weight to the re-use of the stone for these other walls.
48. From my observations on site only the rear wall of the walled garden was a repair and reinstatement worthy of being a public benefit of any note. Furthermore, the repaired walls are in discrete locations set apart from each other, such that different batches of stone could easily have been sourced for each project. In my view their repair is a by-product of the creation of the two accesses, and is not a persuasive heritage justification that outweighs the harm caused to the frontage wall. For these reasons I afford the repairs to the walls limited weight.
49. At the site visit and after looking at the works to the other walls the Council queried whether some of the works required listed building consent and whether this then reduced any alleged public benefits. Deciding if works to the walls require listed building consent is beyond my remit in this appeal. That is a matter for the Council and has no bearing on the weighting I have given them.

Agricultural land management

50. When the appellants bought Field B, the existing field access directly from the road (referred to as access X in the appellants' evidence) did not come with

the purchase of the land. I accept good land management practices necessitate land being put to productive use, with the associated environmental benefits as well as the economic benefits for the local economy and wider rural area.

51. Field A is more difficult to access now that the appellants have prevented vehicular access across the cobbled courtyard and reduced the width of the previous access into Field A. At the Hearing I heard the appellants describe an example of why access A is needed in order to attend to a fallen tree in the field. I saw the tree on my visit and in my view, and experience of seeing tree surgeons at work, a saw of some kind and a wheelbarrow would suffice. Nonetheless, I acknowledge that larger mechanical machinery would be used at times if the land was put to grazing or cut for hay or silage.
52. Field B can still be accessed through the main farm courtyard, even if this is inconvenient to the appellants or any third party. I acknowledge that Field B is bigger and therefore likely to attract a different type and scale of agricultural use and bigger machinery than Field A. However, I am not convinced that the existing main access into the farm courtyard, or from here into Field B, is unusually narrow to warrant the creation of a new wider access and Gate B in the frontage wall.
53. From the overall site layout and that Field A and B both remain in the appellants' ownership they are not landlocked. Whilst not having direct access to the fields from the road may be undesirable, it does not make the fields impossible to farm and contracts could be suitably worded.
54. I accept that tenants would likely prefer direct access to the fields from the road, rather than having to come through the farm complex or cross the cobbled courtyard each time, and accept that this would more likely be a factor in encouraging and ensuring the continued productive use of the land. Therefore, I regard the continued productive agricultural use of the land and the effect this has on the rural economy and the environment amounts to a wider public benefit to which I afford significant weight. Nonetheless, the track is not needed to provide direct access to Field B to ensure its continued productive agricultural use – the new access and Gate B would do this adequately.

Other uses

55. Reinstating an old orchard within part of Field B, as shown on historic maps albeit currently only a few saplings, may have some public benefit as part of the property's restoration. But in my view this does not necessitate the provision of a track for the maintenance of the orchard and fruit picking.
56. Reinstating an orchard does not necessarily indicate a residential use, and a change of use is not alleged in the enforcement notice. At the Hearing the appellants made clear they have no residential intentions for Field B. Whilst that may well be the case, the planning history shows that the appellants have twice sought Prior Approval to convert the more modern 'milking shed' into a 2-bed residential dwelling or a flexible commercial use, but these have been refused as the building was curtilage listed. The appellants have also made reference to the track being able to open up use of the milking shed that faces towards Field B rather the farm complex. This indicates to me that the appellants do have longer term plans to use some of the other buildings,

including for residential use, although no substantive case has been put for the re-use of the other buildings as part of this appeal. However, conjecture about possible future uses for any of the other buildings for which there are no planning permissions does not form part of the matters alleged or the deemed planning applications before me.

57. My conclusion on this heritage main issue is that I find there is harm to a designated heritage asset to which I must give great weight. There are some limited public benefits arising from protecting the 17th century cobbled courtyard and repairing some sections of stone walls around the appeal property, but these are not, in my view, of sufficient merit to outweigh the harm that has been caused to the stone frontage wall.
58. Access to Fields A and B has been frustrated to some extent by the works the appellants have done to keep vehicles out of the cobbled courtyard and unfortunately buying Field B without an existing road access. Third party or tenant access to these fields could still be achieved through the farmyard, even if inconvenient.
59. Nonetheless, it is important that land is kept in productive agricultural use when set against the wider environmental and economic benefits. To this end, it does not seem unreasonable to me for the fields to have their own agricultural vehicular access from the road. I therefore find that this factor, together with the other albeit limited benefits, cumulatively provide sufficient public benefits to outweigh the harm caused to the heritage asset. Accordingly I find no conflict with AP Policy AP5, which seeks to preserve those aspects of the historic environment and their settings, which are recognised as being of special quality, and to the Framework.
60. However, the track from Gate B causes harm to the setting of the listed building and I have not been persuaded of any public benefits or need sufficient to outweigh that harm. Accordingly the track would be contrary to AP Policy AP5 and to the Framework.

