
Appeal Decisions

Inquiry Held on 21, 22, 23 & 24 September 2021, and 18 October 2021

Site visit made on 22 September 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: Monday, 10 January 2022

Appeal A Ref: APP/D0121/C/20/3259117

Appeal B Ref: APP/D0121/C/20/3259118

Appeal C Ref: APP/D0121/C/20/3259119

Land at Woodland Farm, Shiplaite Slait, Mearcombe Lane, Bleadon

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Keith Perrett (Appeal A), Mrs K Perrett (Appeal B) and Mr Mark Perrett (Appeal C) against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 2017/0455, was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land shown shaded in green and shaded in green and hatched black on the attached Plan B from former residential and agricultural use to residential use.
 - The requirements of the notice are:
 - i) Cease the residential use of the land and buildings
 - ii) Remove from the land the building shown in the approximate position shaded in green and hatched black
 - iii) Remove from the land the ornamental pond, the greenhouse and all other domestic paraphernalia
 - iv) Remove from the land any rubble or other materials arising from compliance with 5 i), ii) and iii) above
 - v) Restore the land to its former condition by levelling the ground and re-seeding with grass
 - The period for compliance with the requirements is 24 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal D Ref: APP/D0121/C/20/3259124

Appeal E Ref: APP/D0121/C/20/3259125

Appeal F Ref: APP/D0121/C/20/3259126

Land at Woodland Farm, Shiplaite Slait, Mearcombe Lane, Bleadon

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Keith Perrett (Appeal D), Mrs K Perrett (Appeal E) and Mr Mark Perrett (Appeal F) against an enforcement notice issued by North Somerset Council.
- The enforcement notice, numbered 2017/0455, was issued on 20 August 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of buildings shown in the approximate position and coloured blue and labelled as C1 and C2 on the plan attached to the notice.
- The requirements of the notice are:

- i) Remove the buildings from the land
 - ii) Remove from the land any materials arising from compliance with 5 i) above and level the ground before re-seeding the area with grass seed to restore the land to its former condition.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal G Ref: APP/D0121/C/21/3269170

Land at Woodland Farm, Shiplaite Slait, Mearcombe Lane, Bleadon

- 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 Keith Perrett against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 2017/0455/C, was issued on 8 February 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building shown in the approximate position outlined in green on plan attached to the notice.
 - The requirements of the notice are:
 - i) Remove from the Land the building shown outlined in green on the plan attached to the notice.
 - ii) Remove from the Land any rubble or other materials arising from compliance with 5(i).
 - iii) Make good the land by levelling the ground to align with the adjacent ground level on the norther, east and south sides of the former building.
 - The period for compliance with the requirements is 24 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
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Appeal H Ref: APP/D0121/X/20/3262968

Woodland Farm, Shiplaite Slait, Mearcombe Lane, Bleadon

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Keith Perrett against the decision of North Somerset Council.
 - The application Ref 19/P/0892/LDE, dated 20 January 2020, was refused by notice dated 20 August 2020.
 - The application was made under sections 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as a dwelling, agricultural building, residential curtilage, mixed storage and residential curtilage building.
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Summary Decisions:

Appeals A, B and C: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision
Appeals D, E and F: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision

Appeal G: The appeal is allowed and the enforcement notice is quashed

Appeal H: The appeal is dismissed

Applications for costs

1. Applications for costs were made by Mr Keith Perrett against North Somerset Council. These applications are the subject of a separate Decision.

Procedural matters

2. Evidence at the Inquiry was given under oath by way of affirmation.
3. The description of the use for which a certificate of lawful use or development is sought (Appeal H) includes 'residential curtilage'. However, 'curtilage' is a concept relating to the association of land with a building and is not of itself a use of land. I have therefore approached the application as seeking confirmation that the use of the land for residential purposes is lawful.
4. Representations have been received in relation to Appeals A, B and C from Mrs Carol Oliver, C.J Field and Mr Christopher Sanders. These representations all raise matters relating to the planning merits of the use alleged in the notice. However, because no appeal on ground (a) has been made on these appeals¹, I am not able to consider the points raised in those representations. I consider below the oral evidence on factual matters that Mr Sanders gave to the Inquiry.

The Enforcement Notices

5. The appellant(s) suggest that the enforcement notices relating to the material change of use of the land (Appeals A, B and C) and the erection of a building (Appeal G) are both flawed.
6. The enforcement notice numbered 2017/0455 and issued on 20 August 2020 (Appeals A, B & C) alleges, without planning permission, the material change of use of the land to residential use. No operational development is alleged in the notice. The requirements of the notice include at paragraph 5(i) to cease the residential use of the land and buildings, and at paragraph 5(ii) to remove from the land the building shown in the approximate position shaded in green and hatched black.
7. I initially had some difficulty with the wording of the requirement at paragraph 5(ii) insofar as the building to be removed is identified as being that in the "approximate position shaded in green and hatched black" on the plan attached to the notice. On my initial reading, that wording did not appear to be sufficiently precise. However, having now visited the site, I am satisfied that the area hatched in black on the plan is a reasonably accurate outline of the building which the notice requires to be removed. In that respect, the notice identifies the building with reasonable certainty. It is also clear that the appellants have understood the requirements of the notice. I therefore see no reason to correct the notice in this respect.
8. The enforcement notice numbered 2017/0455/C and issued on 8 February 2021 alleges, without planning permission, the erection of a building. No use of that building is alleged. The notice alleges that the development does not benefit from the four-year time limit for taking enforcement action set

¹ The ground of appeal 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.

out in section 171B(1) of the 1990 Act because of deliberate concealment of the operational works alleged.

9. The appellant argues that the notice is flawed as it asserts an incorrect breach of planning control that simply does not exist. Although tantamount to an appeal under ground (b) as set out in section 174(2) of the 1990 Act², it is convenient to deal with the point here.
10. The allegation is simply the erection of a building: nothing more, nothing less. Whether that building is an entirely new structure or an extension to an existing structure, as well as the use to which that building is put, become important considerations for other grounds of appeal. But those considerations are entirely academic for present purposes. There is no dispute that the works alleged in the notice constitute operational development for the purposes of section 55(1) of the 1990 Act: indeed, Mr Keith Perrett himself describes the works as being "substantial". The works carried out constitute a building operation and the result is the erection of a building. The matters alleged in the notice have therefore occurred. The enforcement notice is not flawed by simply alleging the erection of a building, but equally is limited in its scope.

Background and findings of fact

11. Woodland Farm occupies a substantial parcel of land in the Mendip Hills Area of Outstanding Natural Beauty (AONB), totalling some 52 acres. The land was purchased by one of the appellants, Mr Keith Perrett, in 1989. The site is remote, such that buildings and other structures on the land are not visible from any public vantage points.
12. In or around 1992, Mr Perrett submitted a planning application for a dwelling at Woodland Farm³. Planning permission was refused. Subsequently, some eight years or so later, Mr Perrett made enquiries with a local surveyor about the possibility of re-applying for planning permission for a dwelling. The advice he received was that there would have to be special justification given that the site is within AONB.
13. On 10 November 2010, a LDC was granted for the existing use of parts of barn as a dwelling (Council Ref: 10/P/1631/LDE). The description of the use for which the LDC was sought was limited to 'use as a dwelling of parts of a barn'. The floorplan submitted with that application⁴ shows the part of the barn to which the LDC related enclosed within a red line. The accommodation within that red line included an 'entrance hall' at ground floor level leading to a kitchen, lounge and a bedroom with an en-suite bathroom on a mezzanine level.
14. The area of the barn outside of the red line area was used, in part, to store equipment used as part of Mr Mark Perretts' business but this use appears to have been treated by the Council as being *de minimis*. In any event, that use formed no part of the description of the use applied for. The salient

² The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred.

