



Appeal Decision

Hearing Held on 20 April and 5, 7 and 12 May 2021

Site visit made on 21 April and 13 May 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2021

Appeal Ref: APP/P1615/C/20/3252116

Land at Lake Farm, Wyndbrook Lane, Redmarley, Gloucester GL19 3LF

- 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 William John Larkins against an enforcement notice issued by Forest of Dean District Council.
- The enforcement notice, numbered EN/0021/17(1), was issued on 7 April 2020.
- The breach of planning control as alleged in the notice is: Without planning permission on the Land:
 - 1) The construction of an access with associated fencing and access gates through a protected hedgerow in the north east corner of the field off Wyndbrook Lane;
 - 2) The construction of fencing with associated access gates constructed immediately to the front of the curtilage listed farm outbuildings off Wyndbrook Lane;
 - 3) The construction of fences along the boundary of the field within the setting of the curtilage listed barns;
 - 4) The construction of a large hardstanding and associated fencing in the north western part of the field;
 - 5) The engineering of land to construct a large access track from the unauthorised access to the north east of the curtilage listed barns;
 - 6) The regrading of land to form hardstandings around the curtilage listed barns and towards the rear of the listed residential dwelling;
 - 7) The construction of a garage with hay storage to the rear of the listed residential dwelling;
 - 8) The construction of a dwelling with associated decking, access track and hardstanding and residential paraphernalia to the rear of the existing listed residential dwelling.
- The requirements of the notice are:
 - 1) Permanently cease the use of the land located within the approximate location hatched blue on the site location plan (1) for residential purposes;
 - 2) Demolish the dwelling with associated decking, including all associated drainage and services and remove all other associated residential paraphernalia from the land located within the approximate location hatched blue on the site location plan (1);
 - 3) Demolish the garage with hay storage located within the approximate location hatched blue on the site location plan (1) and remove all associated builders' materials and scrap arising from its demolition;
 - 4) Demolish all of the hardstandings and access roads located within the approximate location hatched blue on the site location plan (2) by digging out the hard surfacing;
 - 5) Demolish the large unauthorised hardstanding with associated fencing and access pillars located within the approximate location hatched red on the site location plan (1);
 - 6) Demolish all the wooden close boarded fencing located within the red lined area as shown on the site location plan (1);

- 7) Once steps 2 to 6 have been completed, regrade the land level and seed with grass;
 - 8) Demolish the whole of the unauthorised access with associated access gates and fencing and hardstanding located within the approximate location hatched dark green on the site location plan (1);
 - 9) Replant the hedgerow that was removed in the area specified in step 8 above with similarly mixed species, to a similar height and depth to that of the existing immediately adjacent hedgerow;
 - 10) Level the land constituting that of the highway verge located within the approximate location hatched dark green on the site location plan (1) that would be between the edge of the tarmac and the newly planted hedgerow and reseed that land with grass;
 - 11) Remove from the land all builders' materials, rubble, scrap and associated waste generated by compliance with steps 2 to 6, 8 and 10 above.
- The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal succeeds and permission is granted for part of the breach of planning control, but otherwise the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr William John Larkins against Forest of Dean District Council. This application is the subject of a separate Decision.

Procedural matters

2. The appellant has made reference to the Council's scheme of delegation and has suggested that there are irregularities with regard to the authority to issue the notice and its signatory. Whilst I note the appellant's evidence in this regard, I am only able to consider whether or not a notice is a nullity by considering whether any defect is evident on its face. I am unable to assess the background to the issue of the notice; such matters must be pursued through the courts.
3. The Notice includes an allegation of the construction of an access. The appellant's case, that the access is historic, falls properly to be considered under ground (b), which is that those matters have not occurred. The same can be said for part of the appellant's case with regard to the dwelling alleged to have been erected, that this is not a dwelling, but is an ancillary or incidental building associated with the existing dwelling.
4. During the hearing I received a number of alternative annotated plans intended to replace the plans attached to the notice. The final plan, which the Council submitted with the intention of superseding all the other alternative plans, is 'Site Location Plan 1B' and is dated 6 May 2021, hereinafter referred to as 'Plan 1B'¹. I have only referred to this plan in this decision.
5. Whilst allegation 3(2) includes 'the construction of fencing with associated access gates', I am concerned that there is not a requirement in part 5 of the notice that deals with the gates. As this was not discussed at the hearing, the

¹ A copy of this is attached at the end of this decision for the avoidance of doubt. I have listed this at the end of the decision as HD1.

parties were given the opportunity to provide any written comments they had on this matter after the close of the hearing.

6. The revised National Planning Policy Framework was published after the hearing closed. As such, the written comments of the parties were also sought after the close of the hearing with regard to the National Planning Policy Framework (20 July 2021). All comments received after the close of the hearing have been taken into account in determining this appeal.

The Notice

7. Section 173 of The Town and Country Planning Act 1990 as amended (the 1990 Act) sets out the contents and effect of an enforcement notice, and is entirely relevant to the matter of nullity and invalidity. In my hearing agenda I drew the parties' attention to the settled case law, which sets out the modern approach to nullity (*Oates v SSCLG v Canterbury CC [2018] EWCA Civ 2229*). This makes it clear that an enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.
8. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellants or the local planning authority.
9. Having regard to the above, I have identified a significant number of defects with the enforcement notice, which were discussed in detail during the hearing. I have dealt with the defects in turn as follows, in what I consider to be a logical order. In the case of many of these I have concluded that I am unable to correct the defect, for reasons which I explain. Despite this, having regard to my duty to put the notice in order if I can, I have not found the notice invalid or a nullity as a whole. Instead I intend to remove the elements that I am unable to put right in a manner that ensures that no injustice would be caused.

The construction of a dwelling and associated operations – Allegations 3(7) and 3(8) of the notice

10. Allegation 3(8) of the notice includes, without planning permission on the land the construction of a dwelling. Having considered the evidence relating to this matter and having had the benefit of inspecting the unit that is the target of this allegation on the first site visit, I subsequently advised the parties of my concerns that the allegation of the construction of a dwelling was not correct. I also asked a number of questions about the unit. From all of this I have established the following.
11. The residential accommodation is primarily contained within a large rectangular unit. This had previously formed an L shape with the addition of two much smaller sections at the rear. However, one of these sections, the section that had been directly to the rear of the main rectangular unit, had been removed. The Council did not dispute that this had been done prior to the issue of the notice. The remaining smaller section, as I had observed it, was detached from the main unit. Both the smaller section and the main unit could be accessed from a raised decking area.

12. The main unit had been brought onto the site in two parts that had been joined together on site and placed upon pillars of stacked loose concrete blocks. All services for the unit were primarily above ground and mainly ran in the void beneath the unit.
13. Settled caselaw² identifies the distinctive characteristics of a dwelling-house as being its ability to afford to those who use it the facilities required for day-to-day private domestic existence. It is plain that the rectangular unit contains those facilities. This is not, however, decisive in this case, particularly in view of the nature of the unit within which these facilities are provided. In this regard I note section 336 of the 1990 Act, which provides a definition of a 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'. Further settled caselaw³ has also identified three primary factors as decisive of what is a building. These are: (1) that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; (2) there would be physical attachment to the ground; and (3) it would cause a physical change of some permanence. I consider each of these in turn as follows. None of the factors are necessarily decisive.
14. I acknowledge that the size of the main rectangular unit can be compared to that of a small dwellinghouse. However, I observed the obvious central join through the building where the two parts, referred to above, would have been fixed together. I also noted the means of support of the building (i.e. the piles of loose concrete blocks). In all, the evidence suggests that the unit did not require construction on site, other than the preparation of the concrete block pillars and then the fixing of the two parts together.
15. The unit is physically attached to the ground by the water and electricity supply, and by the waste-water pipes. However, as I note above, these services are mainly above ground and, from my observation, detachment from these services would be a simple matter.
16. I acknowledge that the unit possesses a degree of permanence in its appearance, particularly with the presence of the raised decking area. However, the decking screens the most obvious views of the concrete block pillars and above ground services, which are features that add to the temporary nature of the unit.
17. The decking has the appearance of a bespoke structure constructed on site. Nevertheless, decking areas are not uncommon on such units, particularly as the units are usually elevated to accommodate above ground services, as in the case before me. Although attached at floor level, the decking does not appear to have affected the integrity of the unit and I have no reason to find that it could not be easily detached.
18. Having regard to the above, as a matter of fact and degree I consider the unit that is the target of the notice to be mobile. The raised decking is not likely to have affected the mobility of the unit. Accordingly, I conclude that the unit in question is not a dwelling and that the allegation in part 3(8) of the notice of the construction of a dwelling is not correct. In reaching this conclusion, I have had regard to all caselaw referred to by the Council, all of which refer to

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

³ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 (*Cardiff Rating*)

the test established in *Cardiff Rating*, which I have considered. Accordingly, I find the notice to be invalid, but not so seriously defective as to make it a nullity.