Highway safety

61. It was apparent at the Hearing that there was common ground between the parties in relation to the revoked Gloucestershire County Council (GCC) standing advice and that the recently published Gloucestershire Manual for Streets (July 2020) uses the same methodology as the national guidance contained in 'Manual for Streets 2' (MfS2). However, it was pointed out that the visibility splay guidance is led by the design of residential and commercial accesses and both parties accepted that there is no guidance specifically relating to the design and visibility of agricultural accesses. There was no dispute between the parties that both accesses are sub-standard, with visibility splays below the national guidance in MfS2, and that the stone frontage wall limits the visibility in both directions from both accesses.
62. During the Hearing there was agreement that the visibility splays could be reduced to 2.4m x 53.5m, following the advice in MfS2 that visibility splays should include a 600mm stand-off from the edge of the highway to reflect the predominant position of vehicles on the road. Helpfully, the appellants' highway consultant produced a revised drawing (SK01 Rev A) to show this.

63. Paragraph 109 of the Framework advises that *“Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residential cumulative impacts on the road network would be severe”*. Both parties agree that there is no definition of ‘unacceptable’ impact on highway safety, but it is a very high bar against which to prevent development.
64. The area of dispute therefore rests with the degree of impact on highway safety arising from the sub-standard accesses and absence of visibility splays. Whilst reduced visibility splays would be acceptable in principle to the Highway Authority, it would still remain the case that the vast majority of the important stone frontage wall would still need to be removed to facilitate the reduced visibility splays. It is therefore necessary to look at factors that may affect highway safety in the absence of visibility splays.
65. The Council does not disagree with the findings of the appellants’ Manual Traffic Count that reveals speeds along the road, based on the 85% percentile, are 36 mph and which is below the 60 mph national speed limit that applies to the road in front of both accesses. The Council also accepts the appellants’ data that traffic flows along the road are low (average of 40 vehicles movements per hour) and from Crashmap⁴ data there are no recorded collisions in the vicinity of the site.
66. The parties acknowledge that MfS2 makes no causal link between collisions and sub-standard visibility. The appellants refer to other sub-standard agricultural accesses in the area, but I have not been provided with their details, locations or context to make any meaningful comparisons. The existence of other sub-standard accesses does not set a precedent for allowing more, and in any event I must consider the appeal on its own merits.
67. On the site visit I saw that visibility from the accesses, in the approximate position of an emerging vehicle, was almost non-existent although the roofs of some higher vehicles could be seen approaching the accesses. However, the appellants suggest there is approximately 62 metres of forward visibility for road users approaching the accesses that would give them time to react to any vehicles emerging from them.
68. The lawful agricultural use of the land is not in question so only agricultural traffic should be using the accesses. In agricultural vehicles drivers would be more likely to be sitting higher up, giving them improved visibility over the frontage walls of oncoming cars. With agricultural vehicles also being generally bigger than cars, this would likely enhance forward visibility of approaching drivers. Furthermore, with the nature and size of the two fields, access to them is likely to be infrequent, although there may be increased activity at certain times of the year. If livestock grazed the fields then there would likely be more regular access needed with smaller vehicles for regular animal welfare and to deliver foodstuffs. The parties confirmed that agricultural traffic is considered a ‘nil’ use for the purposes of trip generation.
69. It is preferable that accesses are designed for safe use by all vehicles, rather than relying on the forward visibility and reactive measures of other road users. However, from the evidence I find on balance that there would not be an unacceptable impact on highway safety in the absence of design guidance

⁴ Crashmap data only records collisions involving person injury reported to the Police.

for agricultural accesses. Accordingly the appeal development is not in conflict with the Framework or the Highway Authority's guidance.

Conditions

70. Any condition needs to meet the statutory tests as required by the Framework and the PPG.
71. The Council has suggested 3 conditions in their Statement. Condition 1 requires the development to be carried out in accordance with approved plans, but there are no approved plans and the development has already been carried out, so this condition is not relevant.
72. Condition 2 is a highway condition and requires setting the gates 5 metres back from the carriageway edge. Furthermore, it was accepted by both parties that the revised highway drawing submitted at the Hearing would need to be drawn up more accurately to account for transposing errors. Consequently, details of the visibility splays and access construction would need to be submitted for approval for clarity and avoidance of doubt. In addition, the first 5 metres of the track from the highway would need to be in a bound surface material to prevent any loose material getting onto the highway surface.
73. As even the revised visibility splays would require the removal of most of the frontage wall, this would worsen the harm to the heritage asset. But as I have found that the accesses as constructed do not cause an unacceptable impact on highway safety, and the track is unacceptable, there would be no need to impose these highway conditions.
74. Condition 3 requires the materials to be used for the gates and walls to be specified, but they already exist. In their ground (f) appeals the appellants recognise that if Gate B was allowed on appeal, some making-good of the gaps in the frontage wall either side of the gate posts would be required. At the Hearing the Council acknowledged the challenges of appointing contractors and getting the stone wall gaps built during the current Covid-19 pandemic and agreed to a 6 month time frame. I am satisfied a suitably worded condition could be imposed.
75. The parties agreed that it was not possible to condition the use of the accesses due to their lawful agricultural use. There was also consensus that there was no need for any conditions relating to access and Gate A if it were approved, and I have no reason to take a different view.