³ Statutory Declaration of Mr Keith Perrett, dated 4 August 2010.

⁴ Dated 16 September 2010

point, however, is that the use as a dwelling found to be lawful in this LDC relates to only part of the barn, and not the whole of it.

15. Similarly, the LDC did not cover the land outside the barn. Uses that may have taken place outside the barn but which may have been associated with use of part of the barn as dwelling (such as car parking and a garden) were not considered as part of the LDC. The Council did not, and never could have, found those uses taking place outside of the building to be lawful as part of that LDC because those uses did not form any part of that application.
16. The application for the LDC had been submitted by a consultant instructed by Mr Perrett. That consultant, a Mr Stephen Pasterfield of Clarke Wilmott LLP, submitted a covering letter dated 2 September 2010 enclosing the application for the LDC. In that covering letter, Mr Pasterfield confirms that he had explained elements of planning enforcement law to Mr Perrett and that as a result of that advice Mr Perrett was "most keen" to get the position regularised.
17. In his Statutory Declaration, Mr Perrett initially stated that works to the barn used in part as a dwelling began in 2012. That is clearly not correct. A photograph dated 12 May 2011 shows the works in progress, with the rear half of the building and the roof removed. By definition, the works must therefore have started before 2012 and in all probability some time before May 2011. In any event, the photograph dated 12 May 2011 clearly shows that the building was not habitable on that date.
18. In his Proof of Evidence, Mr Perrett changed his position and indicates that significant works took place between 2010 and 2012. That would be consistent with the photograph taken on 12 May 2011. The position was further clarified in cross-examination when Mr Perrett conceded that he could not recall exactly when the works started but did recall that works started shortly after Mr Mark Perrett moved out. That is also a known date. In a letter from Mr Keith Perrett to Liberata, undated but received by Liberata on 19 May 2011, it is indicated that Mr Mark Perrett moved out on 7 September 2010.
19. Another fact emerges from the above letter, in that Mr Keith Perrett states his address as being a property known as The Old Rectory in Brean, Burnham on Sea. This is evidence that Mr Perrett's primary residence as of May 2011 was the Old Rectory in Brean, and again is consistent with the building at Woodland Farm not being habitable on that date.
20. When still residing at the Old Rectory, a letter was sent by Liberata to the appellant requesting him to complete a Property Questionnaire in relation to Woodlands Farm. The completed Property Questionnaire was received on 5 September 2011. Question 1.1 of the questionnaire asked 'If the property is unoccupied, which of the following best describe the current state of the property?' The optional responses included 'Unfurnished' and 'Undergoing Structural Repair'. The appellant ticked the former box even though, on that date, the building was completely uninhabitable⁵. In cross-examination, Mr

⁵ The date the response was received was only some four months after the photograph taken on 12 May 2011 showing the rear half of the building and the roof completely removed.

Perrett stated this was because he could not see a relevant box to tick but, even so, it seems to me that the box 'Undergoing Structural Repair' would have been the more accurate and obvious response.

21. In an email dated 1 August 2019, Liberata confirm that the property was recorded as being empty between 8 September 2010 and 31 August 2012, with Mr Keith Perrett then being recorded as being resident from 1 September 2012 onwards. The latter is not entirely consistent with Mr Perrett's own evidence: he says that he moved into the building in December 2012. In any event, even taking the earlier date of September 2012, this equates to a period of nearly two years when the property at Woodlands Farm is recorded as being empty.
22. In giving evidence at the Inquiry, Mr Perrett claimed that he lived in a touring caravan when working on the building during this period. There is no documentary evidence to support that. The touring caravan is not mentioned in any documents dating to that period, and does not appear in any of the photographs taken when works were in progress. I recognise that Mr Perrett maintained his position when giving evidence under oath, and that the Council has no evidence of its own to make his version of events less than probable.
23. However, Mr Perrett's recollection of events has been shown to be unreliable in relation to other matters where definitive evidence clearly shows him to be incorrect: for example, the dated photograph that definitively shows that works on the building were taking place well before 2012 as Mr Perrett originally claimed, and his response to the Property Questionnaire. For that reason, in the absence of any documentary or photographic evidence, I am not persuaded that Mr Perrett's recollection of events is sufficiently precise and reliable on its own to show that he lived in a touring caravan whilst the works were taking place on the main building.
24. It is Mr Perrett's evidence that he lived in a mobile home on the site for "about 9 months" whilst works were finished on the main building. Aerial photographs taken during 2013 do show a white-coloured rectangular object immediately adjoining the main building that may or may not have been the mobile home concerned. There are no aerial photographs taken at a time when works on the building were taking place, and the object is not visible in any photographs taken at ground level whilst works were in progress. There is also no documentary evidence to directly support Mr Perrett's claims in this respect. However, Mr Perrett's occupation of the mobile home appears to be linked to the sale of his house in or around March 2012. That would be broadly consistent with Mr Perrett's occupation of the building some nine months later in December 2012. Consequently, on the balance of probability, it is likely that Mr Perrett did live in a mobile home on the site for that limited period.
25. On 23 March 2019, Mr Perrett submitted a LDC for the existing use of a 4 bedroomed house (Council Ref: 19/P/0893/LDE). The grounds on which that application was made are not relevant to my consideration of these appeals, but the very fact the Mr Perret personally submitted that application is relevant. Shortly afterwards, on 4 April 2019 Mr Perret personally submitted an LDC for B8 storage or distribution (sic) in relation to land at Woodlands Farm (Council Ref: 19/P/0892/LDE). The application was refused, but it is

again relevant that Mr Perrett submitted the application personally. I note that in giving his evidence to the Inquiry Mr Perrett initially denied having submitted that application personally, only conceding the point when a copy of the application for was placed before him.

26. On 23 October 2019, a Council planning officer (Mrs Julie Walbridge) and a Council Building Control officer (Ms Joy Chadburn) visited the appeal site. A record of that site visit is set out in an e-mail from Ms Chadburn compiled soon after that visit took place, on 12 November 2019. In that e-mail, Ms Chadburn records a discussion with Mr Perrett in which he confirmed that the existing barn had been converted and extended to form a dwelling. He advised that the barn walls had been made into cavity walls by tying to the outer leaf, and that the barn had been underpinned where necessary. I have no reason to doubt the veracity of Ms Chadburn's account of that meeting, which has been subsequently verified by Mrs Walbridge.
27. At a later date, in August 2021, Ms Chadburn had the opportunity to see photographs of the building under construction that had not been available to her previously⁶. This caused Ms Chadburn to revise her opinion and in an email dated 19 August 2021 indicated that, having viewed those photographs, she considered that the building was a new building. I do not perceive that Ms Chadburn was in any way coerced into changing her opinion, but rather was reacting to incontrovertible photographic evidence of which she had been previously unaware.