19. In considering what the notice should allege, I note that there is no dispute that the land occupied by the unit currently incorporates a residential use facilitated by the unit. The parties do not, however, agree on the nature or extent of that use. Furthermore, whilst part 5(1) of the notice requires the cessation of the area hatched in blue on the plan for residential purposes, there is no corresponding allegation of a residential use in part 3. I am not persuaded by the Council's view, that such an allegation is implied in the notice. I agree with the appellant, that any recipient of the notice would not be sufficiently certain that a requirement to cease a residential use implies that there is an allegation of that use having occurred. This is particularly so as part 4 of the notice does not refer to the relevant time limit of 10 years for a residential use of the land⁴.
20. I could correct the notice to include an allegation of a residential use. However, the appellant is of the view that such a change would cause him injustice. Whilst his evidence refers to a historic residential use, at the hearing he confirmed that he had not made the case that such a use is lawful because there was no such allegation in part 3 of the notice. Had the notice been sufficiently explicit with regard to the allegation of a residential use, it is likely that the appellant would have made a ground (d) appeal. In these circumstances I would not be satisfied that correcting the notice to allege a material change of use to a residential use would not cause injustice to the appellant.
21. Were I to correct the notice to remove the allegation of the construction of a dwelling, along with the requirements to demolish the dwelling and permanently cease the residential use, such a correction would not, in my judgement, cause injustice to the Council, particularly in view of the provisions of section 171B(4) of the 1990 Act to issue a further notice, should it be considered expedient to do so. I cannot, however, conclude the same with regard to the appellant for the following reasons.
22. Although targeted at the allegation of the erection of a dwelling, the appellant's ground (a) appeal has been made in general terms in respect of all matters listed in the notice, including those in 3(7) and the remaining matters in 3(8). These are the construction of decking, access track and hardstanding and residential paraphernalia associated with the dwelling, and the construction of a garage with hay storage. Notwithstanding my concerns with regard to the precision of the notice in the way that it describes the location of these operations, these are clearly matters that are associated with the allegation of the construction of a dwelling. The appellant has made his ground (a) appeal with regard to these matters; making the case that, altogether, the dwelling and associated operations ought to be granted planning permission. It would, therefore, be unfair for me to consider the appellant's ground (a) appeal and his deemed planning application for these matters in isolation, without considering the planning merits of the residential activity that they are associated with.

⁴ Section 171B(3) of the 1990 Act.

23. For the reasons given above, I cannot be satisfied that injustice would not be caused to the appellant were I to **only** remove from the notice the allegation of the construction of a dwelling. Removal of allegations 3(7) and 3(8) in their entirety from the notice would overcome this issue and would not cause injustice to the Council, having regard again to the provisions of section 171B(4) of the 1990 Act. It would also be necessary to remove from the notice the requirements that relate to these matters.

Regrading of land to form hardstandings - Allegation 3(6)

24. At the hearing I advised the parties of my concerns as to whether the reference to 'curtilage listed barns' and the 'listed residential dwelling' is adequate as a means to identify with reasonable certainty the location and extent of the hardstanding in question. In order to identify which area of hardstanding, amongst others on site, is the subject of allegation 3(6) it is necessary to have knowledge of the location of the listed building or buildings on the site, and to then make a judgement as to what might be the curtilage of those buildings. I acknowledge that the recipient of the notice might have a degree of knowledge of the site. However, the reference to the operations being 'around' the curtilage listed barns makes the identification of the extent of hardstanding all the more difficult.
25. In addition, I have difficulty with the allegation of the 'regrading of the land'. This would suggest some form of raising or lowering of the ground levels, but the notice does not specify the extent or nature of such works. The Council confirmed that the operations consisted of the levelling of the land to lay the hard surface, but that there had not been a change in levels in this area. Even with this added information, I am still concerned that the notice does not specify with the necessary degree of certainty what has been done.
26. Having regard to the above, none of the Council's evidence persuades me that either the description of the operations alleged in 3(6) or the description of their location is such that the recipient of the notice would have the necessary degree of certainty of what he has done and, therefore, what he must do to remedy it. Whilst I could correct the notice so that it is sufficiently precise, I cannot be certain that injustice would not be caused.
27. Plan 1B identifies hatched in yellow the location of the hardstanding that the Council intended to be the target of allegation 3(6). The appellant confirmed that had he known that the yellow hatched area was the target of the allegation, he would have made the case that there had already been a hardstanding in this area and that he had only carried out works of repair to this. Had the notice been sufficiently precise, it is likely that the appellant would have approached his appeal in respect of these works in a different way, and even made the appeal under other grounds.
28. Having regard to the above, the only outcome that would not cause injustice to any party would be for me to delete allegation 3(6), along with the associated requirements. In reaching this conclusion I am again mindful of the provisions of section 171B(4) of the 1990 Act.

The engineering of land to construct a large access track – Allegation 3(5)

29. The location of the access track is described as being 'from the unauthorised access to the north east of the curtilage listed barns'. The Council confirmed

at the hearing that the operation that is the target of this allegation is the track that runs north from the historic barns (labelled A and B on Plan 1B), to the gate in the north east corner of the site, as well as the track that runs west to the yard area in the north west corner of the site. Having had the benefit of the Council's clarification, I maintain my concern that the allegation as put in the notice is particularly imprecise, and that it only sought to target the section of track running north from the barns. Notwithstanding this, having questioned the Council on what is meant by the 'engineering of land' it was agreed that this is not needed as part of the allegation.

30. With regard to the necessary correction, whilst the Council sought to show the route of the track hatched brown and labelled 'track' on Plan 1B, this excludes a section of the track within the green hatched area, behind the gate in the north east corner of the site. Were I to correct the allegation to reflect this, I am satisfied that no injustice would be caused to any party, particularly having regard to the appellant's case with regard to this allegation.
31. Turning to the corresponding requirement of the notice, I have concern with regard to the precision of requirement 5(4). The requirement refers to 'access roads' and not access tracks. I have difficulty with a requirement to 'demolish' the track; digging out is a more precise instruction. The requirement also refers to hardstandings, but duplicates 5(5) and 5(8), which also require the demolition of hardstandings. Finally, there is an obvious error as the requirement refers to an area hatched blue on site location plan (2), whereas there is only a green hatched area on that plan.
32. I am, however, satisfied that the necessary alterations to requirement 5(4) to remove duplication and make it more precise could be made without causing injustice to either party. Whilst reference in the requirement to a blue hatched area instead of a green hatched area is unfortunate, I am not persuaded that the appellant is not reasonably certain of what he is required to do, particularly as there is only one area hatched on plan (2) attached to the notice. The intended alterations would achieve a more precise notice, but would not make it more onerous.

Construction of fences – Allegation 3(3)

33. Allegation 3(3) is the 'construction of fences along the boundary of the field within the setting of the curtilage listed barns'. In my judgement the description of the location of the fences that are the target of this allegation is entirely uncertain, particularly as the recipient of the notice is required to correctly identify the 'curtilage listed barns' and then to make a judgement as to what field boundary is within their setting. Furthermore, on site I noted a number of different types of fences within the site, in various locations, including timber close boarded (TCB) fencing, timber post and rail fencing, metal post and rail fencing, and some post and wire fencing. The notice could be read as targeting **all** of this fencing within the site.
34. At the hearing the Council confirmed that reference in the notice to 'fencing' or 'fences' is meant to apply to the TCB fences only. This is, of course, except for the section of metal post and rail fence (which I will come to later in this decision when I consider allegation 3(1)). As fencing is already referred to in allegation 3(1), 3(2) and 3(4), allegation 3(3) is intended to target all other TCB fencing on site. The Notice could, therefore, be corrected to target only the TCB fencing on site that is not the subject of allegations 3(1), 3(2) and

3(4). I am satisfied that the appellant's grounds of appeal adequately respond to development that the Council intended to be the target of allegation 3(3), and that no injustice would be caused if I correct the notice in the manner set out above and with reference to Plan 1B.

