The Planning Inspectorate

Appeal Decisions

Inquiry Held on 22 June, 8 - 11 November and 22 - 23 December 2021

Site visits made on 31 July 2021 (unaccompanied) and 5 January 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Refs: APP/H1840/C/20/3257219 ("Appeal A")
APP/H1840/C/20/3257220 ("Appeal B")
Woodlands Farm, West Side, North Littleton, Evesham WR11 8QP

- 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 Daniel Albutt (Appeal A) and Christopher Albutt (Appeal B) against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 10 July 2020.
- The breach of planning control as alleged in the notice is *Without the benefit of planning permission, the unauthorised material change of use of agricultural and residential use to a mixed use of agriculture, residential use and:*
  (a) vehicle/equipment storage in connection with a plant hire and construction business, and;
  (b) construction/construction-related materials storage (new and reclaimed).
- The requirements of the notice are:
  (1) To permanently cease the use of the Land for vehicle/equipment storage in connection with a plant hire and construction business.
  (2) To permanently cease the use of the Land for the storage of construction/ construction-related materials (new and reclaimed).
  (3) To permanently remove the vehicles/equipment in connection with the operation of a plant hire and construction business, materials (new and reclaimed relating to unauthorised use/activity) from the Land and restore the land to its former condition.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a)(d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act. Appeal B proceeds on grounds (d) and (g) only.

Summary Decisions:
The appeals are allowed, the enforcement notice (as corrected) is quashed, and a certificate of lawful use or development is issued in the terms set out below in the Formal Decisions.

Application for costs

1. At the Inquiry applications for costs were made by the Rule 6 Party against the appellants. These applications are the subject of a separate Decision.

Procedural Matters

Inquiry and Site Visit arrangements

2. The Inquiry sat 'virtually' via the Microsoft Teams platform.

3. I viewed the site unaccompanied from public vantage points on Saturday 31 July 2021, and was subsequently accompanied by representatives of all parties on Wednesday 5 January 2022, following the close of the Inquiry, when viewing the site and its surroundings. There was some discussion at the Inquiry about whether I ought to witness vehicle (tractor and trailer) manoeuvres at the site entrance and on public roads in the vicinity but I decided this was unnecessary to enable me to assess the effects of the development subject to the deemed planning application.

Scope of legal grounds of appeal and the application of section 176(1)

4. I raised in advance of the Inquiry whether I ought to consider any appeal on ground (b), namely whether the matters alleged in the notice had not occurred over all or part of the land. This was prompted by the reference in some of the appellants' statements to part of the land identified in the enforcement notice having been acquired as recently as 2018, and to the identification in those statements of the use having taken place in relation to an area edged red on plans that was considerably smaller than the (approx. 6.5ha) farm identified by the notice. In the event it was explained to me that the land purchased in 2018 (parcel WR177585) had been farmed for some time before it was formally purchased, and no ground (b) appeal arose on that basis.

5. However, in closing submissions it was suggested to me by both main parties that, if the appeal on ground (d) were to succeed, then any resulting certificate of lawfulness should relate to a 'tighter' red line area than the entirety of the notional appeal site (which constitutes, as I understand it, the whole of Woodlands Farm within the appellants' ownership). It is suggested that any certificate should relate to the barns and storage yard, thus excluding the residential dwelling and the vast majority of the agricultural fields. To do so I would have to be persuaded that the relevant planning unit has differed accordingly, and I therefore consider this under ground (b). This is because the suggestion to limit the 'red line area' amounts to suggesting that the use identified in the notice has not taken place over the whole of the land. Logically this would usually precede the consideration of the appeals on ground (d) but I shall deal with all the legal grounds together.

6. Concomitantly, I should need to consider whether it is necessary to exercise my powers under section 176(1) of the 1990 Act to correct any misdescription in the notice (for example, by excluding residential use as an element of the mixed use alleged if the house and its curtilage were found to fall outside the relevant planning unit and the plan amended accordingly) and consequently whether any variations to the terms of the notice are necessary. This question also arises in relation to 'agricultural contracting', understood by both main parties to comprise an element of the mixed use alleged (and presently carried on) but with differing opinions about whether the notice requires correction in this regard. I shall deal with these matters below.

7. An enforcement notice was issued by the Council in July 2019 in similar but not identical terms to the one now under appeal and relating to a smaller area of land. The question therefore arises whether this is a 'second bite' notice for the purpose of section 171B of the 1990 Act and whether the immunity period the appellants are required to demonstrate is extended accordingly. I shall deal with this below.

Late documents

8. Documents were submitted to the Inquiry by the appellants following the dates specified for submission. Revised plans in relation to the ground (a) appeal were submitted in advance of the Inquiry's resumption in November 2021, and correspondence written by the Rule 6 Party on 11 July 2011 was submitted on 10 November 2021.

9. Rule 17 of the relevant Procedure Rules (SI 2002/2685) provides that the Inspector may allow any person to alter or add to a statement of case, but shall give the other parties an adequate opportunity to consider any fresh matter or document. The rule also provides that the Inspector may take into account any document received by [her] during the Inquiry provided that it is disclosed. The rule thus confers a wide discretion.

10. The Rule 6 Party objected strongly to the submission of these documents. Whilst the submission of late evidence is to be discouraged, the Rule 6 Party was given adequate time to deal with the documents and no prejudice to his case was identified. I accepted them for consideration.

Ground (a) appeal jurisdiction

11. The Rule 6 Party contends that I have no jurisdiction to entertain the Appeal A appeal on ground (a); that is, the deemed planning application for the matters alleged in the notice, citing paragraph 013 Reference ID 17b-013-20140306 of the Planning Practice Guidance dealing with enforcement and post-permission matters. That paragraph sets out that '[a] person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event', and goes on to say that '[n]o appeal under ground (a) may be made if an enforcement notice is issued within the time allowed for determination of a retrospective application'.

12. Having carefully considered this argument, I conclude that the Rule 6 party's contention is incorrect. Whether or not the reference to having 'only one opportunity' in the Planning Practice Guidance turns out to be accurate in all cases, it is the case here that the only planning application that has been made for the matters alleged in the notice, taking that alleged mixed use as a whole, and over the whole appeal site, is the deemed application arising in these appeals. An application was made (and refused, and dismissed on appeal) some 10 years ago for the 'plant hire storage' element of the use then said to be taking place in the barn.

13. That application was different, in my view, from the expanded description and the enlarged land take raised by the present appeal, because the description now raised by the notice includes additional elements in what is now a differently-identified mixed use, albeit one that includes the subject of the 2011 appeal; and the land area identified by the present notice is considerably larger.

14. If the 2011 appeal had succeeded, it would not have resulted in a grant of permission for all the elements, or over all the land, that are (at least notionally) now the subject of the ground (a) appeal. The Council's 2011 officer report into the earlier proposal appeared to presage as much by acknowledging that the 'additional business of ground engineering' was a 'separate issue which [the] Enf. Dept. are aware of'.