The building

28. Mr Perrett's evidence on this matter is inconsistent. He initially maintained that he constructed a new skin of breeze blocks around the existing building, but in cross-examination conceded that this was not accurate. The photographic evidence supports the latter.
29. Photographs of the barn before work commenced show that is of two-storey height at the rear, reducing to single-storey height at the front⁷. The two elements of the roof were linked at the front of the barn to form a 'cat-slide' style roof, in which three rooflights were located. There was a single-storey projection at the eastern end of the barn, itself covered by a mono-pitch roof. The blockwork of which the barn is constructed appears to be heavily weathered, showing significant variations in colour/tone between various sections of blockwork.
30. The previously existing barn may then be compared with a series of photographs published on the appellant's own website. Although undated, what logically must be the chronologically first of these photographs shows a digger in an area that must previously have been within the rear (northern) half of the barn⁸. The photograph was taken looking west and shows the exposed banking to the rear of the barn. The entire rear wall of the barn has been removed, and also the northern half of the wall to the west elevation. The photograph in itself dispels Mr Perrett's initial evidence that the work was simply a new skin around an existing building.

⁶ These photographs now comprise Core Appendix 73.

⁷ Core Appendix 73, photographs Nos. 18 & 19.

⁸ Core Appendix 73, photograph No. 13.

31. A second photograph, this time looking east, shows what must be a new rear wall in the course construction⁹. This photograph is practically identical to that dated 12 May 2011 referred to above, which places the photograph at around the same date. Working backwards, it is evident that the photograph described in the paragraph above must pre-date May 2011. This photograph also shows the end wall of the eastern elevation in the process of being rebuilt in the same materials as the rear wall, suggesting that the former was also completely removed before being rebuilt.
32. Another photograph, unfortunately undated but evidently taken after 12 May 2011, shows the rear wall of the eastern elevation complete (but unfinished externally)¹⁰. Given that other photographs clearly show the eastern elevation to be at a height of approximately one metre, the elevation shown in this photograph cannot possibly have been an additional skin constructed around a previously existing. It must be an entirely new wall.
33. This same photograph shows that the single-storey rear projection has been removed in its entirety. The wall to the front (southern) half of the barn has also been removed, exposing views of the central internal wall of the barn. That is evidently the original internal wall.
34. The photograph also shows a tiled roof over the northern half of the building. Again, given that other photographs clearly show the roof over this half of the building to have been completely removed, this can only be an entirely new roof. Other photographs in the series show this roof under construction, including the insertion of an RSJ. It follows that the entire roof, including all the other joists, rafters, purlins and tiles, is of new construction¹¹.
35. Construction of the front (southern) half of the building is also shown in this series of photographs. The first of these photographs shows the front wall under construction but nearly at two-storey height¹². Given that the front elevation of the barn only reached single-storey height, any work above that height must be new. It is not possible to discern from this photograph or any other in the series whether the front half of the building was replaced in its entirety as was the rear half, but it is clear that at least a substantial part of it was new work.
36. One photograph shows the construction of the roof over this front half of the building¹³. That photograph shows the exposed rafters in situ, and a membrane being laid over the base of valley gutter formed in the space between the roofs over each respective half of the buildings.
37. The extent of the works to the building becomes evident in views of the nearly-completed structure¹⁴. These photographs show the insertion of four dormer windows into the roof over the front half of the building, together with the insertion of windows openings in the gable ends. The single-storey projection has been rebuilt, but now with a hipped roof. In the photographs,

⁹ Core Appendix 73, photograph No. 14.

¹⁰ Core Appendix 73, photograph No. 17.

¹¹ Core Appendix 73, photographs Nos. 15 and 16.

¹² Core Appendix 73, photograph No. 6.

¹³ Core Appendix 73, photograph No. 7

¹⁴ Core Appendix 73, photographs Nos. 1, 2 and 3.

the front elevation is in the process of being clad with stone, a process which had been largely completed at the time of my site visit.

38. Dimensionally, the building as constructed does not have the same footprint as the barn it replaced. The building was measured as part of my site visit, and found to be approximately 4.5 metres longer than the barn it replaced.
39. In summary, the building as constructed is dimensionally larger than the barn that stood on the land. It is of very different appearance, with the former 'cat-slide' style roof being replaced with a new first floor on the front half of the building. The entire rear half of the building is newly constructed. There is a new valley roof that spans the whole building, of wholly different design and appearance to the former 'cat-slide' style roof. There are dormer windows inserted into that roof. The single-storey projection at the eastern end of the building has been entirely rebuilt and is of now of different appearance to that of the original barn.
40. In *Oates v Secretary of State for Communities and Local Government* [2018] EWCA Civ 2229, the Court of Appeal upheld the finding of the lower Court that it was possible to conclude that there was a "new building" even where parts of the "old" building remained. In this case, relatively little of the original barn remains: at most, only the ground floor of the front half of the barn and some internal walls. Any remnants of the original barn have been completely and seamlessly integrated into the new structure. The original barn no longer exists as recognizable, independent structure. Accordingly, I conclude that, as matter of fact and degree, the building now on site is a new building.

The planning unit

41. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:

a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;

b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;

c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

It is necessary to apply the principles established in *Burdle* to the facts of this case.

42. The whole of the appeal site is within a single unit of occupation. At the time the enforcement notices were issued and the LDC was submitted, the 'dwelling' and the land immediately to the south were in residential use.

Although not physically separated from the remainder of the land, that part of the land is functionally separate and is used solely for that purpose. This part of the site forms a separate planning unit.

43. The use of the remainder of the site is more difficult to categorise. The appellants describe the buildings in this part of the site (Building C1 and C2) to be in agricultural use, with which the Council concurs. The difficulty lies with the land in front of those buildings, which the appellants term as the 'yard'. The appellants consider this to be in a mixed use, comprising uses incidental to the dwelling (vehicles/storage), used incidental to agriculture and uses incidental to a commercial use (vehicles/storage).
44. I do not agree. Whilst there are elements of use relating to both residential and commercial (for example, the storage of tractors for restoration as part of Mr Perrett's hobby), at the time of my site visit these did not amount to significant levels of activity. In my view, these uses/activities should more properly be regarded as being *de minimis* in scale. Consequently, I consider that the primary use is for agriculture. This area therefore forms a separate planning unit in that use.
45. At the time of my site visit, the unit of occupation comprised two distinct and functionally separate areas which are occupied for different and unrelated purposes. This is therefore an example of the third category identified in *Burdle*.
46. However, this has not always been the case. Following the grant of the LDC in November 2010 (Council Ref: 10/P/1631/LDE), the only area found to have a lawful residential use was *part* of the barn that existed at that time. The lawful planning use of the remainder of the site, including the remainder of the barn, was for agriculture. This still comprises an example of the third category identified in *Burdle*, albeit the part in lawful residential use covered only a very small part of the unit of occupation. That, then, is the planning unit against which any material change of use must be assessed.

Reasons

47. Having made the above findings of fact, it is possible to consider the various grounds on which the appeals have been made. It is convenient to consider Appeal G in the first instance.