35. The corresponding requirement of the notice is 5(6). It is the appellant's case that this requirement is not sufficiently precise as, he suggests, there are two red lined areas on Plan (1) attached to the notice. Whilst I acknowledge that the boundary of the red hatched area on Plan (1) has been defined with a red line, a reasonable reading of the notice would not conclude that the red hatched area is the 'red lined area' referred to in the requirement and that only fencing in this area need be demolished. I am satisfied that the recipient of the notice would be reasonably certain that the requirement relates to the fencing in the wider area outlined in red on Plan (1).
36. Notwithstanding this, the requirement duplicates part of 5(5) and 5(8), which also require the demolition of fences that are the intended target of allegations 3(4) and 3(1) respectively. I will vary requirement 5(6) to avoid this duplication by referring to the fences in allegations 3(2) and 3(3) alone, making the notice more precise. Furthermore, in the interests of consistency, the requirement should refer to 'timber' close boarded fencing. I am satisfied that these variations would not cause injustice to either party.

Construction of an access – 3(1)

37. My concern with allegation 3(1) is whether there is reasonable certainty as to what operations comprise 'the construction of an access', and the extent of fencing that is associated with these operations. At the hearing the Council confirmed that the allegation is intended to target the works undertaken to form a new means of access through an existing hedge; the construction of gates and pillars across that means of access; the hard surfacing between the gates and the adopted highway; all other hard surfacing within the land hatched green on the enforcement notice plan (1); and the TCB fence and the metal post and rail fence erected between the gates and the highway.
38. Whilst the Council's clarification and reference to Plan 1B provides a more concise list of operations that are the intended target of allegation 3(1), I remain concerned with the mention of 'access gates'. On site I noted that there is a single sliding gate, rather than 'gates', that is supported by a mechanism behind the pillars either side of the gate. The appellant suggests that the gate is separate to, and not reliant on the pillars, and that the gate and pillars were not constructed at the same time. The suggestion is, therefore, that the pillars are not targeted by the notice.
39. In my judgement the pillars still have the appearance of being part of the gate, rather than being a separate operation. Despite not having been constructed at the same time, the pillars have clearly been designed to work together with the gate, and they provide the means of securing the access, with the gate, when the gate is closed. As a matter of fact and degree I find that the pillars form part of the operation, together with the gate (singular). The gate and the pillars are, therefore, the target of allegation 3(1).
40. Despite the appellant's concern about the lack of clarity with allegation 3(1), I am satisfied that his evidence under the relevant grounds of appeal responds to the list of operations set out above, and that it is unlikely that he would

have approached his appeal in a different way, or made an appeal under a further ground, had the notice been more clear. In these circumstances, correcting the allegation in the interests of precision, would not, in my judgement, cause injustice to any party.

41. That the notice includes land that is not within the control of the appellant does not make the notice invalid or a nullity. I have no reason to conclude that the notice has not been served on all parties with an interest in the land to which it relates, including Highways Gloucestershire. I also note the Council's representations at the hearing with regard to the parties on whom they consider the responsibility for compliance with the notice falls.
42. I am concerned that all corresponding requirements, 5(8), 5(9) and 5(10), lack the necessary degree of certainty. In particular, I find the requirement to demolish 'the whole of the unauthorised access', rather than stopping it up, to be unclear, and I have difficulty understanding what is meant by the requirement to 'level the land' or 'replant' a hedgerow to a 'similar height and depth' of that of the existing immediately adjacent hedgerow'. The adjacent hedgerow is mature and it would be difficult to achieve such a hedgerow with new, less mature plants. Whilst I do not consider the requirements to be so hopeless as to render the notice a nullity, variations to these are necessary and could be achieved without making the notice more onerous or causing injustice.

Construction of fencing and associate access gates – 3(2)

43. The location of the 'fencing with associated access gates' is described as being 'immediately to the front of the curtilage listed farm outbuildings off Wyndbrook Lane'. Again, there is an error in this allegation as there is only a single sliding gate and I have already set out the difficulty in using a reference to the curtilage of a listed building as a way to describe the location of the operations.
44. At the hearing the Council confirmed that the allegation is intended to target the gate to the east of the historic barns, as well as the TCB fence either side of the gate, along the boundary of the site. Plan 1B identifies both historic barns (A and B), as well as the gate with a short solid black line and the TCB fences with a dotted brown line. I am satisfied that, if I correct allegation 3(2) in line with this clarification and with reference to Plan 1B, injustice would not be caused to any party, particularly as the appellant's grounds of appeal adequately respond to these matters.
45. There is no requirement in the notice to demolish the gate, including its pillars. I have difficulty with the Council's suggestion, that the requirement to 'demolish all the wooden close boarded fencing' implicitly includes all timber means of enclosure, and that this implicitly includes the timber gates⁵. At the hearing the Council confirmed that reference in the allegation to 'fencing' was the fencing either side of the gates; there was no suggestion that this included the gate itself. Indeed, there is a separate reference in the allegation to 'access gates'. Having regard to this, it would be unreasonable to conclude that the requirement to remove the gate, including its pillars, was implied. In my judgement 'wooden close boarded fencing' is simply not a description that applies to the gate and pillars in question. The recipient of

⁵ The post hearing comments received from the Council.

the notice would not have reasonable certainty that to comply with the terms of the notice he should remove the gate and its pillars.

46. Accordingly, having regard to the provisions of section 173(11) of the 1990 Act, the notice clearly under-enforces with regard to the gate, including its pillars. I could not include a requirement for its removal as this would widen the scope of the notice, making it more onerous. To do this would, therefore, cause injustice to the appellant.
47. Notwithstanding the above, requirement 5(6) of the notice, if corrected in the manner set out earlier in this decision, would adequately deal with the fencing either side of the gate, that will be the subject of allegation 3(2).

Construction of hardstanding and associated fencing – Allegation 3(4)

48. The hardstanding is that located in the north western part of the field, in the approximate location hatched purple on Plan 1B. As the fencing along the northern and western boundary of the hardstanding is targeted by allegation 3(3), the fencing that allegation 3(4) targets is only that along the southern and eastern boundary of the hardstanding. The notice is not clear in this regard and would need correcting. The location of the operations could also be described more clearly with reference to the purple hatched area on Plan 1B. I am satisfied that no injustice would be caused by any such corrections.
49. With regard to the corresponding requirement, 5(5), an instruction to 'dig out' the hard surface comprised in the hardstanding would be more precise, as would an instruction to demolish the TCB fences that will be the subject of allegation 3(4).
50. Notwithstanding the above, at the site visit I observed pillars and a single sliding gate at the entrance to the hardstanding. Whilst 5(5) requires the removal of 'access pillars' alone (without reference to the gate), neither the pillars nor the gate are referred to in part 3 of the notice. At the hearing the Council confirmed that these are not the target of the notice and that reference to the access pillars in 5(5) should be removed. This variation, along with all others to requirement 5(5) are necessary in the interests of clarity and precision, and would not, in my judgement, cause injustice to any party.

Requirement 5(7)

51. These requirements are intended to relate to multiple steps in the notice. Once the notice is corrected and varied, requirement 5(7) will only relate to steps 5(4), 5(5) and 5(6). I consider the instruction in this requirement to 'regrade the land level' to be unclear. This suggests that there has been a change in ground level, but that is not alleged in the notice and I did not observe any such works on site that were obvious. A variation to this requirement to simply grass seed the land would be sufficient as part of the works to remedy the breach.

Summary on the notice

52. I have concluded that I am unable to correct the defects of the notice found in allegations 3(6) and 3(8). I have, therefore, concluded that the only course of action that would not cause injustice to any party would be to remove

these allegations from the notice, along with the associated allegations in 3(7). I also intend to vary the notice to remove all requirements corresponding to these allegations. It therefore follows that the ground (g) appeal does not fall to be considered as this only relates to the dwelling and the associated requirements. Of the remaining allegations and requirements, I have concluded that any defects or misdescriptions can be corrected without causing injustice.