15. This is to say that even if the relevant time limit of section 174(2A)(b) of the 1990 Act does apply, which it plainly does not, I would not have found that the 2011 application was anyway a 'related application' thus precluding the present ground (a) appeal. Therefore, as there is no previous related application for planning permission, and certainly not one made at a time when the time limits of section 174(2A) would apply, there is no statutory bar to my considering the appeal on ground (a). In the event it does not arise.

Main Issues

16. As anticipated by the foregoing paragraphs, the main legal issues arising are:

    (i) whether the existing use on the relevant date is accurately described in the notice;

    (ii) whether it had begun and been carried on for an uninterrupted period of at least 10 years (or as extended under the 'second bite' provisions) such that the enforcement notice was issued out of time and so should be quashed;

    (iii) whether the use was being carried on across the whole of the land identified in the notice; and

    (iv) whether a lawful development certificate should be issued in relation to some or all of the matters alleged in the notice over all or part of the land identified in it.

17. Depending upon the outcome of those legal matters, it may be necessary to consider the deemed planning application under ground (a) which principally raises the issue whether the development is unacceptable on highway safety grounds, and if not then to what conditions a grant of planning permission should be made subject. If a planning permission is not forthcoming, or is forthcoming for part only of the matters specified (and/or part only of the land to which the notice applies) it will then be necessary to consider whether any corrections or variations are required to the notice and whether it should be upheld. If the notice is to be upheld in any form it will be necessary to consider, under the ground (g) appeal, whether the time specified in the notice for compliance with its requirements falls short of what should reasonably be allowed.

Reasons

The legal grounds and section 176(1)

18. Broadly put, the notice alleges that storage of equipment and materials relating to a plant hire and construction business operating from the site was taking place, amounting to development for which permission was required. The appellants do not in substance take issue with the allegation, or with the requirement for permission. It is instead contended by the appellants that the use alleged had been continuously taking place for so long that it was immune from enforcement action by the time the notice was issued. As set out above, the precise description of the use, the area of land take, and the length of the required immunity period may all require consideration.

19. In support of their general contention, the appellants put forward a number of documents and called four witnesses of fact (and a professional witness) at the Inquiry. The documents consisted in the main of:

    (i) Aerial photographs of the site taken over a 20 year period 1999 - 2019 (Appendix DMA2);

    (ii) Letters and statements from customers and suppliers concerning their involvement with the business (NAJ2);

    (iii) Summary of profit and loss accounts 2009 – 2019 (NAJ1); and

    (iv) Correspondence from the Rule 6 party written to the Council in 2011.

20. Reference was also made (by all parties) to enforcement investigations and to previous planning and lawful development certificate applications, together with the witnesses' own knowledge of the site.

21. Additionally, a considerable number of photographs and other documents were adduced by the Rule 6 party, who was himself a further witness of fact. The Council's witnesses had no historic factual knowledge of the site of their own raised in relation to the legal ground(s) of appeal, but Mr Black spoke to the limited documentary records held by the Council.

22. The approach to an appeal on ground (d) (or other legal grounds) is that it is for the appellants to prove their case, to the standard of probability (i.e. more likely than not). The appellants' evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or to make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

23. The Council's case on ground (d) is that the breach of planning control has not continued on an uninterrupted basis for the relevant period; and that the evidence submitted by the appellants is insufficient to discharge the evidential burden of proof upon them, citing in particular the lack of sales or purchase invoices or any detailed accounts. They counsel caution against relying on the evidence of the two appellants who were only teenagers for part of the relevant period.

24. The Rule 6 party goes further. He raises a number of matters going to the credibility of the appellants and their witnesses and asks me to disbelieve their evidence. He also raises a positive case of the business having relocated elsewhere during part of the relevant period.

Planning History of the Site

25. The family moved into Woodlands Farm, then comprising only HM Land Registry title no. WR58231, in 2001 at which time the appellants were respectively five (Christopher, hereafter 'CMA') and eight (Daniel, 'DMA') years old. Replacement buildings were erected in around 2003 and 2004/5, consisting of a large steel-framed agricultural barn ('the barn') and a smaller building referred to as a workshop. The site appears to have been purchased as an agricultural concern with an associated residence, and reference has been made to an agricultural occupancy requirement of the dwelling.

26. Other than the permissions for those replacement buildings the planning history appears to have been largely uneventful until around 2008, when the

Council began enforcement investigations at the site in connection with the alleged operation of a business (IN/08/00138) for which 'insufficient evidence' was found. The Council's records are somewhat scant, but copies of correspondence sent to the appellants' late father, Mr Gary Albutt, between 2009 and 2011 have been supplied.

27. The Council's letter of 21 August 2009 (IN/09/00171) refers to 'Material Change of Use – Agricultural Barn' as the alleged breach of planning control, but beyond that it is unclear exactly what was alleged. The appellants' statutory declarations refer to stabling having been relocated into the barn following completion of building works in around 2005, and there is reference in the Council's letter to it having been deemed inexpedient to pursue the stables' removal. At first blush this suggests that the alleged change of use may have involved some equestrian activity, but the August 2009 correspondence on its own is inconclusive as to the nature of any breaches alleged or considered.

28. The letter records Mr Albutt as having indicated that he did not intend to apply for permission to change the use of the barn. It is not clear that the Council accepted that no change of use had been made: it appears that no express determination was made in the light of Mr Albutt's apparent statement that the barn was henceforth to be used only for agricultural purposes. Later correspondence of December 2009 suggests that contraventions (plural) had been evident but deemed inexpedient to pursue.

29. Subsequent investigations from 2009 – 2011 arose under reference IN/09/00557. Correspondence in November 2009 indicated it appeared to the Council that plant and machinery were being used for what was described as 'non-agricultural purposes'. Signage indicating 'plant hire and ground works' was observed. A planning application was invited, and this invitation was repeated in December 2009.

30. I am mindful that Mr Albutt was not professionally represented at the relevant time, and the reference in the Council's letters to the machinery having been used for 'non-agricultural purposes' might have been apt to confuse, especially if I am to accept other evidence in the case suggesting that the nature of Mr Albutt's business involved a number of contracts with agricultural or other rural enterprises, and his own correspondence of 1 July 2011 stating that no machinery was kept that had not been put to use on the farm.

31. Further correspondence in May 2011 describing the barn as being in a 'mixed use' for 'agriculture and contractors business' (which I consider commensurate with the present allegation) eventually elicited a planning application. That was described by the Inspector on appeal as a retrospective application to continue a plant hire business occupying the majority of the barn. As noted above the officers' report on the application referred to an 'additional business of ground engineering' as a separate issue of which the enforcement department were aware, but this received no further consideration in that report or in the Inspector's decision.