Appeal G

48. This appeal has been submitted on ground (d) only, namely that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The breach of planning control alleged in the notice is the erection of a building. Where there has been a breach of planning control consisting of operational development, section 171B(1) of the 1990 Act provides that no enforcement action may be taken after the end of the period of four years beginning with the date on which operations are substantially completed. In order to succeed on this ground, the appellant must therefore show that the building had been substantially complete for a period of four years before the notice was issued, unless the works were deliberately concealed, in

which case that period may be disapplied. The test in this regard is the balance of probability and the burden of proof is on the appellant.

49. The Council accept that the building was substantially complete by the end of December 2012, some 9 years before the enforcement notice was issued. In that respect, I note the comments made by Mr Melbourne, the occupier of a neighbouring property. In his representations, Mr Melbourne explains that he personally witnessed work taking place on the eastern end of Woodlands Farm after he moved into his own property in June 2017.
50. During my site visit, I noted that some sections of the external stone finish at the eastern end of the building had yet to be applied. By comparing photographs of the building under construction with my observations at the site visit, it is evident that the majority of the building had the external finish applied relatively early in the build process. I therefore deduce that, more likely than not, the application of the remaining sections of the external stone finish at the eastern end of the building was the work that Mr Melbourne witnessed taking place.
51. That being the case, the remaining section(s) of external finish to be applied are not extensive in proportion to the building as a whole and the building is in every other respect complete. I therefore consider that, as a matter of fact and degree, the building should properly be regarded as being substantially complete for the purposes of assessment against the time period set out in section 171(B)1. I see no reason to depart from the accepted position that it has been so since December 2012.
52. Given that the building has been substantially complete in excess of four years, it would normally be considered immune from enforcement action at the date the notice was issued. However, it is now settled law that the four-year time limit for taking enforcement action against operational development set out in section 171B(1) of the 1990 Act is disapplied if deliberate concealment of those works has occurred. The Council has alleged that the building in this case was deliberately concealed, and I turn now to considering if that allegation is well-founded.
53. The leading judgment in relation to deliberate concealment is *Welwyn Hatfield v SSCLG and Beesley* [2011] UKSC15. In *Welwyn*, the Supreme Court identified four features that must be present to take matters outside the true scope of section 171B of the 1990 Act. These are:
 - i) positive deception in matters integral to the planning process;
 - ii) that deception was directly intended to undermine the planning process;
 - iii) it did undermine that process, and
 - iv) the wrong-doer would profit directly from the deception if the normal limitation period were to enable him to resist enforcement
54. The application of the principles established in *Welwyn* were subsequently considered by the High Court in *Jackson v SSCLG* [2015] EWHC 20

(Admin)¹⁵. In paragraph 37 of that judgment, Mr Justice Holgate referred back to *Welwyn* and noted that situations potentially falling within section 171B may involve a spectrum of wrongdoing. He noted that, at one end of that spectrum, there may be cases where the landowner is unaware of the need for planning permission and thus no deception is involved. Mr Justice Holgate then noted that the four features present in *Welwyn* were at the other end of the spectrum and plainly sufficient to take that case outside the scope of section 171B. It was also held that there is no 'exceptionality' or 'egregious' test to be applied when determining whether there has been deliberate concealment.

55. The judgment in *Jackson* must be read in conjunction with the guidance set out in the Planning Practice Guidance (PPG) in relation to Planning enforcement orders (PEO). The PPG indicates that PEOs can only be made where the developer has deliberately concealed the unauthorised development and has taken positive steps to conceal the unauthorised development, rather than merely refraining from informing the local planning authority about it.
56. In applying these principles to the present case, it is firstly important to note that the enforcement notice relates only to the building itself and not to the use of that building. It follows that only those actions on the part of the appellant that could potentially relate to the deliberate concealment of the building itself may be taken into account for this purpose. In my view, there are only four potential candidates: not applying for planning permission; not applying for Building Regulation Consent; the response to the Property Questionnaire; and the explanation given to the Council's Building Control officer and Planning Officer at their site visit.
57. It is clear that Mr Perrett was aware that he would be unlikely to obtain planning permission for a dwelling on this site: he had been refused planning permission for a dwelling previously, and he had received advice from a local surveyor that there would have to be special justification if he applied again. He admitted as much in cross-examination. It is also clear that Mr Perrett has some understanding of planning law. He was evidently aware of the 'four-year' rule and the 'ten-year' rule, albeit only on broad terms, and had himself submitted applications for LDC's to the Council on at least two occasions. My interpretation of the evidence before me is that Mr Perrett then embarked upon a strategy to secure his objective of a dwelling on the site by seeking to exploit the LDC obtained in November 2010 (Council Ref: 10/P/1631/LDE) together with extensions under 'permitted development'.
58. Deploying that strategy required works to the then existing barn. Mr Perrett is a builder by trade and has wide experience of building projects. He knew that planning permission was required for those works: indeed, in cross-examination, he conceded that he "didn't bother" to apply for planning permission. Carrying out those works was therefore a blatant, and some might argue cynical, breach of planning control. In other circumstances, that would constitute Intentional Unauthorised Development and would have

¹⁵ The judgment of the High Court in *Jackson* was referred to the Court of Appeal but only in relation to the discrete point in relation to the effect of Planning Enforcement Orders on that judgement: *Bonsall and Jackson* [2015] EWCA Civ 1246

weighed against him in a balance of the planning merits. But that in itself was not positive deception: it was 'keeping a low profile'.

59. Similarly, with his experience of building projects Mr Perrett should have been aware (and in my view probably was aware) that the works required Building Regulation Consent. Not applying for Building Regulation Consent was therefore a blatant breach of those regulations. Had a Full Plans or Building Notice submission been made before work commenced, it is highly likely that the Council would have discovered the development well within the relevant four-year period and (possibly) taken enforcement action against it. It would not in my opinion be correct to say that not applying for Building Regulation Consent was an omission on Mr Perrett's part: more likely than not, it was deliberate decision. But again, it was not an act of *positive* deception.
60. I found Mr Perrett's explanation of his response to the Property Questionnaire to be wholly unconvincing. It is not on any level accurate to describe a building that has no rear wall and no roof as 'Unfurnished', especially when a perfectly viable response was an option available to him on that questionnaire. There is no obvious reason for completing the questionnaire as Mr Perrett did. It is therefore difficult to escape the conclusion that Mr Perrett refrained from providing an honest answer to the response to the Property Questionnaire because he knew that doing so would reveal the scale and nature of the works that were taking place.
61. Nevertheless, responding to questionnaire about Council Tax is not in itself a matter integral to the planning process. For that reason, Mr Perrett's response to that questionnaire does not amount to positive deception in *Welwyn* terms.
62. The information provided by Mr Perrett to the Building Control officer and Planning Officer at their site visit on 23 October 2019 was not accurate as a matter of fact. It is inconceivable, for example, that Mr Perrett was unaware that the entire rear half of the building and most of the roof had been removed in or around May 2011, and the wall rebuilt. For that reason, I have great difficulty in reconciling his explanation to the Council officers at that site visit with his knowledge of the works that he must have known had taken place.
63. It is evident that Mr Perrett knew that both planning permission and building Regulation Consent were required for the works. It is again difficult to escape the conclusion that Mr Perrett was deliberately seeking to mislead the Council Officers as to the extent of the works that had taken place.
64. Nevertheless, I am mindful that this site visit took place after the building had already been substantially complete in excess of four years. I have found that there had been no positive deception in *Welwyn* terms prior to that date. I am not persuaded that the *Welwyn* principle can be applied retrospectively to a building that otherwise had been substantially complete for the time period set out in section 171(B)1. Consequently, in the absence of any positive deception to that point, the building itself had achieved immunity from enforcement action by that time and was lawful.
65. Having regard to the above, there can be no doubt that Mr Perrett was

fundamentally dishonest in not applying for planning permission and/or Building Regulation Consent when he knew that both were required. He embarked on a strategy to secure a dwelling on the site when he knew that he would not be successful through the conventional route. Having embarked on that strategy, he deliberately concealed the true extent of the works in completing the Property Questionnaire and in his explanations to the Council officers when they visited the site.