Ground (b)

53. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appear to the Council to constitute the breach of planning control, have not occurred. The test of the evidence is on the balance of probability and the burden of proof is on the appellant.
54. Due to the intended corrections, the remaining matter to be considered under the ground (b) appeal is the formation of a means of access that is targeted by allegation 3(1). I have had regard to the image provided by the appellant, which he suggests shows the field access and gate in place, as well as the street view images⁶ which the Council suggest show the site in the location of the means of access prior to its formation. The appellant suggested that the gate would have been present in the street view images, close to the junction with Cook's Lane, but that it had grown over with vegetation.
55. Having compared the photographs, I am not persuaded that I can see any feature in the hedgerow on the street view images that compares to the gate and posts visible in the appellant's photograph. The photographs clearly show a means of access, but I cannot be satisfied that this is in the location suggested by the appellant. I am not able to marry up any of the features visible in the photograph (for example, the trees in the distance or the tree to the right of the access gate) with any features I saw on site, or with any features visible in some of the Council's older photographs of the site⁷.
56. Furthermore, I have considered the Council's aerial photographs at its Appendix 1a. In the photographs prior to 2018 I can see no obvious signs of the existence of a means of access in the north east corner of the site. These might include worn earth in that corner, a double rutted track from the access or a patch of hard surfacing close to the access, as can be seen in the 2018 photograph.
57. Whilst I have had regard to the oral evidence given in respect of the suggested historic access, I cannot be satisfied that the appellant has discharged the burden of proof in this case. He has failed to demonstrate that, on the balance of probability, there was already a means of access in the north east corner of the site and that, accordingly, the allegation of the construction of an access has not occurred. I conclude, therefore, that the ground (b) appeal should fail in this regard.

Ground (c)

58. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. Again, the burden of proof is on the appellant.

⁶ The Council's Appendix 2.

⁷ Photographs dated 17.09.2014 in the Council's document entitled 'Site Visit Photo Pack.'

59. Whilst there are numerous corrections to be made to the allegations in the notice, having had regard to the appellant's case, I am satisfied that the ground (c) appeal relates to all matters that will remain in part 3 of the notice, as set out earlier in this decision. I consider each of these in turn as follows.

Hardstanding and tracks – allegation 3(5), and part of allegations 3(4) and 3(1)

60. The appellant points to the provisions of Class B (agricultural development on units of less than 5 hectares) of Part 6 (agricultural and forestry), Article 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). This permits the formation or provision of a private way and the provision of a hard surface on agricultural land comprised in an agricultural unit.
61. With regard to the hardstanding, hatched purple on Plan 1B, the appellant had initially suggested that this development had the benefit of permission granted by the above mentioned provisions of the Order. However, the limitations to the development permitted by reason of Class B(e) – the provision of a hard surface, as imposed by paragraph B.4.⁸ were drawn to the appellant's attention at the hearing. The appellant subsequently confirmed that the area in question exceeds 1000 square metres and, as such, accepted that the hard standing was not permitted by the Order.
62. Turning to the track, the extent of this is largely shown hatched in brown on Plan 1B, but also runs into the area hatched green, up to the gate. For development to be permitted by Class B it must be carried out on agricultural land comprised in an agricultural unit of less than 5 hectares. It must also be development that is reasonably necessary for the purposes of agriculture within the unit. In this regard, at the hearing the Council acknowledged that the appeal site is an agricultural unit and that there is an agricultural use of the site at present. Furthermore, there was no suggestion that the size of the agricultural unit in question meant that the development did not fall to be considered within Class B. What is in dispute between the parties is whether there was an agricultural use at the site at the time the works to lay the track were carried out, and that the works to lay the track are reasonably necessary for the purposes of agriculture within the unit. In this regard the Council point to a commercial use of the site, particularly in the north west corner, and to a residential use of the site that it suggests spread beyond the south east corner.
63. For the purposes of Class B, agricultural land is defined in paragraph D.1. of Part 6, Article 3 of Schedule 2 of the Order as land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden. There is no dispute that the lawful use of the appeal site was for agriculture before the appellant's purchase of it. At the hearing the appellant confirmed that the land was purchased for him to farm and that his use of the land would be connected to his family's farm some 2Km from the site. The appellant suggested that the site had been neglected and that there was a need for works to be undertaken to bring the land back into active use. As part of this process, he submitted a number of planning

⁸ B.4. Development is not permitted by Class B(e) if the area to be covered by the development would exceed 1,000 square metres calculated as described in paragraph D.1(2)(a) of this Part.

applications for the site, including the proposed erection of a new barn. He also suggested that the works took place between 2017 and 2019.

64. When asked about the alleged commercial use and the plant, machinery and other items that are visible in some of the Council's photographs, the appellant confirmed that some of these items were on the site in order to carry out the works undertaken at the site, including the track and north west yard area. He also confirmed that other items referred to are present on site now and used in connection with farming activity on the land. The appellant pointed to, amongst other items, the tractors, trailers, and hay bales that are all stored in the yard area; the containers that are used to store hay; and the polytunnels that he advised had been erected whilst he sought permission for a barn. These are being used in the photographs to keep animals, as I had observed on the site visits.
65. Whilst I acknowledge the Council's reference to certain domestic items on land outside of the curtilage of the original cottage⁹, these are mainly transient items of children's play equipment that have since been removed. Their presence and the condition of the land (which the Council suggest was closely mown) does not lead me to conclude that there was a residential use of the whole appeal site at the time the works to lay the track were carried out, or that the land was not in agricultural use.
66. I note the Council's reference to complaints having been received regarding the commercial use of the site and the observations of the Council's planning officers. I have not, however, been provided with the details of the complaints or the planning officer's site visit notes. Having regard to the evidence before me, I find that it is more likely than not that the appeal site was in use for agriculture for the purposes of a trade or business at the time the works to lay the track were carried out and that this use continues to present.
67. In terms of the necessity for the track, it provides access from the north west yard area to the southern part of the site. I acknowledge that there are some ornamental items on the site, but these do not detract from the functional nature of the track and its purpose of providing a safe and convenient form of access around the site, particularly for larger farm vehicles or vehicles with trailers. Accordingly, I can see that there is a reasonable need for a hard surfaced track in association with agricultural activity taking place on the land.
68. There is no dispute that the works to lay the track do not fall within any of the criteria set out in Class B.1. of Part 6, Article 3 of Schedule 2 of the Order. Furthermore, I was given no other reason to find that the permission granted by Class B would not apply in this case.
69. Having regard to all of the above, I am satisfied that on the balance of probability the development consisting of construction of a track is permitted by Class B, of Part 3, Article 3, Schedule 2 of the Order.

Means of access – part of allegation 3(1)

70. The appellant has referred to the provisions of Class B (means of access to a highway) of Part 2 (Minor operations), Article 3 of Schedule 2 of the Order. He suggests that this permits the means of access constructed in the north

⁹ As seen in the Council's photographs at appendix 1f.

east corner of the site. Class B permits 'the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)'.

71. The Council were asked at the hearing whether the means of access would have the benefit of the permission granted by the Order, in the event that I find the track to be permitted development for the reasons suggested by the appellant. The Council confirmed that it would.
72. Whilst I note that there is an alternative means of access to the appeal site, I can see that the use of that access would be difficult for large farm vehicles, due to the proximity of the access to the historic barns. It is, therefore, more likely than not that the means of access targeted by 3(1) is required in connection with the track. As I have concluded that the track is permitted by an alternative part of the Order, the construction of the means of access is, on the balance of probability, also permitted by reason of Class B, Part 2, Article 3 of Schedule 2 of the Order. In my judgement the hard surface apron constructed between the gate and the edge of the highway is part of the means of access. As such, the permission granted by the 2015 Order applies to this operation.
73. Whilst I note the Council's concerns with regard to the removal of 'protected hedgerow' to form the means of access, this is not a matter that I am able to consider in the context of this appeal. This is a matter that ought to be considered under separate legislation.

Fencing – allegation 3(3) and part of allegations 3(1), 3(2) and 3(4)

74. The appellant's case under ground (c) does not refer to the gates that are the target of allegations 3(1) and 3(2) of the notice. He has only referred to fencing. Despite the presence of various types of fencing on site, the notice, once corrected, will only target TCB fencing on site and a section of metal post and rail fencing on the north east corner of the site. I have, therefore, considered this part of the ground (c) appeal on this basis.
75. Class A (gates, fences, walls etc) of Part 2 (Minor operations), Article 3 of Schedule 2 of the Order permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The appellant suggests that much of the fencing on site is permitted by Class A, but acknowledges the limitations of the permission granted by the Order, as set out in A.1. of Class A. Of particular relevance to this case are A.1. (a)¹⁰, (b)¹¹ and (d)¹².
76. At the hearing the Council suggested that all TCB fencing on site is a single operation and that, as there are sections of the fence that are subject to the limitations of the Order, none of the fencing is permitted by the Order. Whilst

¹⁰ Development is not permitted by Class A if - (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed - (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; (ii) in any other case, 1 metre above ground level.

¹¹ Development is not permitted by Class A if - (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level.