32. The general flavour of this correspondence is that by late 2009 it appeared to the Council that an agricultural contracting business was operating from the site of sufficient import to amount to a material change of use. It is not uncommon for farmers to lend out their equipment to each other, with or without personnel, and the 'tipping point' at which the storage of plant or

equipment for hire on other land becomes a materially different use from agriculture is not always easy to discern. By 2011 Mr Albutt was persuaded that an application was necessary, although it appears this was with some reluctance on his part.

33. The Rule 6 party's letter to the Council of 11 July 2011 contended that Mr Albutt 'only works on the farm part time as he is mainly out running his plant hire (delivering and returning vehicles) and his ground engineering business… therefore it cannot be said that all this plant machinery is mainly used for the farm and on occasion for hire'. This indicates that Mr Albutt's contention to the planners was that the plant was primarily agricultural. My understanding of the correspondence is that Mr Albutt was reluctant to accept that his use of the site was for 'non-agricultural purposes'. The existence of a 'ground engineering' business in addition to the plant hire appears to have been discerned but not resolved at the time of the 2011 application.

34. The Council's next recorded investigation took place in March 2013, more than a year after the appeal was dismissed, under reference IN/13/00094. Again the Council's records are scant. Mr Black stated in evidence that a complaint was received on 3 March 2013 of 'unauthorised plant machinery business conducted from agricultural site'. A record of 'no further action' was made on 7 March 2013, with no indication on the Council's own files as to whether a site visit took place, and no recollection by any of the appellants' witnesses that one had.

35. The Council invites me to find that there was no breach of planning control occurring at this point, by reason of the closure of the complaint. The Rule 6 party's evidence on this point was that a site visit did take place, following which the findings of the visit were reported to him by telephone. He reports that the Council's officer confirmed that no unauthorised activity was found at the site on a thorough site inspection, and moreover that Mr Albutt had also confirmed to the Council's officer that no non-agricultural activity was being conducted on site at Woodlands Farm.

36. No reason for the Council having decided that 'no further action' was required is documented, but I accept that in the light of the previous appeal decision it is unlikely that the Council will have concluded that a breach was apparent but that it was inexpedient to enforce against it. This is particularly so given the short period between the receipt of the complaint and the resolution of it four days later where, given the history of the site by this point, any decision not to enforce on 'expediency' grounds, if it arose, would be likely to require the involvement of Members or at least senior officers. For the same reasons I consider it unlikely that the Council will have closed their file without undertaking a site visit seeking to establish the veracity of the allegation. I accept for this purpose the Rule 6 party's evidence of the verbal report made to him by the Council's officer, but I am unable to find that this is 'fatal to the Appeal', as the Rule 6 party contends.

37. From the scant correspondence before me and mindful that Mr Albutt was not professionally advised, it is difficult to discern what Mr Albutt's understanding of 'non-agricultural activity' actually was, but there are indications that he and the Council were not of like mind. It is not suggested by any party that there was any deliberate concealment by Mr Albutt of any breach of planning control affecting the applicable immunity period. It appears from reading the 2009

correspondence that he was at least reluctant to agree that the plant and machinery then stored on site amounted to a 'non-agricultural' activity. It is also far from clear what the Council officers' own understanding was of what amounted to 'non-agricultural purposes', with the officer positively discerning a breach only when encountering advertisements for 'G M Albutt Plant Hire and Ground Works' affixed to the machinery in late 2009 but with no evidence of the nature or amount of machinery or equipment then (or previously, or subsequently, save for the '12 bits of kit' at the time of the 2011 application) encountered at the site.

38. The further complication is that the appellants' own evidence is that plant and machinery would spend periods away from the site, out on jobs. Ditto the construction materials which, on the appellants' account, would preferably be delivered to the site concerned rather than to Woodlands Farm. With an allegation of this type of business, and in view of Mr Albutt's recent assertion (found in Mr Albutt's correspondence of 1 July 2011) that this diversification was the only way to secure the site's viability, it is somewhat surprising that the Council's officers felt able to discern, or rather discount, the extent or nature of any breach on the basis of what appears to have been a single site visit of an unknown duration. No information is given about what may have happened to the business since 2011 or how the farm was then being made viable, or whether Mr Albutt was asked about such matters.

39. Therefore all that can really be gleaned from the account of the 2013 events given by the Rule 6 party and found in the Council's files is that in all likelihood the Council officers visited the site, spoke with Mr Albutt, and did not observe a breach of planning control that in their opinion was then taking place. Unknown but potentially relevant matters include what equipment or materials were then on site, what activities were observed, for how long the officers remained on site, what time of day it was, whether or not the visit was pre-arranged, what if any equipment was then owned by the business but was presently hired out, or what Mr Albutt's (or indeed the officers') understanding was about what constituted 'non-agricultural activity'.

40. It is important to appreciate that the 'activity' taking place on, or from, a site may not be determinative of the 'use' of the land: that would be a question of fact and degree in each case. For example, if the items of plant and equipment (or materials) kept at the site were being hired out to or used on farms or rural enterprises elsewhere, this could mean that, although in broad terms they were being used in what might reasonably be perceived as agricultural 'activity', the use of the site as a base for storing those items might not in itself be an agricultural 'use' of the site. There is no indication that this was a distinction appreciated by Mr Albutt. Therefore, even accepting what he is said (by the Rule 6 party) to have told the Council officers in 2013, that no 'non-agricultural activity' was taking place, this does not assist me in understanding what the use of the land was at that point.

41. The final piece of correspondence from the Council arising before the more recent lawful development certificate applications and investigations leading to the present proceedings is a letter of 24 November 2017. This was sent to the Rule 6 party and supplied by him to the Inquiry in a heavily redacted form, revealing a single paragraph. This stated that the author of the letter had not been asked to look at Woodlands Farm for the running of a commercial civil

engineering business, but that the author understood from a colleague that this had been looked into some years previously and no breach found.

42. It is unclear from this to which of the previous investigations the author was referring. The 2013 complaint related to a 'plant machinery business' rather than a civil engineering business. Reference to an 'agricultural contracting business' was made in the Council's correspondence of May 2011 but there a breach had been found. There is nothing in the Council's documents to indicate what the enforcement department may have done about the 'additional business of ground engineering' referred to in the 2011 officer's report. The 2008 investigation, revealing 'insufficient evidence', related to 'a business', so is perhaps the most likely candidate, but precedes (on either approach to the 'second bite' issue and relevant date) the relevant period. In any event the letter of November 2017 reveals only what the author had been told by a colleague rather than anything from her own knowledge. Even if it does relate to the 2013 complaint, it does not add anything to the other evidence about that.

Letters and statements from customers and suppliers

43. Appended to the evidence of Ms Jameson were a number of letters and statements from customers and suppliers of the business.