66. But none of Mr Perrett's actions amounted to positive deception in *Welwyn* terms, at least during the time period set out in section 171(B)1. It was held in *Jackson* that it was not necessary for all of the features present in *Welwyn* to be present to take matters outside the scope of section 171B. However, on my reading of *Welwyn* and the PPG, the first feature of positive deception must be present, given that the remaining three features all relate back to that deception. In this case, I find that there has not been positive deception in matters integral to planning process. It is therefore not necessary for me to consider whether the remaining three features identified in *Welwyn* are also present.
67. I conclude that the actions of Mr Perrett were not sufficient to take matters outside the scope of section 171B(1) of the 1990 Act. The building itself is therefore immune from enforcement action. The appeal on ground (d) succeeds and the enforcement notice will be quashed.

Appeals A, B and C: the appeals on ground (d)

68. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from former residential and agricultural use to residential use. This falls within the category of 'any other breach of planning control' for the purposes of section 171B of the 1990 Act, specifically within section 171B(3). The latter provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In order to succeed on this ground, the appellants must show on the balance of probability that use had been continuous for a period of ten years beginning with the date of the breach.
69. It is Mr Perrett's evidence that the land was used continually for residential purposes from the time that part of the barn was occupied as a dwelling in or around 2005. He claims that areas of the land to west of the building (the original barn as well as the new building) were used for residential purposes (i.e. as a garden), as was land on the opposite side of the track to the south. Mr Perrett also refers to use of a now demolished outbuilding (Building A) for uses incidental to the use of the building as a dwelling, and use of Building B for a similar purpose.
70. To some extent, the above is supported by the evidence of Mr Christopher Sanders, who has occupied a property in Mearcombe Lane since 1989. In previous years, albeit not so much more recently, Mr Sanders had been a regular visitor to Woodlands Farm. His evidence supports that of Mr Perrett, particularly insofar as the period after 2012 is concerned. However, Mr Sanders was not able to assist with the precise use of the land in period between 2010 and 2012.
71. There is, however, evidence to counter that of the appellants, and which in

my view makes their version of events less than probable. Photographs taken by the appellants at the time works to the building were in progress cast serious doubt on that version of events. One photograph shows the area in front of the building as an area of rough ground devoid of grass¹⁶. Another shows a large digger on land to the west of the building¹⁷. A third shows a smaller digger immediately adjacent to the single-storey projection at the eastern end of the dwelling¹⁸. A fourth shows the area of land to the west of the dwelling being used for the parking of a digger and a bulldozer, together with other vehicles¹⁹. The ground on which those vehicles are parked is of rough stony appearance, and not grass. These photographs are not themselves dated but it can be established from other photographs that are dated that they must have been taken at some point between May 2011 and December 2012

72. I recognise that these photographs do not show all of the land in question. But they do show a significant part of it, and there is no evidence of a touring caravan or mobile home being on the land at that time. Moreover, at the time the photographs were taken, the area around the dwelling then under construction would at times have been a hive of activity. The diggers/bulldozer shown in the photographs would be moving around that land and/or being operated. The resultant environment would have been wholly incompatible with a residential use of that land, particularly for sitting out in a garden.
73. In addition, the property on the appeal site was recorded as being empty between 8 September 2010 and 31 August 2012. This equates to a period of nearly two years when the property is recorded as being empty. During that period, Mr Perrett's primary residence was at his property in Brean. It therefore seems to me highly unlikely that the land was being used for residential purposes during that period, particularly given the condition of the land at that time as shown in the photographs referred to above. There is no documentary evidence to support Mr Perrett's claim that he lived in a touring caravan when working on the building during this period.
74. Based on the above, I consider that on the balance of probability any residential use of the land ceased in or around September 2010. It then resumed when the new building was first occupied which, on the balance of probability, was in or around December 2012 (or alternatively in September 2012 if the records held by Liberata are correct). Even taking into account that Mr Perrett may have lived in the mobile home for a period of some nine months in 2012 before occupying the new building in December of that year, that would still leave a period of around one year when the land was not being used for residential purposes. The duration of the gap between the residential use ceasing and resuming again is, in my view, such that the use was interrupted and cannot be considered to have been continuous. The Council could not have taken enforcement action during that period, simply because the use was not taking place. It follows that a fresh breach of planning control occurred when the use of the land for residential purposes resumed, either when the new building was occupied in or around December

¹⁶ Core Appendix 73, photograph No. 1

¹⁷ Core Appendix 73, photograph No. 3

¹⁸ Core Appendix 73, photograph No. 2

¹⁹ Core Appendix 73, photograph No. 10

2012 (or alternatively in September 2012) or the mobile was occupied earlier in that year.

75. The enforcement notice was issued on 20 August 2020. That was only some eight years (give or take a few months) after the date on which the breach of planning control began. The Council was therefore in a position to take enforcement action in respect of the breach of planning control constituted by those matters alleged in the notice. Accordingly, the appeals on ground (d) fail.

Appeal H

76. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
77. There are several aspects to the LDC, including a dwelling, residential use of the land, a residential curtilage building, an agricultural building, and mixed storage. These are shown on a plan submitted with the application (Plan KP1). In all respects, the application sought confirmation that use of the buildings/land was lawful and not the building itself²⁰. It is convenient to consider these matters separately, beginning with the dwelling claimed to be lawful in the LDC.

The dwelling

78. Section 171B(2) of the 1990 Act provides that in respect of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The provision is very specific. It relates only to a *change of use* of any building to use as a single dwellinghouse (emphasis added).
79. I have found that, as matter of fact and degree, the building now on site is a new building. The only area found to have a lawful residential use by the LDC granted in November 2010 (Council Ref: 10/P/1631/LDE) was *part* of the barn that existed at that time. That building no longer exists. The partial use of that barn did not survive the substantive demolition of that building and the incorporation of the residual elements into the new building. The use of the new building as a dwelling was the first use of that building

²⁰ Paragraph 2 of the Planning Supporting Statement accompanying the LDC application

and more likely than not began when the building was substantially complete in or around December 2012 (or possibly September 2012).