¹² Development is not permitted by Class A if - (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

this is noted, I am mindful that the fencing in question is in various locations on a large site. Indeed, there are four separate allegations that make reference to the construction of fencing or fences, and three of these associate the fencing with other operations. Allegation 3(3) also refers to the construction of fences in the plural, again indicating a number of separate operations. As such, I am not satisfied that all TCB fencing on site is a single operation. I have, therefore, considered the fencing or fences alleged to have been constructed in each of the four allegations as separate operations.

77. One of the main issues in dispute with regard to the fencing is whether it is 'adjacent' to the highway for the purposes of Class A.1 (a), as referred to above. Although there is no definition of 'adjacent' in the Order, a fence does not have to touch the edge of a highway to be considered adjacent. Indeed, there may be some distance between a highway edge and a fence/wall serving a property, yet it may still be close enough to have the perceived function of forming a highway boundary. Whether a fence would be adjacent in such circumstances is a matter of fact and degree in each case.
78. The fences that will be the subject of allegation 3(1) exceed 1 metre in height. They have been constructed either side of the hard surface apron of the means of access, and are between the gate and the edge of the carriageway. Whilst the fences are not adjacent to the carriageway, there are no features between them and the highway. In my view they have the purpose of securing the boundary of the site with the highway, which in this location is formed by the carriageway and a verge, part of which is covered by the hard surfaced apron.
79. Similarly, the fences that will be the subject of allegation 3(2), are over 1 metre in height and are also along the boundary of the site that is shared with the highway (Wyndbrook Lane). Again, although set off the carriageway, they are adjacent to the highway verge and there are no other intervening features between the fences and the highway. As such, they serve to secure the boundary of the site with the highway.
80. For the above reasons, I find that the fences that will be the subject of allegations 3(1) and 3(2) are, as a matter of fact and degree, adjacent to the highway for the purposes of A.1.(a) of Class A. As they measure over a metre in height, I find that they do not, on the balance of probability, have the benefit of the permission granted by Class A, Part 2, Article 3 of Schedule 2 of the Order.
81. Turning to the fences that are the intended target of allegation 3(3), the Council maintains that none have the benefit of the Class A permission granted by the Order as sections along the northern and eastern boundary are adjacent to the highway and over a metre in height. With regard to the other sections, the Council contends that these are 'part of a fence that at least touches such a boundary'.
82. I acknowledge that the sections of fencing along the northern and eastern boundary of the site (excluding those targeted by allegations 3(1) and 3(2)) are close to the edge of the highway (i.e. the edge of the highway verge). However, they are separated from the highway by the mature hedgerow that encloses the vast majority of the site. The hedgerow is a substantial feature, the depth of which I observed to be over a metre in most places. When asked the purpose of all fencing erected behind the hedgerow, the appellant

suggested that it was intended to reinforce the hedgerow; to prevent animals entering or leaving the site through the base of the hedge. Having regard to the above, I can only conclude that as a matter of fact and degree the fences that are intended to be the target of allegation 3(3), are not adjacent to a highway for the purposes of A.1.(a) of Class A, Part 2, Article 3 of Schedule 2 of the Order.

83. The Council's evidence refers to the domestic appearance of the fences and at the hearing the Council referred to the provisions of Article 3(5) of the Order¹³, suggesting that the permission granted by Class A does not apply as there is an unlawful residential use of the site. Whilst I will remove from the notice the matters relating to the allegation of the construction of a dwelling, I acknowledge that a dispute between the parties remains with regard to residential activity on the site. However, this is confined to a small part of the site, extending just beyond the historic cottage. Furthermore, I have concluded above that at the time the works subject of the notice were carried out, it is more likely than not that the appeal site was in use for agriculture. Whilst I acknowledge that TCB fences are more commonly found in a domestic setting, the appellant's evidence leads me to conclude that their purpose in this case is connected with the agricultural use of the site and not with any residential activity; there is no dispute that the agricultural use of the site is lawful. Furthermore, the Order is not prescriptive about the style or appearance of the means of enclosure it permits. Accordingly, I am satisfied that the provisions of Article 3(5) of the Order are not engaged in this case.
84. I have been given no other reason to conclude that the fences would not be permitted by the Order. Accordingly, I conclude that on the balance of probability these enclosures have the benefit of the permission granted by Class A, Part 2, Article 3 of Schedule 2 of the Order.
85. Finally, with regard to the fencing that is the target of allegation 3(4), the appellant acknowledged that when this was first constructed its height exceeded 2 metres. This is apparent from the Council's photographs at Appendix 1d. Whilst it might now be the case that the height of the fence complies with the permitted dimensions of Class A, it was initially completed to a height that would mean the limitations set out in A.1.(b) apply. Accordingly, I find that the fencing does not, on the balance of probability, have the benefit of the permission granted by Class A, Part 2, Article 3 of Schedule 2 of the Order. That it has been reduced to a height that might comply with the permitted dimension does not change this conclusion; the permission granted by Class A cannot be claimed retrospectively. This was acknowledged by the appellant at the hearing.

Summary on the ground (c) appeal

86. Having considered all evidence before me, I have concluded that on the balance of probability the following operations are permitted by the Order:
 - The track - allegation 3(5);

¹³ Article 3(5) of the Order states: The permission granted by Schedule 2 does not apply if - (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.

- The means of access, including the hard surface apron between the gate and the edge of the carriageway - allegation 3(1); and
 - The TCB fences - allegation 3(3).
87. As such, these matters do not on the balance of probability constitute a breach of planning control. For this reason the ground (c) appeal should succeed in part and the ground (a) and (f) appeal does not fall to be considered in so far as these grounds relate to the above listed matters. Accordingly, instead of correcting allegations 3(3) and 3(5), I will remove them in their entirety from the notice. Furthermore, instead of correcting the allegation of 'the construction of an access', I will remove reference to the access from allegation 3(1). I will also vary the requirements of the notice to remove those related to these allegations.
88. Notwithstanding the above, I have concluded that on the balance of probability the following operations are not permitted by the Order:
- The hardstanding - allegation 3(4); and
 - The TBC and metal post and rail fences - allegations 3(1), 3(2) and 3(4).
89. I have not been given any other reason to conclude that these matters do not constitute a breach of planning control. Accordingly the ground (c) appeal should fail in so far as it relates to these matters.

Ground (a) and the deemed application for planning permission

90. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
91. Whilst I have concluded earlier in this decision that, in my judgement, the notice underenforces insofar as it relates to the gate (including its pillars) that are the intended target of allegation 3(2), I must still consider the ground (a) appeal that has been made in relation to this matter. Accordingly, and having regard to my conclusions on the ground (c) appeal, the operations that remain the subject of the appellant's ground (a) appeal are as follows:
- The gates and fences - allegations 3(1) and 3(2); and
 - The hardstanding and fencing - allegation 3(4).
92. I note the substantive reasons for issuing the enforcement notice as they relate to these operations. From these I have identified the main issues as being:
- i) The effect of the development on the special interest of the heritage assets that are within the site and on the character and appearance of the area; and
 - ii) Whether the fences at the access in the north east corner of the site are acceptable in terms of highway safety.

Main issue i)

Policies and guidance

93. I note the policies that have been referred to in part 4 of the notice. Of relevance to the ground (a) appeal and the main issues are policies AP 1 (Sustainable Development), AP 4 (Design of Development) and AP 5 (Historic character and local distinctiveness) of the Forest of Dean District Council Allocations Plan 2006 to 2026 Adopted June 2018 (FODAP). Policies CSP.1 (Design, environmental protection and enhancement) and CSP.4 (Development principles, development at settlements) of the Forest of Dean District Council Core Strategy Adopted Version dated 23rd February 2012 (FODCS), along with policies C1, C2, I1, I2, I3, and B1 of the National Design Guide dated January 2021 (NDG) have also been mentioned.
94. The vast majority of the policies referred to above require development to respond positively to the features of the site and surrounding area, and to create well-designed, high quality and attractive places that shape the character and identity of the area. In particular, policies AP5 of the FODAP and CSP.1 of the FODCS state that development should preserve and where appropriate enhance those aspects of the historic environment together with their settings, and that it should take into account important characteristics of the environment and conserve, preserve or otherwise respect them in a manner that maintains or enhances their contribution to the environment.
95. Reference is made to the Framework and Planning Practice Guidance (PPG), with particular regard to the relevant sections on the historic environment.
96. The Forest of Dean District Landscape Character Assessment dated November 2002 (FODLCA) has also been drawn to my attention. This informs that the site is within area 6b The Severn Vale. The document sets out the key characteristics of this area, stating that it is deeply rural, with the predominant form of settlement being isolated farm houses, small hamlets and villages linked by a network of narrow lanes.
97. Policies CSP.4 of the FODCS and B1 of the NDG relate more to the location of development and are less relevant to the main issues in this case.