44. A firm of accountants confirmed that Mr Albutt had traded as a sole trader since 1994, with a trading address at Woodlands Farm since 2001. Insurers confirmed that a commercial insurance policy based at Woodlands Farm was held from April 2005 in the activities of 'Farmer, Agricultural Contractor and Groundworks Contractor'. Liability for non-domestic rates began in April 2011. Snow contracting works to the County Council began in 2012.

45. Supplies were made to Woodlands Farm since 2006 by companies concerned with car parts and trucks. Supplies of 'materials' to Mr Albutt were made from (at the latest) July 2005 by a building materials supplier. It is not expressly stated where to, although Mr Albutt was confirmed to be known to be trading from Woodlands Farm. A timber merchant confirmed that they had traded with Mr Albutt since 2000 and had made deliveries to Woodlands Farm. Supplies of agricultural and industrial drainage products had been made by another company since 2004, although again it is not expressly stated where such deliveries were made to. Another company, 'steelfast', had supplied Mr Albutt at Woodlands Farm since 2006. Six 'kit buildings' had been acquired from another company since 2015, but with no reference to deliveries or collection.

46. A supplier of telehandlers and excavators and like plant confirmed four purchases made since 2012, 'all bought from' Woodlands Farm. Five dumpers or excavators had been purchased from a construction equipment company since around 2013, who had dealt with Mr Albutt and the appellants 'at their current address'.

47. The supplier of drainage materials was also a customer of Mr Albutt's business, stating that the services of GM Albutt & Sons had been used for 'various groundworks and industrial building supply and construction', for 'many years'. A nearby country estate confirmed a trading relationship with Mr Albutt since 2007 but with no further details.

48. Another estate company, concerned with holiday parks and a farm, confirmed they had been a customer of Mr Albutt's since 1984, saying that Mr Albutt's company were one of their main contractors for ground works, building and maintenance of machinery. In that time, they were aware that Mr Albutt's head office 'has moved to different locations', with 'the main office and trading location' since 2001 being Woodlands Farm. Machines, parts and stock items including pipe and hardcore had all been collected from Woodlands Farm.

49. An employee of this estate company confirmed working alongside Mr Albutt at 'most of his sub contract work' on the estate, and confirmed that GM Albutt & Sons have been trading from Woodlands Farm since 2001. A landscape gardener from Alcester had 'used' GM Albutt & Sons since 2001, using 'their small plant hire and equipment repair service at Woodlands Farm whenever necessary' and commissioning them to work on landscaping jobs where diggers and dumper trucks have been required. A civil engineering contractor referred to having fabricated the barn at Woodlands Farm and confirmed that construction plant and materials were stored therein for hire and sale since 2005. Excavators had been purchased from GM Albutt at Woodlands Farm since 2006, and various fabrication projects had been supplied to GM Albutt. A customer confirmed GM Albutt & Sons had carried out drainage and groundworks at a domestic property in 2003, since when he had recommended them for other jobs and provided architectural drawings. To the best of his knowledge the business has been based at Woodlands Farm since at least 2003.

50. A racehorse trainer has commissioned the business for various groundwork contracts since 2007, visiting Woodlands Farm on numerous occasions to arrange work and to hire equipment. A local builder (Mr Homer, who also gave oral evidence) first encountered the business in 2007, since when he had used the business for various contracts in the area and visited Woodlands Farm to arrange jobs and hire of equipment. Finally, the appellants' aunt confirmed the purchase of Woodlands Farm in April 2001, saying that Mr Albutt already had his business up and running at that point and moved all his equipment to the farm and immediately commenced business as usual. She refers to helping the family get the farm up and running, helping with the livestock needed to comply with the Agricultural Tie whilst Mr Albutt carried on with running his business.

Summary of profit and loss accounts

51. Summaries of the profit and loss accounts of the business were supplied by Attwoods, exhibited to Ms Jameson's proof, including covering correspondence confirming that they (Attwoods) had seen no evidence of any rent payments for any other site.

52. In themselves, the profit and loss accounts, covering the years ending in September 2009 through March 2020, reveal very little. Wage costs have risen considerably over the period (although the extent to which these have included subcontractors' costs over the whole period is unclear). Both sales and purchases took a distinct upturn in the year to September 2013. Net profit in the year to September 2014 was thrice the previous year and quadruple that of the following year. Insurance costs have fluctuated considerably throughout.

53. The accounts include 'Woodlands Farm' in the header but beyond that give no real indication of the nature of the business and in particular how much of the

expenditure or income derived from farming or other purposes. Whilst the size of the farm has changed over the years it appears to me that in many years the overall income and expenditure has exceeded what could be reasonably expected of the current holding, but I am without sufficient information as to other land tenancies or their profitability to draw any firm conclusions.

Oral evidence of witnesses

Ms Jameson

54. Some explanation of the accounts was however given in oral evidence by Ms Jameson. She stated that the split of income received by the business was around 20% farming and 80% non-agricultural work. Ms Jameson lived at the farm throughout the relevant period (since at least 10 years before the 2019 notice was issued) and began assisting with the business in around 2006. Her evidence was that the nature of the business has throughout involved farming, agricultural contracting, ground and drainage works, plant hire with driver, equestrian works, site clearance and demolition, and the design, supply and erection of steel framed buildings. Items of plant, equipment and machinery, and some materials, are stored and maintained in the barn and workshop and yard areas at Woodlands Farm.

55. Her evidence was that the business has not at any time operated from any other site. Although 'thousands' of invoices were in existence in relation to the business, these had not been submitted on professional advice and due to her concern that it was inappropriate to put such an amount of information into the public domain. Her involvement with the business rates liability and relief had been limited to completing the relevant forms on Mr Albutt's instructions.

56. Discussing the letters and statements from customers and suppliers appended to her evidence, although in some cases (eg Truckstop, SE Davies) further information had been offered, Ms Jameson had been professionally advised that the present information was sufficient. Likewise the absence of photographs. Discussing the 'Kit buildings' sales beginning only in 2015, she advised that prior to that date such buildings had been constructed by Mr Albutt's father at Woodlands Farm but due to regulatory changes this had ceased and such buildings had been bought in instead.

57. Her evidence was that most construction materials would be delivered directly to the relevant site, but that there had nonetheless been a continuous supply of materials to Woodlands Farm over the relevant period even if different items were themselves only stored for short periods of time. Fabrication and repair work carried out at the appeal site was largely connected to projects or machinery associated with the business.