80. It follows that there has been no change of use of the building that now exists on the site. The relevant period is therefore not the four years provided by section 171B(2). Rather, it is the period of ten years provided by section 171B(3). That was the conclusion reached by Lord Mance in *Welwyn* where, at paragraph 17, he found that "The building attracts a four-year period for enforcement under subsection (1) while its use attracts, at any rate in theory, a ten-year period for enforcement under subsection (3)." The caveat of "at any rate in theory" relates to questions of fairness and good governance, to which I return in consideration of the appeal on ground (f).
81. It is Mr Perrett's evidence that new building was occupied in or around December 2012. The precise date is largely academic in this case because it is known that, as of May 2011, the new building had no rear wall and no roof. It could not possibly have provided the facilities required for day-to-day living at that time, and probably not for many months after that. The LDC was submitted on 20 January 2020. The first occupation of the building was therefore only some eight years before the date on which the LDC was submitted, some two years shy of the ten years required by section 171B(3) of the 1990 Act to become immune from enforcement action. It follows that the use as a dwelling was not lawful on the date on which the LDC was submitted.
82. In this respect, this case can be distinguished from that in relation to a property known as 'The Oxe Yard' in Yatton (APP/D0121/X/19/3227427). In that case, planning permission had been granted for ancillary accommodation for an elderly relative of the occupiers of the main dwelling. The 'annexe' had initially been occupied on an ancillary basis pursuant to that permission, but subsequently was occupied as a dwelling in its own right. The Inspector found that a change of use of the building had occurred, and that section 171B(2) applied. The relevant period was therefore four years. That is not the situation here, because in this case the new building was occupied as a dwelling from the outset, such that the relevant period is ten years pursuant to section 171B(3).
83. The appellant seeks to rely on the judgment in *Arun DC v First Secretary of State* [2006] EWCA Civ 117; [2007] 1 WLR 523 in relation to this and other issues raised in these appeals. However, *Arun* is a very different case on its facts and related to the occupation of an annexe to a dwelling in breach of a condition imposed upon a planning permission. On my reading, *Arun* does not bear the interpretation placed upon it by the appellant and I do not consider that judgment to be directly relevant to the circumstances in this case.
84. The appellant also relies on an appeal decision in relation to a property known as 'Sandyway', in Lanlivery, Cornwall (APP/D0860/X/09/21003602), which analysed sections 171B(1) and 171B(2) of the 1990 Act at some length. The Inspector in that case highlights the distinction between operational development and a material change of use, and in doing so makes reference to the judgment in *Arun*. The Inspector goes on to conclude that there was a material change of use of the main building to use as a

single dwelling house, and that section 171B(2) therefore applied. Consequently, the facts and circumstances of that case can again be distinguished from the present case, in which the use of the building as a dwelling was the first use of that building and no change of use has occurred. Nothing in that decision leads me to a different conclusion to that which I reached on the particular facts and circumstances of this case.

The residential use of the land

85. The area now claimed to be used for residential purposes was occupied in part by a building (Building A). That building was demolished in 2017. In his Statutory Declaration and in giving evidence under oath at the Inquiry, Mr Perrett explained that Building A was used for purposes incidental to the use of the dwelling (including by his son when he occupied the dwelling in part of the barn from 2005). Two points flow from this.
86. Firstly, the use of a building cannot survive the demolition of that building. Even if the use was lawful when Building A was demolished in 2017, that use effectively ceased at that point. Secondly, I am not persuaded that the use of Building A continued during the period of time in which the new building was under construction. For the majority of that time, Mr Perrett's primary residence was in Brean, several miles away. Furthermore, for at least a year of the relevant period and possibly nearly two years, there was no dwelling on the land to which the use of the building could have been incidental. The use could not, therefore, have been continuous throughout the relevant period.
87. For these reasons, I am not convinced that the land shown as 'curtilage' on Drawing KP1 was in lawful use for residential purposes on the date on which the LDC was submitted.

The curtilage building

88. This is Building B as shown on Plan KP1. In his Statutory Declaration and in giving evidence under oath at the Inquiry, Mr Perrett explained that Building B was used for purposes incidental to the use of the dwelling. In his evidence, Mr Perrett explains that his hobby is restoring old vehicles: indeed, there was a tractor that he had immaculately restored in this building at the time of my site visit. Given that restoring old vehicles is clearly one of Mr Perrett's hobbies, and is a hobby that requires specialist tools and equipment (that were present in the building at the time of site visit), I am prepared to accept that Building B has been used for purposes incidental to the dwelling *when the latter existed*. I am not dissuaded from that view by the absence of other paraphernalia that might be usually expected to be present in this type of building.
89. However, the use of Building B for purposes incidental to the use of the dwelling cannot possibly have been undertaken continuously for a period of ten years prior to the date on which the LDC was submitted. For at least one of those years, and possibly nearly two years, there was no dwelling on the land to which the use of Building B could have been incidental. Or, put another way, there was no residential curtilage within which Building B could have been located. Furthermore, as above, on the evidence before me I am not persuaded that the use of Building B did continue whilst the new building

was in the process of being constructed, as Mr Perrett claimed, given that his primary residence was elsewhere during that period.

90. For the reasons set out above, I am not convinced that the use of Building B for purposes incidental to the dwelling was lawful on the date on which the LDC was submitted.

The agricultural building

91. This building, identified as Building E on Plan KP1, is a long-standing structure that is currently in a poor state of repair. At the time of my site visit, a variety of materials and equipment was being stored in this building. These included logs, plastic pipes, gas bottles, 'Acro' props and a dumper, together with other miscellaneous items including a motorcycle and traffic cones. Close to this building, but not within it, were piles of building materials, including roof slates, flagstones and breeze blocks.
92. It is apparent that Building E has been in situ for many years. But, on the balance of probability, I am not convinced that the use of the building for a mixed agricultural/residential storage is lawful. With the exception of the 'Acro' props and the motorcycle, the materials and equipment that were within the building could all equally be used in connection with an agricultural use. The building materials, which more likely than not were used in the construction of the new building, were all store outside of Building E. The appellant has not provided any detailed evidence to show that the storage these materials within Building E is for purposes incidental to the residential use of the dwelling, and has not discharged the burden that falls upon him in his respect.
93. Furthermore, for at least one year during the relevant period and possibly nearly two years, there was no dwelling on the land to which the use of Building E could have been incidental. Even if the mixed use claimed had occurred, it could not have been undertaken for a continuous period of ten years.

Mixed storage

94. This relates to an area identified as 'The 'Yard' on Plan KP1. Mr Perrett claims that he uses this area for the storage of building materials and equipment, the storage of agricultural materials and equipment and for the parking and turning of vehicles. This area lies directly adjacent to Buildings C1 and C2, which are used for agricultural purposes. It is therefore likely that this area has been used for the ad hoc storage of agricultural materials and equipment, as well as for the parking and turning of vehicles associated with that use. It is also likely that Mr Perrett used this area for parking his private cars when there was a dwelling on site.
95. There is, however, no evidence to support Mr Perrett's contention that 'The Yard' has been used for the storage of building materials and equipment for a period of ten years. The only building materials that I observed on the land appeared to those used in the construction of the new building. Given that the construction of that new building took place between 2010 and 2012, it is unlikely that these have been stored on the land for in excess of 10 years. There is certainly no evidence before me to substantiate Mr

Perrett's claims in that respect by indicating, for example, the building projects to which those materials do relate.