The heritage assets

98. The historic buildings on site comprise the original cottage in the south east corner and the historic barns to the north of this dwelling. These are labelled 'Listed Dwelling C', 'Historic Barn A' and 'Historic barn B' on Plan 1B. Whilst the notice might suggest that only the original cottage is listed, the evidence confirms that the listing extends to the barns; the listing description specifically refers to these barns in addition to the cottage. Accordingly, the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 extends to these buildings.
99. Notwithstanding the above, whilst the Council suggested that the farmstead as a whole is a non-designated heritage asset, I was not provided with any formal record of this, such as a local list.
100. The listed buildings date from the early 18th century and are visually connected by a yard area between the barns, the cottage and the boundary of the site with Wyndbrook Lane. The Council suggests that the cottage and the

barns are a modest collection of buildings that are typical of a historic small holding. At the hearing it was suggested that the group should be read within the landscape, as the surrounding agricultural land gives the reason for the existence of the buildings. It was also suggested that, although the buildings have important architectural elements, the small scale of the dwelling and the collection as a whole is important as a reflection of the economic history of agriculture in the area.

101. The appellant's assessment¹⁴ acknowledges the importance of the collection as rare buildings of the period, although it points to more recent alterations that have been undertaken. Nevertheless, it confirms that the site is of architectural and historic interest. It states that the site is a good example of the small farms that once existed in this part of the county, that it is complete and represents the small scale nature of farming up until the second half of the 20th century.
102. Having regard to the evidence before me, it is clear that the setting of the heritage assets in this case is an important element of the buildings' significance. The appeal site as a whole is, as the appellant suggests, complete and adds to the value of the heritage assets it accommodates.

The gates and fences - allegation 3(1) and 3(2)

103. The gate and TCB fences that are the intended target of allegation 3(2) are in close proximity to both the listed cottage and barns. These partly enclose the curtilage of the listed buildings and are within their immediate setting. Although such means of enclosure might be commonplace for domestic properties, these are within a rural setting and have the function of enclosing an agricultural yard, as well as the cottage. Whilst the gate itself has a fairly simple design, its brick pillars each topped with a pointed coping stone are substantial features which are wholly out of character with their modest rural setting. The scale and design of the pillars do not reflect the simple character of the listed buildings and the choice of materials does not respond positively to built development on the site.
104. The fence either side of the gate is also out of keeping with the character of the historic agricultural yard. This enclosure visually jars with the historic and rural setting, particularly when viewed from Wyndbrook Lane. Both the gate (comprising the single gate and pillars) and sections of fence either side are detrimental to the character and appearance of the area and the setting of the listed buildings. The presence of the M50 some distance to the south of the site does not alter this conclusion, particularly as this road is not viewed within the context of the development in question. Accordingly, these operations cause harm to the significance of the heritage assets on this site, although I consider that harm to be less than substantial in the context of chapter 16 of the Framework¹⁵.
105. Turning to the development in the north east corner of the site, this comprises a second single sliding gate with brick pillars, as well as a section of metal post and rail fence and TCB fence. These are some distance from the listed buildings, although still within their setting. Nevertheless, these operations are within a rural setting and are highly visible when viewed from both

¹⁴ Appellant's appendix 2.6 – Draft Heritage Appraisal and Justification Statement.

¹⁵ Paragraph 202 of the Framework.

Wyndbrook Lane and Cook's Lane. Whilst I acknowledge above that the gate itself has a simple design, the pillars are elaborate and their scale and design are wholly out of character with what is otherwise an agricultural entrance in a rural lane. The same can be said for the section of timber fence between the gate and Wyndbrook Lane. This overtly domestic enclosure exacerbates the visual impact of the gate and, together, these form an inappropriate means of enclosing this part of the site. Accordingly, these operations are detrimental to the character and appearance of the area, and cause harm to the setting and, therefore, the significance of the listed buildings. Again, in my judgement the harm caused is less than substantial.

106. With regard to the section of metal post and rail fence to the front of the gate, this is described by the appellant as estate fencing. Indeed, this is a common means of enclosure found on agricultural land and is used elsewhere on the site. This fence is not a substantial, solid section of enclosure and, although it is in a prominent location, its appearance reflects the rural setting. Accordingly, this section of fence has a neutral effect on the setting of the listed buildings and is acceptable with regard to its effect on the character and appearance of the area.

Hardstanding and fences - allegation 3(4)

107. The hard standing covers a large area and its appearance is, of course, functional. Nevertheless, it is not highly visible within the landscape and is a feature that is commonly found on agricultural land. Although within their setting, the hardstanding is physically divorced from the listed buildings. Accordingly, it has a marginal effect on the setting of the heritage assets, as well as the character and appearance of the wider area.
108. As with the TCB fence referred to above, the enclosure along the southern and eastern boundary of the hardstanding is overtly domestic in its character and is out of keeping in an agricultural setting. Whilst I acknowledge that it is not particularly visible from any public vantage points, I cannot regard it as a positive response to the character and identity of the area. The domestic character of the fence, its solid appearance and its expanse make it a prominent feature within the setting of the listed buildings, causing harm to their significance. Notwithstanding this, I note the new hedgerow planting along the outward facing elevation of the fence, which softens its appearance.
109. Within the context of chapter 16 of the Framework, the harm caused by the hardstanding and fencing is less than substantial.

The less than substantial harm balance

110. As noted above, I have identified less than substantial harm to the significance of the heritage assets on site with regard to the gates, all TCB fences and the hardstanding. In these circumstances, paragraph 202 of the Framework makes it clear that the harm identified has to be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use. In undertaking this balance, I have also had regard to the provisions of paragraph 197 of the Framework.
111. The appellant has listed a number of public benefits of the scheme, which were discussed at the hearing. Some of these, including the provision of a quality family home and the eventual use of the heritage assets, do not

however result from the development that is now the subject of the ground (a) appeal. I conclude the same with regard to the suggested biodiversity and ecology enhancement, which results from the maintenance of the land and the additional hedge planting, but not from the development itself. Similarly, whilst there may have been an improvement to the flood risk situation on Wyndbrook Lane, I have insufficient evidence to link this to the development in question. Furthermore, having regard to my conclusions on the effect of the development on the heritage assets and the character and appearance of the area, I cannot agree that the development has resulted in environmental enhancement.

112. With regard to the suggested economic benefit related to the farming of the site, the Council say that this benefit would occur without the development in any event. I was able to observe the hardstanding area being used as the appellant described, including for the storage of machinery, trailers and vehicles used on the land; for the keeping of animals in the polytunnels; and for the storage of hay. All of these activities are directly relevant to the farming of the land and are facilitated by the hardstanding.
113. The evidence suggests that the existing barns are unsafe and that they are not being used for agriculture. I can see that the hardstanding has allowed for a more active farming use of the site and has facilitated the use of more modern agricultural equipment and methods on site, as well as providing an area for storage in all weather. I am satisfied that the consequence of this is a public benefit in terms of employment on the land and other economic benefits that result from a more actively farmed site. Whilst I acknowledge that I must give great weight to the conservation of the heritage assets¹⁶, I have concluded that the hardstanding would have only a marginal effect on the setting of the listed buildings (and therefore, their significance). As such, I conclude that the public benefit resulting from the hardstanding would, on balance, outweigh the harm identified.
114. Turning to the gates and TCB fencing, I acknowledge that these might assist the farming activities on the site to a degree by providing security for the farm and, in the case of the fencing along the boundary of the hardstanding, provide a means of separating the grazing land from the functional yard area. However, I am not satisfied that the harm caused by these operations is outweighed by any resulting public benefit, particularly as the same benefits could be achieved with more appropriately designed gates and enclosures.

Summary on main issue i)

115. Having regard to my conclusions above, I find that the metal post and rail fence that is the intended target of allegation 3(1) has a neutral effect on the special interest of the heritage assets and, therefore, preserves the setting of these listed buildings¹⁷. This fence is also acceptable in terms of its effect on the character and appearance of the area. In this regard, this development complies with policies AP 1, AP 4 and AP 5 of the FODAP; Policy CSP.1 of the FODCS; and policies C1, C2, I1, I2, and I3 of the NDG. There is also no conflict with the FODLCA, the PPG or the Framework.

¹⁶ Paragraph 199 of the Framework.