Mr Homer

58. There were two versions of Mr Homer's statement available to him with some inconsistency as to how long he had been familiar with the site. His oral evidence was that he had known Mr Albutt since 2007 and was a friend of the family and a relatively close neighbour, living in Middle Littleton. Operating in the same line of work, he had not done much business with the Albutts himself, and not until around 2015, but had referred Mr Albutt for jobs. His evidence was that he had never known work not to be going on at the farm in a business use, and that he had visited the barn or the house around once a month over a

prolonged period. Pressed by the Rule 6 party, Mr Homer was unable to go into some particular details such as about specified changes to the materials storage area ('the brown area' on plan 8850-101) over time. He was however clear that the business as described was generally being carried on from the appeal site during the period of his knowledge.

The appellants

59. The appellants gave similar evidence, describing moving into the property as children and gradually assuming tasks in their father's business after school and during holidays and then as full-time workers from respectively 2010 and 2011, subsequently assuming the running of the business as their father's health declined from around 2012. Each of the appellants spent time employed elsewhere, one subcontracted, but each returned to the business full-time in 2016.

Nature of stored equipment

60. Each described the nature of the work, consistently with Ms Jameson's account. CMA's evidence described the plant and machinery presently used and for hire, consisting of a number of excavators, dumpers, roller, telehandlers, tractors, bulldozer and cherry picker. In oral evidence DMA also referred to smaller items such as compressors, balers, hedge trimmers and the like. CMA accepted that the number of items of plant and machinery had grown over the years, but averred that the business had operated consistently throughout.

61. The Council suggest that the list of equipment supplied by CMA as being representative of the business inventory over the whole of the relevant period cannot be right, referring to the details of the 2011 application that was solely for agricultural and plant hire storage as opposed to construction equipment such as a bulldozer or roller. However, the application was for agricultural and plant hire storage as 'part of' farm diversification; the officer's report on the application referred to the 'additional business of ground engineering'; the Rule 6 party's letter of 11 July 2011 also referred to a ground engineering business (it is unclear whether these two references derived from the same source); and the appellants' evidence in the round was that not all items would be kept at the site all of the time, it being in the nature of the business to hire them out or use them elsewhere. I do not find it inherently surprising that neither the officer's report (save for the 'ground engineering' reference) nor the Inspector on appeal in 2011 failed to refer to any other equipment or materials that may have been kept at the site at the time. This is because they were considering the terms of the planning application, not any other matters.

Storage of construction materials

62. CMA's evidence was that the business aims to get everything delivered to where it's being used but if there's no telehandler at the relevant site then it has to be delivered to Woodlands Farm. The preference is to have materials delivered to the relevant site, but some quantities of material are kept at the farm. This was consistent with DMA's evidence. Ms Jameson also confirmed that most of the materials for the business are delivered directly to the job site. DMA accepted that the amount of materials held at the appeal site has increased since 2015. He did however identify scaffolding, boards, pipe fittings and posts and like materials in the yard area in a photograph supplied in 2011

(BS05). He considered that the quantity and nature of the materials shown would be inconsistent with its use at Woodlands Farm.

Other sites

63. The appellants were consistent in their account of the business having operated throughout from Woodlands Farm, and not having moved to any other base during the relevant period. This is a contention raised by the Rule 6 party.

64. The appellants and Ms Jameson each denied having operated the business from any other site during the relevant period, Ms Jameson also referring to the Attwoods correspondence in support. It was put to Ms Jameson that her statement in relation to planning application 18/01014/CLE that the business had 'neither owned nor rented any other sites' was incorrect. Although other land parcels were owned or rented, Ms Jameson explained that these were not 'sites' from which the business was run. An address in Evesham, retrieved from the internet apparently as an address of the business by the Rule 6 party, was said to be unknown to any of the appellants' witnesses who were asked about it.

65. The Rule 6 party also referred to having been informed by a police officer a number of years ago (following the 2011 appeal decision) that the Albutts had relocated their business to the Wellesbourne/Mickleton area. The appellants denied this. DMA reported having done some work in the area at a site in around 2013-14. The Rule 6 party also refers to additional correspondence from 2018, not reproduced, in which he had stated that the applicant 'continued the commercial uses elsewhere for several years and was seen commuting daily to another site in the Mickleton/Wellesbourne area' and to which Ms Jameson had apparently responded by saying that the Rule 6 party 'must have been following them to have known this'.

66. The Rule 6 party suggests that this reply gives credibility to his assertion of there having been another site, but I do not accept that Ms Jameson's reported reply confirms the truth of the allegation. In 2020 it was recorded that the Rule 6 party had by then written 64 letters of objection to planning applications made by the Albutts, running to 234 pages of correspondence. It is unsurprising that not every assertion in such a volume is countered in detail. The Rule 6 party has not identified the 'other site', other than to suggest on the basis of an internet search that it is not in Wellesbourne or Mickleton but in Evesham. Wellesbourne and Mickleton are several miles apart, and so if Mr Albutt or the appellants, or Ms Jameson who has other employment, had been observed commuting daily to another specific site, beyond merely leaving Woodlands Farm, I would expect it to be identified with greater geographical accuracy.

Business rates

67. Neither appellant had had any involvement with the business rates until recently and were unable to account for the rateable area assessment of only slightly under 100 sq m, or why rates were not assessed before 2011. It appears from the correspondence that business rates have continued to be payable since then. The sums (supplied to the Council in 2019 by the Rule 6 party) are not insignificant, and thus I give some weight to the absence of any challenge to the liability after 2011 as evidence of continued business use. No evidence was submitted by any party as to how the extent of the rateable area

was reached although it appears to have been without the assistance of the local planning department. It was conceded by the appellants to be plainly wrong.

Aerial photographs

68. A series of aerial photographs covering a 20 year period since shortly before Mr Albutt's acquisition of the land was appended to the evidence of DMA and discussed by him and other witnesses. These do not show what was kept inside either building since their construction (evident in the 2007 photograph) but show external areas, particularly what was in the yard area and the 'brown area' to the front of the site.

69. A criticism of the 'brown area' as drawn is that it contains a chamfer not evident on the ground throughout the relevant period, and that in fact the area used for vehicle or materials storage at the front of the site was squarer than marked on the plans. However, as Mr Williams for the appellants explained, the chamfer relates to a line of trees on the ground providing an appropriate demarcation.

70. The Rule 6 party contends that the business use at the site ceased following the dismissal of the appeal in 2011. The 2012 aerial photograph appears to show a little less evidence of activity at the site than the 2010 photograph preceding it, although it also shows the yard area as having been extended. DMA explained elements of the 2012 photograph as demonstrating the continuation of the use. A low loader was parked at the front in the 'brown area'. Materials and equipment were visible up by the buildings including a yellow excavator. It was suggested by DMA that any apparent diminution of activity in 2012 was likely to be the result of his father's then-recent diagnosis of serious illness and perhaps running low on materials in the yard.

Rule 6 party

71. The Rule 6 party adduced a substantial amount of written and documentary evidence, including photographs, in the proceedings, and gave oral evidence. Additionally, a letter written by him in July 2011 was submitted by the appellants.