96. Furthermore, the now familiar issue arises again in that any mixed use of 'The Yard' has not been continuous for a period of ten years. A photograph, unfortunately undated, but clearly taken during the period when works on the new building were taking place shows 'The yard' occupied by vehicles and equipment used in the construction of the new building²¹. There is no evidence in that photograph of the claimed mixed use taking place. It therefore appears more likely than not that a mixed use for the storage of agricultural equipment commenced (or re-commenced) only after the new building was occupied in or around December 2012.
97. For these reasons, I am not convinced that the use of the land shown as 'The Yard' on Drawing KP1 for mixed storage was lawful on the date on which the LDC was submitted.

Conclusion on Appeal H

98. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeals D, E and F: the appeals on ground (a) and the deemed planning application

99. The ground of appeal 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. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are whether:
- the development conserves or enhances the landscape and scenic beauty of the AONB, and
 - the buildings are necessary for and ancillary to the use of the land for a viable agricultural or land based rural business.

Landscape and scenic beauty of the AONB

100. The appeal site lies within the Mendip Ridges and Combes landscape area as defined in the North Somerset Council Landscape Character Assessment Supplementary Planning Guidance (SPG). The key characteristics of this landscape area are identified in the SPG as including high ridges of Carboniferous Limestone, steep scarp slopes clothed in broad leaved and mixed woodland and open grassland plateaus. The appeal site exhibits, in part at least, all of these key characteristics. The appeal site also forms part of designated Ancient Woodland.
101. Examination of aerial photographs shows that the land on which buildings C1 and C2 are located was cleared of trees before they were erected. The erection of those buildings was therefore not directly responsible for the loss of any Ancient Woodland or the erosion of tree cover on site.

²¹ Core Appendix 73, photograph No. 10

102. Nevertheless, the presence of the buildings themselves is out of keeping with the key characteristics of the landscape area within which the appeal site is located. The siting of buildings C1 and C2 close to the building used as a dwelling, Building B and Building E adds to the conglomeration of built structures on this part of the site. That in itself is incongruous in this landscape character area. The harm in that respect is exacerbated by the size and poor design of the buildings resulting, in part, from the poor quality of the materials from which the buildings are constructed.
103. I recognise that the buildings are not visible from outside of the appeal site. However, AONB is so designated in recognition of its intrinsic character and beauty. Consequently, the fact that the buildings cannot be seen from public vantage points does not justify the harm caused to that intrinsic character and beauty.
104. I conclude that the development fails to conserve or enhance the landscape and scenic beauty of the AONB. I therefore conclude that the development is contrary to Policies CS5 and CS12 of the North Somerset Core Strategy, as well as policies DM10, DM11, and DM51 of the North Somerset Sites and Policies Plan (Part 1). These policies require, amongst other things, that any development conserves and where possible enhances the landscape and scenic beauty of the AONB, and that the siting and design of the building does not harm the character of the landscape.
105. The Council also cites Policy DM32 of the North Somerset Sites and Policies Plan (Part 1) in the reasons for issuing the enforcement notice. On my reading, that policy is primarily aimed at large-scale residential development in built-up areas. I am therefore not convinced that Policy DM32 is directly relevant to the breach of planning control alleged in the notice.
106. In addition to being contrary to the development plan for the area, the development fails to accord with paragraph 176 of the National Planning Policy Framework (Framework), which indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB.
- Whether the buildings are necessary for and ancillary to the use of the land for a viable agricultural or land based rural business*
107. Policy DM51 of the North Somerset Sites and Policies Plan (Part 1) provides, amongst other things, that planning permission will be granted for agricultural development on existing holdings provided that proposals are necessary for and ancillary to the use of land for viable agricultural or land-based rural businesses purposes.
108. The appellants have provided an extensive list of agricultural equipment and machinery held on the holding, some of which was pointed out to me as being present in the buildings at the site visit. The land is used for the cutting of grass for hay sales, and also for the keeping of livestock. The appellants hold both County Parish Holding and Single Business Identifier accreditations, and this further reinforces the fact that the land is used for agriculture. I therefore accept Mr Perrett's evidence that Buildings C1 and C2 are required to accommodate the agricultural equipment and machinery that he holds.

109. The supporting text to Policy DM51 explains that the aim of the policy is to support proposals for new agricultural buildings which are genuinely necessary. On my reading of the policy itself and its supporting text, there is nothing to suggest that the submission of a formal Business Plan is required to support a proposal for a new agricultural building. However, within the policy itself, the words 'necessary' and 'viable' must be read together. It is not sufficient for Mr Perrett to confirm under oath that there is a need for the buildings: that in itself does not address the second of the two-part 'test' in Policy DM51. To comply with the policy, the appellant's evidence in relation to need must be supported by detailed information relating to viability that can be scrutinised and tested, however that information is presented. The appellants' evidence, whilst clearly indicating an intention to continue with and indeed expand the agricultural use of the appeal site, does not address whether that use is viable now and/or would be viable in the future. Without that information, the proposed development cannot be considered to comply with Policy DM51.

Other considerations

110. 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. I have found that the agricultural buildings fail to accord with 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.
111. I am satisfied that there are currently no suitable alternative buildings on the site that could accommodate the equipment listed as being held by the appellants. Building E is not of sufficient size and is currently in poor condition. Similarly, I do not consider that the storage of a limited amount of non-agricultural equipment in Buildings C1 and C2 is fatal to the consideration of the development against Policy DM51.
112. At the site visit, my attention was drawn to a substantial building on a farm (known as Woodlands Farm) on land beneath the escarpment on which the appeal site is located. I was subsequently provided with a copy of the officer report for the planning application (Council Ref: 09/P/1778/F) that resulted in planning permission being granted for that building. It is evident from that officer report that the building, described as a free-range egg production building, was accepted as being required for purposes ancillary to that farm without a Business Plan being submitted.
113. Whilst there appears to be an element of inconsistency in the Council's approach between the determination of that application compared with the appeal proposal, I note that planning permission was granted for that free-range egg production building some eleven years ago. The permission was granted under a different policy regime, with the need for the building being accepted when assessed against Policy RD/1 of the then extant North Somerset Replacement Local Plan and before the publication of the Framework. The permission granted for that agricultural building therefore provides no justification for granting planning permission for the agricultural

buildings subject to these appeals which must, as I have done, be determined against relevant policies in the current development plan for the area.

Conclusion on the ground (a) appeals and the deemed planning application

114. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. I therefore conclude that planning permission ought not to be granted for the breach of planning control alleged in the notice.

Appeals A, B and C: the appeals on ground (f)

115. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice include to cease the residential use of the land and buildings, and to remove from the land the building shown in the approximate position shaded in green and hatched black on the plan attached to the notice. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
116. Section 173(4)(a) of the 1990 Act provides that an enforcement notice may require that the breach is remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. Section 173(5) of that Act gives power to require the alteration or removal of buildings or works, or the carrying out of any building or other operations. It was held in *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the enforcement notice may require that the works are removed in order that the site is restored to its previous condition and the breach is thereby remedied (the *Murfitt* principle). This is the principle that the Council seeks to invoke in this case. The principle has been considered by the courts on numerous occasions, most recently in the comprehensive evaluation by the Court of Appeal in *Kestrel Hydro v Secretary of State for Communities and Local Government* [2015] EWHC 1654 (Admin).
117. There is no doubt in my mind that the construction of the new building constitutes works carried out to facilitate the material change of use alleged in the notice. The previous dwelling in part of the original barn had been completely removed when the new building was constructed. The residential use of the land could not take place without that new building being present. The construction of the new building facilitated that use. The question remains, however, as to whether the *Murfitt* principle can extend to the removal of a lawful building as part of an enforcement notice alleging a

material change of use. The appellant considers that it does not.