¹⁷ The general duty as respects listed buildings in exercise of planning functions - Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

116. With regard to the gates and all TCB fences that are intended to be the target of allegations 3(1), 3(2) and 3(4), I find that these have a harmful effect on the special interest of the heritage assets as they fail to preserve or enhance their setting. These operations also have a detrimental effect on the character and appearance of the area. Accordingly, there is conflict with the development plan and NDG policies referred to above, as well as the FODLCA, the PPG and the Framework.
117. As for the hardstanding, I have identified marginal harm with regard to its effect on the special interest of the heritage assets and the character and appearance of the area. Nevertheless, there is conflict with the development plan policies, NDG policies and FODLCA referred to above. I must also conclude that this element fails to preserve or enhance the setting of the listed buildings. However, having regard to paragraph 202 of the Framework, I have found that the public benefit of this development outweighs the harm identified, on balance. There is, therefore, no conflict with the Framework or the associated PPG.

Main issue ii)

118. The reasons for issuing the enforcement notice refer to the visibility splays at the new means of access to the site in the north east corner. As the metal post and rail fence and the TCB fence are forward of the new point of access, it is necessary to consider whether these operations have an effect on highway safety when the access is used.
119. The Council suggests that the visibility splay at this new access is below standard, causing harm to highway safety. The solid TCB fence is to the right (south) of the point of access when leaving the site. At the hearing it was agreed that the visibility splay should be measured back from the edge of the carriageway by a distance of 2.4 metres and that to the south of the access there should be a splay of 45 metres. On site in the company of the parties I stood at a point 2.4 metres from the edge of the carriageway and looked south along Wyndbrook Lane. The TCB fence was not within my view. Indeed, the parties agreed on site that the 45 metres vision splay south had been achieved.
120. As for the metal post and rail fence to the left of the access, whilst this was within my vision looking north, its design allowed for uninterrupted views towards the junction and Crook's Lane.
121. In view of the above, I have no reason to conclude that the fences targeted by allegation 3(1) are unacceptable in terms of highway safety when the access is used. No relevant policies of the development plan were drawn to my attention, and I have no reason to conclude that the fences in question conflict with national guidance in the form of the PPG or the Framework.

Other Considerations

122. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there

are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

123. The appellant has a need for a hard surfaced area to store modern agricultural equipment and machinery, and to house animals currently sheltering in the polytunnels. The hard surfacing provides an area sufficient in size for storage, the keeping of animals and for turning larger vehicles. As I have already noted, the hardstanding has allowed for a more active farming use of the site as a whole. I have identified this as an economic benefit of this operation, which weighs in favour of the grant of planning permission.
124. I have also identified similar benefits in terms of the gates and all TCB fences, although these benefits are less tangible and, therefore, carry less weight in the overall planning balance. Notwithstanding this, the appellant has suggested that the TCB fences to the east of the listed barns are a temporary measure. In this regard, I acknowledge that a temporary permission for these fences would reduce the harm they cause. However, these enclosures are within the immediate setting of the listed buildings. Even if the degree of harm caused by the operations is reduced by reason of a temporary permission, the harm caused to the setting and, therefore, the significance of these buildings is still unacceptable.
125. In addition to the above, the appellant has drawn my attention to the permitted development rights for hard surfaces and means of enclosure that would ordinarily be granted by the Order, as already considered in the ground (c) appeal. In this regard, my attention has been drawn to the provisions of Class B Part 6, Article 3 of Schedule 2 of the Order that would permit a hard surface in the north west corner of the site, albeit of a smaller area than that constructed. As the appellant is in need of a hard surfaced yard area on site, he is likely to exercise his permitted development rights, should he be required to remove the hardstanding that is targeted by the notice. This is a realistic alternative in this case. Accordingly, the weight I attribute to the harm caused by the hardstanding is only that caused by the difference in area between the existing and what would be permitted by the Order.
126. With regard to the fencing along the southern and eastern boundary of the hardstanding, whilst the appellant acknowledged at the hearing that the enclosure as originally constructed exceeded a height of 2 metres, he pointed to the current height, which the parties agree is now in accordance with the dimensions that would otherwise be permitted by Class A, Part 2, Article 3 of Schedule 2 of the Order. I have no reason to conclude that a fence of a similar construction and height in this location would not benefit from the permission granted by the Order. Furthermore, I acknowledge that there is a need for an enclosure of the yard area to separate it from the grazing land. The materials used to construct the existing fence could be recycled to form a new means of enclosure. As such, there is a real prospect that an enclosure of the same design, materials and height would be constructed in the place of the existing hardstanding boundary fence, causing a similar degree of harm to the significance of the heritage assets and the character and appearance of the area. This is a material consideration of significant weight in the case of this enclosure.

Conditions

127. The Council have provided a list of suggested conditions¹⁸. I consider each of these, as follows, and where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance: Use of Planning Conditions.
128. I note the suggested condition for biodiversity enhancement to include bat roosts, hedgerow and orchard planting, and nesting opportunities for birds. There is, however, little opportunity for the provision of bat roosts on the development in question and I have insufficient evidence to conclude that they would be of benefit in this case. Orchard planting would also be impractical in relation to the development to be permitted.
129. Notwithstanding this, I have noted earlier that a new hedgerow has been planted along the outward facing elevation of the fence enclosing the hardstanding. This has mitigated the appearance of the enclosure and will continue to do so, provided it is properly maintained. It will also provide nesting opportunities for birds. In this regard, whilst I do not consider further details of biodiversity enhancement measures to be necessary, a condition requiring the maintenance of the measures already implemented would be necessary in the interests of both biodiversity and the visual impact of the development.
130. This ground (a) appeal relates to operational development, rather than a use of the land. Accordingly, I do not consider the suggested conditions relating to external lighting to be relevant to the development to be permitted, or reasonable, having regard to the lawful use of the site. Similarly, the condition limiting the use of the hardstanding is unnecessary, particularly as any other use of the land would require the benefit of planning permission in any event.
131. Finally, none of the conditions suggested would adequately mitigate the harm caused by the gates and TCB fences that are the intended target of allegations 3(1) and 3(2). No other conditions have been drawn to my attention that are relevant to the development I have considered in this case.

Overall planning balance and conclusion on the ground (a) appeal

132. For the reasons given above, I conclude that the hardstanding, close board timber fences and gates that are intended to be the target of allegations 3(1), 3(2) and 3(4) cause harm to the significance of the heritage assets on site and the character and appearance of the area. Whilst the degree of harm caused by each element varies, the development in question nevertheless conflicts with the development plan when read as a whole.
133. With regard to the gates and TCB fences that are the intended target of allegations 3(1) and 3(2), having regard to the harm caused by these operations, I conclude that the material considerations identified earlier are of insufficient weight to indicate that the determination should be made otherwise than in accordance with the development plan. I cannot be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. Accordingly, I conclude that planning

¹⁸ Document HD. 5

permission ought not to be granted for these operations and that the ground (a) appeal should not succeed insofar as it relates to these matters.

134. Whilst I have identified a degree of harm in respect of the hardstanding and the fences enclosing this hardstanding, I find that the material considerations identified above are, on balance, of sufficient weight to indicate that the determination should be made otherwise than in accordance with the development plan. Furthermore, I have not identified any conflict with the development plan with regard to the metal post and rail fence. Accordingly, I conclude that planning permission ought to be granted for the hardstanding and fencing (allegation 3(4)), as well as the metal post and rail fence (allegation 3(1)). The ground (a) appeal should, therefore, succeed insofar as it relates to these matters. As such, the ground (f) appeal does not fall to be considered insofar as it relates to the requirements that correspond to these matters.
135. Notwithstanding the conclusions above, in addition to the hardstanding and fences referred to in the paragraph above, the notice will, of course, target other development (i.e. the gates and TCB fences elsewhere). For this reason the notice will not be quashed. Despite my conclusion on the ground (a) appeal, I will still include a reference to the metal post and rail fence in the corrected allegation 3(1), and I will also leave allegation 3(4) in the notice with the corrections I intend to make. These allegations will describe the development for which I will grant planning permission. It therefore follows that the requirements of the notice relating to these matters must also remain so as to avoid any grant of unconditional planning permission for these developments through section 173(11) of the 1990 Act. However, in accordance with section 180(1) of the 1990 Act, the appellant can rely on the notice ceasing to have effect insofar as it will be inconsistent with the planning permission I will grant.