11 July 2011 correspondence

72. In oral evidence the Rule 6 party contended that his letter of July 2011 was merely a response to the information contained in a flyer and letter circulated at the time by Mr Albutt. I consider this recollection likely to be mistaken. The letter is clearly articulating the author's own opinions and knowledge of the site at the time, and complains that the applicant's flyer may have been misleading. He wrote, consistently with the appellants' evidence, that Mr Albutt only worked on the farm part time as he was mainly out running his plant hire (delivering and returning vehicles) and his ground engineering business (which was not mentioned in Mr Albutt's flyer). The plant hire business was not, he wrote, a recent diversification activity to cope with the then-present economic climate, but had always been, along with the ground engineering business, the main activity run from Woodlands Farm. A recent land sale, he wrote, demonstrated that the focus for the applicant was not farming but his plant hire and groundwork engineering business.

Rule 6 party's observations

73. The Rule 6 party also contended that the 2011 application was not in fact retrospective. His oral account to the Inquiry was that the use had been carried out but had ceased by then, re-started some time in 2011 before the appeal Inspector visited, ceased again following the Inspector's decision, and subsequently re-started again in around 2014. It had appeared to him that it had re-started by March 2013 but he appeared to have been reassured following the Council's visit.

74. None of this sits comfortably with the Rule 6 party's witness statement to the effect that he observed the barn being used as a hay store and not for any business use in the period to 2011. Photographic evidence (from 2011) submitted by him does clearly show the barn being used for the storage of animal fodder, although the interior of the barn is shown only partially (about a third of the building) and is not necessarily exclusive of any plant storage use. In fact the JCB in the photograph, being used to transport the hay, was affixed with advertising signage of the type recorded by the Council's enforcement officer in December 2009 as being indicative of a non-agricultural enterprise.

75. The Rule 6 party was aware that other land was being rented by the Albutts throughout the period to 2018, and submitted photographs of reclaimed asbestos cement sheeting and builders' waste located on a field away from the barn and yard area (although on land subject to the enforcement notice). This is not in itself evidence going to how the barn and yard area were being used. The same can be said of the maintenance activity in the domestic garage and on grassed areas and of tractors parked in the fields or on bridleways. Conversely, the absence of equipment or materials being stored on any particular part of the land (eg photographs BS06) at any particular moment would not necessarily preclude a finding that the use had been continuous over the planning unit as a whole over the relevant period. The planning unit needs to be considered as a whole when making the assessment.

Relocation of the business post-2011

76. The other matters relied upon by the Rule 6 party to contradict the appellants' account were an internet search revealing an address for the business in Evesham, and a statement said to have been made to him by a police officer about the business having relocated following the Inspector's dismissal of the 2011 appeal. Neither the Rule 6 party nor any other witness to the Inquiry appeared to have witnessed at first hand any business operating from the Evesham address, which is of a semi-detached house. It appears mistaken. It is unclear how the police officer had come by his information to the effect that the business was being operated from Wellesbourne/Mickleton in around 2012–2014. It is potentially consistent with DMA's evidence of carrying out a works contract in the area in 2013-2014, but is inconsistent with the correspondence from Attwoods and with the oral evidence of the appellants as to whether the business has operated anywhere other than from Woodlands Farm throughout the relevant period.

Credibility of the appellants

77. The remaining main plank of the Rule 6 party's case (and I am conscious that many other points were made, all of which I have considered) was to attack

the credibility of the appellants and their witnesses, and to invite me to disbelieve their evidence to the Inquiry.

78. Ms Jameson has been registered on the electoral roll at a different address. As she explained, there is no general preclusion to voting registration at different addresses; many students and those with second homes do it. I do not consider that remaining on the electoral roll at a previous family residence casts any serious doubt on the credibility of Ms Jameson's evidence. Similarly her differing statements about whether she moved into Woodlands Farm in 2007 or 2008. At such a distance, minor errors of fact such as these are not unusual. For example, the Rule 6 party's statement of case referred to Council investigations having taken place in 2014, rather than in 2013 when they did in fact occur.

79. The credibility of CMA is questioned because a statutory declaration stated a parcel of land to have been purchased in 2002 rather than, correctly, in 2014. CMA accepted he had been mistaken. CMA was a child or teenager during this time and was not himself the purchaser of the land in question. I heard, in relation to a different land parcel, that it had been rented and farmed by the family for some years prior to its actual acquisition. In the round this appears a minor error.

80. Other errors in planning documents are claimed to demonstrate the unreliability of CMA, such as a reference to the address of the property as 'Woodlands' rather than as Woodlands Farm. CMA was not the applicant, and the application form was completed by a professional agent. An application was made in 2006 when CMA was around 10 years old stating that there was no aerodrome within 3km, again apparently in error. CMA was not the applicant. A partial extract of a planning appeal form from 2021 is supplied, incorrectly stating that there was no other appeal pending at the time. CMA was here one of the appellants but no information is given as to whether a professional agent completed the form or whether CMA was asked to check it for accuracy prior to submission. No advantage sought or gained from any of these errors is apparent. These matters do not, in my estimation, affect the credibility of the witness.

81. As to DMA, the principal additional matters raised related to previous legal proceedings of some vintage, DMA having apparently denied criminal charges relating to driving offences and having offered evidence in support of his father's defence to a charge of assault. Without full details, I do not know the detailed grounds of defence that were raised in either case and do not know what facts were contentious. In the absence of such knowledge, the fact of DMA having given or offered evidence in previous legal proceedings does not give me grounds to question the reliability of his evidence before me.

82. I am not prepared to draw any adverse inference from the appellants' failure to call a mutual neighbour to give evidence or to provide a statement in support of their case. I am invited to think by the Rule 6 party that the neighbour would be unwilling to support the appellants' case because he knows it to be untrue. Under questioning DMA suggested the neighbour had not appeared because he wished to avoid confrontation. I merely note that he has not appeared at all, in support of the appellants' case or of the Rule 6 party's.

83. The final main criticism levelled against DMA was his omission when asked of two people who had resided at Woodlands Farm during the relevant period.

DMA accepted that he had been mistaken but explained that those other occupants had resided at the farm for only short periods. This mistake is insufficient to disturb my overall impression of DMA's evidence as reliable and consistent with that of his brother and of Ms Jameson.

84. The Rule 6 party pointed out the conflicting information in Mr Homer's two statements. He also put it to me that Mr Williams' credibility is 'demolished' by his statement that his personal knowledge of the site began in 2018 whereas he had visited the site before then to discuss a different planning appeal some years ago.