118. In *We/wyn*, the local planning authority had argued before the Court of Appeal that an enforcement notice directed to a material change of use of the land could require not only the cessation of the residential use of the building but also the removal of the building itself, even though the building was immune from direct enforcement action. However, Richards L.J. was not attracted by that argument, indicating that “I would be reluctant in any event to accept that an enforcement notice directed against use of the land could properly require removal of a building that enjoys an immunity from enforcement by virtue of section 171B(1)”. In the particular circumstances of that case, Richards L.J. did not find it necessary to reach a firm conclusion on that point and it remained undecided²².
119. In this case, I have found that the building which the Council seeks to be removed enjoys an immunity from enforcement by virtue of section 171B(1). This is therefore exactly the same situation that Richards L.J. considered in *We/wyn*, and to which he was reluctant to find that the *Murfitt* principle applied. In the absence of any further consideration of the point by the courts, I have no reason to depart from the reservation expressed by Richards L.J. in *We/wyn*. I therefore consider that the Council is not able to require the removal of the building through this enforcement notice. I will vary the notice accordingly. Given that the notice as originally drafted envisaged that this building would be removed, I will also take the opportunity to vary the notice to make it clear that the residential use that is required to cease includes the residential use of this building.
120. Any lawful residential use granted by the LDC in November 2010 was lost when the original barn was substantially demolished. In any event, the new building is of an entirely different configuration to the barn that existed when that residential use took place, and would require substantial works to revert to that configuration. Reinstating the residential use granted by the LDC in November 2010 would be tantamount to granting a new planning permission. It is therefore not open to me to vary the notice to reinstate the lawful residential use granted by the LDC in November 2010, particularly given that there is not an appeal on ground (a) before me.
121. In reaching the above conclusions, I am mindful of the reservations expressed by Lord Mance in *We/wyn* in relation to questions of fairness and good governance. The building that the notice requires to be removed has been Mr Perrett’s home now for some nine years or so. I acknowledge that losing his home after such a long period of time would be a significant hardship. But two points come to mind.
122. Firstly, questions of fairness and good governance are matters for the Local Planning Authority. Moreover, in the absence of an appeal on ground (a), Mr Perrett’s rights under the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA), are not before me. I am therefore not able to consider whether his rights under the HRA would be interfered with and, if so, whether any such interference would be proportionate and justified.

²² The point was not raised in the Supreme Court when the case was subsequently considered by that court.

123. Secondly, section 171B(3) of the 1990 Act provides a period of ten years after which the use would become immune from enforcement action. The use against which the enforcement notice is directed was discovered within that ten-year period. It is the cessation of the residential use required by the notice that, in effect, deprives Mr Perrett of his home and causes the hardship. Discovery of that use occurred within the time period set out in the statutory scheme, and as such the loss of Mr Perrett's home must be considered to fall within the scope of the statutory scheme.
124. The requirements of the notice also include removing the buildings from the land and restoring the land to its former condition. The essence of the appellant's appeal on this ground is that the requirement to reseed the appeal site with grass is excessive, given that the lawful agricultural operations at the appeal site could result in the entire surface area ploughed and returned to bare earth. The appellant therefore considers that the seeding over of an established area is both impractical and unnecessary.
125. I agree. The removal of the new building and restoration of the land to its former condition would be sufficient to achieve the purpose of the notice. The lawful use of the land is for agriculture, and the appellants are in the best position to know what the condition of the land was before the development was carried out. The requirements are excessive in this regard and the appeal on this ground succeeds to that extent. I will vary the notice accordingly.
126. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. I conclude that the requirements of the notice are excessive in relation to the removal of the new building and the restoration of the land. Accordingly, the appeals on ground (f) succeed to that extent.
127. **Appeals D, E and F: the appeals on ground (f)**
128. The requirements of the notice include removing the buildings from the land and restoring the land to its former condition. The purpose of the notice is therefore to remedy the breach of planning control that has occurred.
129. The appellant's appeal on this ground is again that the requirement to reseed the appeal site with grass is excessive. For the same reasons given in relation to Appeal A, B and C above, I consider that the requirements are excessive in this regard and the appeal on this ground succeeds to that extent. I will vary the notice accordingly.

Conclusion

130. For the reasons given above, I conclude that Appeal G should succeed. The enforcement notice to which that appeal relates will be quashed. However, for the reasons given above, I conclude that Appeals A to F inclusive should not succeed. I shall uphold with variations the enforcement notices to which those appeals relate and will refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended in relation to Appeals D, E and F. The appeal against the refusal of the LDC will be dismissed.

Formal Decisions

Appeal A Ref: APP/D0121/C/20/3259117; Appeal B Ref: APP/D0121/C/20/3259118 and Appeal C Ref: APP/D0121/C/20/3259119

131. It is directed that the enforcement notice is varied by:
- In paragraph 5(i) of the notice, add after the word “buildings” the words “,including the residential use of the building shown in the approximate position shaded in green and hatched black on the plan attached to the notice”
 - In paragraph 5(ii) of the notice, delete the words “Remove from the land the building shown in the approximate position shaded in green and hatched black”
 - In paragraph 5(iv) of the notice, delete “ii)”
 - In paragraph 5(v) of the notice, delete the words “and re-seeding with grass”
132. Subject to those variations, the appeals are dismissed and the enforcement notice is upheld.

Appeal D Ref: APP/D0121/C/20/3259124; Appeal E Ref: APP/D0121/C/20/3259125 and Appeal F Ref: APP/D0121/C/20/3259126

133. It is directed that the enforcement notice is varied by:
- In paragraph 5(ii) of the notice, delete the words “re-seeding the area with grass seed”
134. Subject to that variation, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal G Ref: APP/D0121/C/21/326917

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

Appeal H Ref: APP/D0121/X/20/3262968

136. The appeal is dismissed.

Paul Freer
INSPECTOR

APPEARENCES

For the Appellants

Mrs Amanda Sutherland LLb (Hons) PG Dip LPC

Planning Solicitor

She called:

Mr Keith Perrett

Appellant

Mr Christopher Sanders

Local resident

For the Local Planning Authority

Mrs Sue Buck

Solicitor – Litigation
Team Leader

She called:

Mrs Julie Walbridge

Senior Planning
Enforcement Officer

Ms Joy Chadburn

Area Surveyor

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Photographs submitted by the appellants
- 2/ Photographs submitted by the Local Planning Authority
- 3/ Land Registry extract in relation to The Old Rectory, Brean
- 4/ Unredacted copy of the application form for application 19/P/0892/LDE
- 5/ Photographs taken at the site visit on 22 September 2021.
- 6/ Copy of Annex 8 to Circular 10/97
- 7/ Delegated Report Sheet for application 09/P/1778/F
- 8/ Delegated Report Sheet for application 10/P/1631/LDE
- 9/ Application 19/P/0893/LDE: Extract from Council's website
- 10/ Representation from Mr Melbourne