Split Decision

76. I have the powers to issue a split decision should I find parts of the appeal scheme to be acceptable and other parts unacceptable, provided those parts are severable from each other, both physically and functionally. At the Hearing both parties agreed that a split decision was feasible.

Other Matters

77. The appellants make repeated reference to not being allowed to make a planning application and were disappointed that matters were not resolved locally. Newland Parish Council has also expressed its surprise that the Council was not prepared to accept a retrospective planning application. This is a

matter between the Council and the appellants and is not relevant to my decision.

Conclusion on the Ground (a) Appeals and Deemed Planning Applications

78. Whilst I have found harm to the heritage asset, there are cumulative public benefits that outweigh the harm caused by the two accesses. However, I find the track causes harm to the heritage asset and there are no public benefits to outweigh that harm.
79. The absence of harm in terms of character and appearance of the rural area and there being no unacceptable impact on highway safety carry neutral weight in my consideration of the proposal.
80. Accordingly, for the reasons given above, I conclude that both appeals should succeed in part only. I will grant planning permission for one part of the alleged matters (both vehicular accesses) subject to a condition, but otherwise I will refuse to grant planning permission on the other part (the track).

The Appeals on Ground (f)

81. It is disappointing that the track was not mentioned in the 'Reasons for issuing the notice' for completeness and the avoidance of doubt. Nonetheless, I find the requirements of the enforcement notice reflect and follow from the terms of the alleged breach, as they clearly and specifically refer to the track. Whilst the 'Reasons' are incomplete it is nonetheless clear from the notice as a whole that the track is under attack, as well as the accesses and gates.
82. Listening to the Council's evidence during the Hearing the appellants accepted that the track did form part of the Council's case and left the matter for me to determine. I find the matter falls away and the ground (f) appeals fail.
83. The appellants also suggest that if the appeals succeed and the gates and accesses are found to not cause heritage or highway harm, that the requirements of the notice be varied to require the gaps either side of Gate B to be 'made good' by continuing the stone wall up to either gate post. 'Making-good' is not a requirement of the notice. However, as I am granting planning permission for both vehicular accesses, 'making good' will be a condition of the deemed planning approvals as already described.
84. The appeals on ground (f) therefore fail.

The Appeals on Ground (g)

85. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The first requirement of the notice is the cessation of the use of the accesses within 3 days of the notice coming into effect - this has happened. All the other requirements are to be complied with within 2 months.
86. The appellants have proffered a number of timescales depending on the outcome of the appeal. As I am granting deemed planning permission for the accesses and gates there is less work to do to comply with the notice. Re-grading the land and demolition of the track could be undertaken in 2 months

by the appellants' own admission. As that is the only element left of the requirements there is no need for an extension of time.

87. The appeals on ground (g) fail.

Overall Conclusion

88. For the reasons given above I conclude that the appeals should succeed in part only. I will grant planning permission for one part of the alleged matter the subject of the enforcement notice (the two vehicular accesses), but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part (the track). The appeals on ground (f) and (g) fail.
89. Section 180 of the 1990 Act as amended provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeals on ground (a) will be allowed in part for the vehicular accesses with a 'make-good' condition. If the requirements of the notice were varied to exclude the accesses for which planning permission is being granted, then this would give rise to two inconsistent permissions, one being granted under s173(11) of the Act as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on s180 to mitigate the effect of the notice in so far as it is inconsistent with the permission.