85. There is no inconsistency in Mr Williams' account. Previous visits in connexion with a different matter did not appear to have required him to observe the wider site and he would have had no reason to do so; conversely it would be more surprising if Mr Williams, as a professional witness, had purported to give factual evidence relating to a time when he had assumed no professional responsibilities in respect of the matters now alleged in the enforcement notice. Rightly he did not do so. The aspersions made by the Rule 6 party, who professes to be aware of procedure and rules of evidence, in closing submissions, without having properly put the relevant points to Mr Williams in cross-examination, are unfair and unhelpful.

Evidence not supplied

86. The Council and the Rule 6 party make common cause in asking me to draw adverse inferences from the absence of documentary evidence supplied in support of the appellants' claims. The obvious inference, say the Council, is that whilst there will be invoices covering the later years, there are no detailed accounts or invoices stretching back to the earlier part of the relevant period, consistent with the Council's apparent observation in 2013 that no breach of planning control was taking place.

87. I accept that there is in existence some information of potential relevance to the case that has not been supplied to the Inquiry. Ms Jameson referred to 'thousands' of invoices being available, and it is said too that many photographs are also in the appellants' possession. These documents have not been supplied because, she said, professional advice was received to the effect that they are unnecessary, and because of a reluctance to put such commercially sensitive information into the public domain. In cross-examination Mr Williams accepted that a document such as a plant hire invoice (which could show details such as the nature of the equipment hired and where delivered to) could be probative as to the use of the site. The appellants' case is however that the production of such documents is unnecessary because the evidence supplied is already compelling.

88. Some invoices/receipts had been supplied to the Council on an earlier lawful development certificate application, with an offer to supply more if necessary. This offer was not taken up. The assessment of the invoices made by the Council's officer in 2019 was that it was unclear precisely what the invoices showed in respect of the uses claimed on the site, and that they could not be used to demonstrate what areas on the site were being used as claimed. Some of the invoices were noted to have been dated outside the relevant 10 year period.

89. The appellants impress upon me the importance of proportionality, and of the need, given the particular local circumstances of this case where neighbourly relations are far from harmonious, to be mindful of putting commercially sensitive information into the public domain unnecessarily. It is suggested that sufficient corroborative evidence exists without the need for documents such as invoices. Those that have been supplied to the Council were assessed by them as failing to demonstrate the nature or location of the uses taking place on the site and, say the appellants, there is no reason why the production of any more would not meet with the same criticism.

Conclusions on legal ground(s) of appeal

90. Returning to the main issues identified in paragraph 16 above:

Description of the use

91. I shall return to the question of whether the residential aspect of the use should be included below. The appellants contend that the allegation in the notice should be amended to refer to an agricultural contracting use as part of the mix. The Council say that this is unnecessary, but only because they say it is covered by the present description. In the interests of certainty and clarity I agree with the appellants that the use described should make specific reference to the agricultural and groundworks contracting that undisputedly forms part of the present use.

Whether begun and carried on continuously throughout the relevant period

92. Neither main party suggested that the outcome would turn on whether or not the notice is a 'second bite' notice. The Council's enforcement investigations in 2009 began, and 'non-agricultural activity' was observed, less than 10 years before the 2019 notice but more than 10 years before the instant one.

93. I accept the appellants' case. Overall I found their oral evidence to be clear and compelling, and substantially corroborated by Ms Jameson and by the letters and statements supplied in support, as well as by the Rule 6 party's written observations made in 2011. The appellants' accounts are also corroborated by some of the third party correspondence received in the course of the appeals.

94. The limited written correspondence of 2009 – 2011, including the officer's report on the 2011 application and the Inspector's decision, corroborates the appellants' accounts of the business having been run from the site at around that time. The Courts have stressed the importance of contemporaneous documents as a means of getting at the truth, saying that such documents are generally regarded as far more reliable than the oral evidence of witnesses in some cases (*Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413; *Bates v Post Office No. 6* [2019] EWHC 3408 (QB)). Letters written by Mr Albutt and by the Rule 6 party to the Council in July 2011 are clearly of different opinions about the intensity of the use then being carried on at the site, but they are in plain agreement that an established plant hire business was then in operation. The Rule 6 party's letter describes both this and Mr Albutt's ground engineering business as long-standing concerns based at Woodlands Farm. This letter thus strongly collaborates the appellants' account. In terms of its evidential value, I prefer it to the Rule 6 party's later evidence to the Inquiry, insofar as there are differences.

95. I accept therefore that the use as now alleged had begun more than ten years before the enforcement notice (or the 2019 notice) was issued. The question then is whether it has been continuous throughout the relevant period. An interruption can take the form of some cessation in activity or change to the character of the use. Short suspensions in activity or non-material fluctuations in scale are unlikely to stop the clock: it is a question of fact and degree whether, if there has been some interruption in activity, enforcement action could nonetheless have been taken by the local planning authority throughout the relevant period.

96. The profit and loss accounts are of no particular assistance. The accounts given by the letters and statements supplied by Ms Jameson are limited, but largely consistent. The Council say that most of these letters are entirely circumspect as to what was actually supplied, when or in what quantities, with the few going to any detail all speaking to dates well after the start of the relevant period. It is the case that these letters lack overall detail as to what was supplied or in what quantities, but the volume of correspondence from firms dealing in the types of equipment and materials referred to by the appellants creates an overall impression of supplies being made to the business over a prolonged period that are considerably in excess of what might be required solely for use on the farm itself (or on Shernal Brook or on any other farmed land brought to my attention such as any of the BS34 B fields). No alternative explanation as to what might have happened to the supplies has been advanced by any party. Overall I consider these letters and statements to corroborate the appellants' accounts of how the business has operated over the course of the relevant period.

97. Evidence of a continuing business rates liability since 2011 gives some support to the appellants' case that there was no cessation of the use following the previous appeal decision. I give this some weight but it is not determinative. Aerial photographs show evidence of the claimed uses throughout the relevant period. The failure to submit invoices and receipts has been comprehensively justified, and previous such documents provided to the Council were found to be of no assistance. I accept the force of the appellants' arguments as to why these documents are not required, and so I do not draw the inferences suggested by the other parties.

98. The reported outcome of a Council visit in March 2013 and reports of the business's relocation around that time are insufficient to disturb my conclusion that, on the balance of probability, the use was continuous during the relevant period and thus that immunity from enforcement action has been acquired. I consider it likely that Council officers visited the site and did not perceive a breach of planning control in 2013, and that Mr Albutt is likely to have stated that no 'non-agricultural activity' was then occurring. However, there are several 'unknowns' about this visit, as I have set out above. Although I think it probable that the Council's officers did not observe an apparent breach, there is insufficient information before me to understand the extent of their investigations or why they concluded that the breach previously identified by them in May 2011 was not continuing at that point. Mindful that the onus of proof rests with the appellants, in the absence of any documented or first-hand evidence about the visit from any of the participants I do not consider that its reported outcome sufficiently upsets the appellants' corroborated and consistent accounts of the use having continued throughout, so as to make those accounts less than probable.