Ground (f)

136. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
137. Having regard to all of my findings so far in this decision, the remaining matters to be considered under the ground (f) appeal are the requirements to demolish the gate that is the intended target of allegation 3(2) and the TCB fences that are the intended target of allegation 3(1) and 3(2). Having regard to these requirements, the purpose of the notice must be to remedy the breach of planning control that has occurred.
138. The appellant suggests that where any fences exceed the height permitted by the Order, a requirement to reduce the height to comply with the Order should be sufficient. The relevant provision of the Order is at Class A, Part 2, Article 3 of Schedule 2.
139. Earlier in this decision I conclude that the TCB fence targeted by allegation 3(1) is adjacent to a highway used by vehicular traffic¹⁹. I do not, however, consider this enclosure to be within the curtilage of the listed buildings or to

¹⁹ For the purposes of A.1.(a)(ii) of Class A, Part 2, Article 3 of Schedule 2 of the Order.

be a means of enclosure surrounding these buildings²⁰. The Order would, therefore, permit a means of enclosure with a design similar to the existing of up to 1 metre in height in this location. Although I acknowledge that reducing the height of the existing enclosure to a metre would not mean that it is permitted by the Order, it is an obvious alternative to the relevant part of requirement 5(8) that could be achieved with less cost and disruption.

140. Whilst I have considered a similar approach to the requirement to remove the gate in the north east corner of the site, its construction (both the single gate and pillars) is more complex than the TCB fence. The coping stone and bricks could be removed to reduce the height of the pillars, but there would be a need for some form of finish on top of the altered pillar. Also, as the gate appears to have a metal prefabricated frame, it is likely that it would be difficult to alter and I cannot be sure how a reduction in the height of the gate would affect the sliding mechanism. I have insufficient evidence to be sure that an altered version of the existing gate and pillars, constructed in accordance with the Order, would be an obvious alternative in this case and that an alternative requirement to specify alterations to the existing could be drafted so as to be sufficiently precise. Accordingly, I cannot conclude that a requirement to remove the gate, including its pillars, is excessive.
141. With regard to the TCB fences to the east of the listed barns, I have already concluded that these are part of a means of enclosure surrounding the listed buildings. Accordingly, it is more likely than not that an enclosure of any height in this location would not be permitted by Class A, Part 2, Article 3 of Schedule 2 of the Order, by reason of the limitations imposed by A.1.(d). The requirement to remove these fences does not, therefore, exceed what is necessary to remedy the breach of planning control as far as these matters are concerned.
142. Having regard to my findings above, I conclude that the requirement of the notice to demolish the TCB fence that is the intended target of allegation 3(1) exceeds what is necessary to remedy the breach of planning control in this case. I will, therefore, vary the notice to require a reduction in its height to no more than 1 metre. Accordingly, the ground (f) appeal should succeed insofar as it relates to this matter.
143. With regard to the requirements to demolish the gate that is the target of allegation 3(1) and the TCB fences that are the intended target of allegation 3(2), I conclude that these are reasonable and proportionate. Accordingly, the ground (f) appeal should fail insofar as it relates to these matters.

Overall Conclusions

144. For the reasons given above, and having regard to the corrections and variations set out in 'The Notice' section of this decision, I conclude as follows:
 - The appeal on ground (b) should fail;
 - The appeal on ground (c) should succeed insofar as it relates to the track (allegation 3(5)), the means of access, including the hard surface apron between the gate and the edge of the carriageway (allegation 3(1)), and the TCB fences (allegation 3(3)). The ground (c) appeal should fail

²⁰ For the purposes of A.1.(d) of Class A, Part 2, Article 3 of Schedule 2 of the Order.

insofar as it relates to all other matters that will remain in the notice, once corrected as intended;

- The appeal on ground (a) should succeed insofar as it relates to the metal post and rail fence (allegation 3(1)), and the hardstanding and TCB fencing (allegation 3(4)). The ground (a) appeal should fail insofar as it relates to all other matters that will remain in the notice, once corrected as intended;
- The appeal on ground (f) should succeed insofar as it relates to the TCB fence (allegation 3(1)) and should fail insofar as it relates to all other matters that will remain in the notice, once corrected and varied as intended; and
- The ground (g) appeal does not fall to be considered.

145. I will grant planning permission for the metal post and rail fence (allegation 3(1)) and the hardstanding and TCB fencing (allegation 3(4)), but otherwise I will uphold the notice with corrections and variations. In accordance with section 180 of the 1990 Act, the requirements of the notice will cease to have effect in so far as they are inconsistent with the planning permission which I will grant.

Formal Decision

146. It is directed that the enforcement notice is corrected by the deletion in their entirety of all paragraphs in part 3 of the notice and their replacement with the following paragraphs:

- '1) In the approximate location hatched green on the plan attached to this notice and entitled Plan 1B (hereinafter referred to as "Plan 1B") the construction of a gate, and the construction of a timber close boarded fence and a metal post and rail fence between the gate and Wyndbrook Lane;
- 2) To the east of the buildings labelled 'Historic Barn A' and 'Historic Barn B' on Plan 1B, the construction of timber close boarded fences in the approximate location indicated with a dotted brown line on Plan 1B and a gate in the approximate location indicated with a solid black line on Plan 1B; and
- 3) The construction of a hardstanding and the construction of timber close boarded fencing along the southern and eastern boundary of the hardstanding in the approximate area hatched purple on Plan 1B.'

147. It is directed that the enforcement notice is varied by:

- The deletion in their entirety of paragraphs 1 to 10 in part 5 and their substitution with the following paragraphs:
 - '1) Dig out the hard surface comprising the hardstanding that is the subject of paragraph 3) in part 3 of this notice and demolish the timber close boarded fencing along the southern and eastern boundary of the hardstanding;
 - 2) Demolish the timber close boarded fences that are the subject of paragraph 2) in part 3 of this notice;

- 3) Once steps 2 and 3 have been completed, seed the land affected by the works required by these steps with grass;
- 4) Demolish the gate and metal post and rail fence that are the subject of paragraph 1) in part 3 of this notice and reduce the height of the timber close boarded fence that is also the subject of paragraph 1) in part 3 to a height no greater than 1 metre; and’.
- In paragraph 11 of part 5 substitute the words ‘2 to 6, 8 and 10’ with the words ‘1, 2 and 4’;
- Change the number of paragraph 11 in part 5 to paragraph 5; and
- Substitute both plans attached to the notice with the plan entitled Plan 1B²¹.

148. Subject to the corrections and variations, the appeal is allowed in part 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 hardstanding and timber close boarded fencing along the southern and eastern boundary of the hardstanding in the approximate area hatched purple on Plan 1B, and
- the metal post and rail fence between the gate and Wyndbrook Lane in the approximate location hatched green on Plan 1B,

on the Land at Lake Farm, Wyndbrook Lane, Redmarley, Gloucester GL19 3LF, and subject to the following condition:

- 1) The hedge planted along the timber close boarded fence hereby permitted shall be retained and if any of the plants comprised in the hedge die, are removed or become seriously damaged or diseased within a period of 5 years from the date of this decision, they shall be replaced in the next planting season with others of similar size and species.

149. The enforcement notice is upheld as corrected and varied.

J Moss

INSPECTOR

²¹ HD1 – A copy is attached at the end of this decision.

APPEARANCES

FOR THE APPELLANT:

Mr Peter Tufnell	Tufnell Town and Country Planning
Mr Alan Steel	Tufnell Town and Country Planning
Mr Larkin	The Appellant
Mrs Jade Larkin	The Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Wood	Forest of Dean District Council
Mr David Haigh	Forest of Dean District Council

INTERESTED PERSONS:

Mr Peter Henning	Local resident
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HEARING DOCUMENTS

HD1 Annotated plan of the appeal site entitled Plan 1B
HD2 Appeal decision dated 9 March 2021
HD3 Historic maps of the appeal site
HD4 Council's photographs dated 30 April 2021
HD5 List of suggested conditions
HD6 Appeal statement of West Oxfordshire District Council
HD7 Document entitled 'Operation of Delegated Powers – Planning'
HD8 Organisational tree entitled 'Planning and Regeneration (May 2018)'
HD9 Sales particulars for the site
HD10 Structural Assessment of the Barns at Lake Farm dated April 2021



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 09 November

by **J Moss BSc (Hons) DipTP MRTPI**

Land at: Lake Farm, Wyndbrook Lane, Redmarley, Gloucester GL19 3LF

Reference: APP/P1615/C/20/3252116



Planning Enforcement Notice

Land at Lake Farm, Wyndbrook Lane, Redmarley, Gloucester, GL19 3LF - Site Location Plan (18)

Scale: 1:2000
06 May 2021