Formal Decision

Appeals A and B:

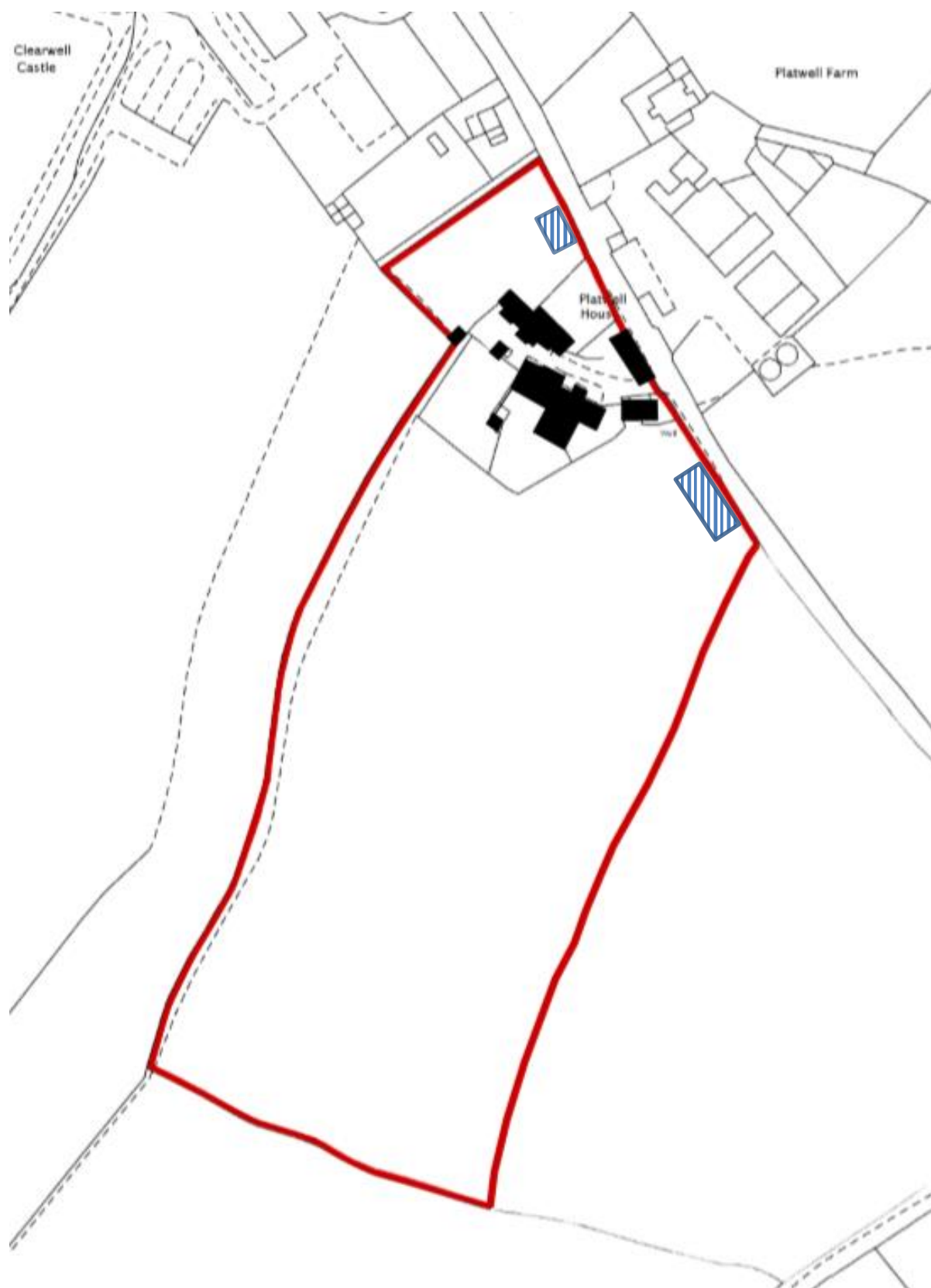
90. It is directed that the appeals are allowed insofar as they relate to the construction of two vehicular accesses and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the construction of two vehicular access subject to the following condition:
- 1) Unless within 6 months of the date of this decision the gaps either side of the timber gate posts of Gate B are made good with stone to match the existing stone frontage wall either side in materials, coursing and height, the use of the access shall cease, and the gates and gate posts removed and the whole gap in the wall made good to match the stone frontage wall either side.
- Upon making good the gaps, they shall thereafter be retained and maintained.
- In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
91. It is directed that the appeals are dismissed and planning permission is refused in respect of the track on the application deemed to have been made

under section 177(5) of the 1990 Act as amended, and the enforcement notice is upheld but corrected as follows:-

- **Substitute** with Plans 1a and 2a attached to this decision for the Plans 1 and 2 attached to the enforcement notice, which shows "the Land" outlined in red and the approximate location of the accesses and the track hatched blue.
- In section 3 of the notice **delete** the word 'driveway' and **substitute** with the word 'track'.
- In section 5.2 of the notice **delete** 'plan 1' and **substitute** with 'Plan 1a'.
- In section 5.3 of the notice **delete** the word 'access', and also **substitute** Plan 2 with 'Plan 2a'.

K. Stephens
INSPECTOR

Plan 1a



Plan 2a