99. The alleged relocation of the business to a different site after 2011 was unwitnessed by any party to the Inquiry and was not something the business's accountants were aware of. On the balance of probability I accept the appellants' evidence that it did not happen.

100. Finally, I agree with the main parties that nothing turns on the 2019 enforcement notice, because I accept the appellants' evidence that the use began before 2009 and has continued since.

Whether the use was carried on across the whole of the land

101. Although general immunity from enforcement has been acquired, I do not consider that the Council was correct to identify the whole of the farm as the appropriate planning unit to which the notice should relate. This approach is an understandable one to have taken, where some of the storage is external and the local planning authority wish to avoid potentially pursuing an unauthorised use around a landholding where a notice identifying only part of the holding is upheld. However, the landholding, or unit of occupation, is not the only point of analysis as to what land an enforcement notice should cover.

102. The principles of assessment as to a planning unit are well known and were stated by Bridge J in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. Where the unit of occupation has one primary use and other activities are incidental or ancillary to it, that will be the planning unit. Where a unit of occupation is put to two or more activities and it is not possible to say that one is incidental to another, that would be another type of planning unit, and appears to have been the category considered by the Council to be applicable when issuing the notice. Here, however, I think that Bridge J's third category arises. This is where the unit of occupation comprises two or more physically distinct 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.

103. Whilst there has been some overspill of the business's storage and maintenance activities into the surrounding fields, evidenced by some of the photographs supplied by the Rule 6 party, the evidence before me does not support this overspill having taken place to such an extent as to disturb the principal agricultural use of those fields. Likewise the residential dwelling, apart from the initial part of the access road which is shared by all uses. Whilst the barn and yard area are partly in an agricultural use, for the storage of hay, it does not follow that the fields are partly in the identified business uses (or in a residential use).

104. I accept that there is not a complete functional separation, because the buildings and yard continue to some extent to serve the surrounding agricultural land. But as a question of fact and degree I do not consider the whole farm to be a single planning unit in a mixed use. It appears to me to comprise three different and physically distinct units, of which only one constitutes the mixed use as alleged. The area over which the alleged mixed use has been taking place coincides with the plans submitted with the 2019 lawful development certificate application and appended to the appellants' statement of case in these proceedings (Drawing Nos 8850-100B, location plan, and 8850-101, site plan).

105. I therefore find that, akin to an appeal on ground (b) having been made, the matters alleged in the notice have not occurred on the remainder of the land. I also find that the residential element of the mix needs to be removed from the description of the alleged use.

Whether to grant a lawful development certificate

106. Section 177(1)(c) of the 1990 Act confers a discretion to issue a lawful development certificate under section 191 where determining that an existing use of land was lawful on the date on which the appeal was made. The ground (d) appeal relates to the date the enforcement notice was issued, rather than the subsequent date of the appeal, but there is no suggestion by any party that anything had changed on the site between those dates.

107. It is a discretion, not a duty, and not usually exercised except at the appellant's specific request. The consequences may include the ground (a) fee not being refundable. Here I am invited by the appellants to consider granting a certificate.

108. Although I am conscious that some potentially relevant information has been withheld, for the reasons given above I do not think that this withholding gives rise to any inferences adverse to the appellants. In the interests of certainty I think it an appropriate case to exercise my discretion to grant a certificate, as well as quashing the notice.

109. One question raised in my opening remarks to the Inquiry was whether the use alleged in the notice was sufficiently particularised for the purposes of any certificate. I have set out above why the description of the use will be amended to expressly include the agricultural contracting element of the mix and to remove the residential element. For the reasons set out above (and at the suggestion of each of the main parties) the land affected will be redrawn to reflect the 'red line' of the 2019 application plans, and specifically the location plan given its purpose of identifying the land to which the certificate relates. The certificate I shall grant will thus mirror the corrected enforcement notice.

110. It may be wondered why I am correcting the notice only to quash it. It is my duty to get the notice in order wherever possible, whatever the outcome, and it also gives certainty in relation to disposing of the other grounds of appeal.

Other grounds

111. It follows that the appeal on ground (a) and the appeals on ground (g) do not fall to be considered.

Conclusion

112. From the evidence at the Inquiry I conclude that the allegation of the mixed use in the notice is incorrect, in that it both includes an allegation of residential use and excludes express reference to agricultural and groundworks contracting. It is also clear to me that the plan attached to the enforcement notice is incorrect, in that it includes areas of land in respectively residential and agricultural uses that do not fall within the same planning unit as the area within which the mixed use, against which the notice is directed, is located. Accordingly, the appeals should succeed on ground (b) to this extent. I shall correct the allegation in the notice and the extent of the land affected thereby to reflect this.

113. As to the appeals on ground (d) I conclude on the balance of probabilities that the material change of use alleged in in the notice (as corrected) took place more than 10 years prior to the issue of the enforcement notice (and, for the avoidance of doubt, more than 10 years prior to the issue of the 2019 enforcement notice), and there has been no material change of use in the intervening period, and that the time for issue of the enforcement notice set out in section 171B(3) of the 1990 Act as amended has therefore expired. Accordingly the appeals succeed on ground (d).

114. In view of the success on legal grounds, the appeal on ground (a) and those on ground (g) set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

115. Furthermore I conclude that it is appropriate to exercise the power available to me under section 177(1)(c) of the 1990 Act as amended to issue a certificate of lawful use or development under section 191 of the 1990 Act as substituted by section 10 of and paragraph 24(1)(b) of Schedule 7 to the Planning and Compensation Act 1991.

Formal Decisions

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

(i) Deleting the text to paragraph 3 of the notice and substituting it with:

Without the benefit of planning permission, the unauthorised material change of use of agricultural use to a mixed use of agriculture and:

(a) Vehicle/equipment storage in connection with a plant hire and construction business;

(b) Construction/construction-related materials storage (new and reclaimed); and

(c) Agricultural and groundworks contracting.

(ii) Deleting the plan attached to the notice and substituting it with drawing no 8850-100 rev B.

117. Subject to these corrections the appeals are allowed and the enforcement notice is quashed.

118. Attached to this decision is a certificate of lawful use or development, issued in accordance with the powers under section 177(1)(c) of the 1990 Act as amended, in respect of the use.

Laura Renaudon

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 August 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action may have been taken (because the time for enforcement action had expired) and the use did not contravene any of the requirements of any enforcement notice then in force.

Signed

Laura Renaudon

Inspector

Date: 23 February 2022
Reference: APP/H1840/C/20/3257219 and APP/H1840/C/20/3257220

First Schedule

A mixed use of agriculture and:

(a) Vehicle/equipment storage in connection with a plant hire and construction business;

(b) Construction/construction-related materials storage (new and reclaimed); and

(c) Agricultural and groundworks contracting.

Second Schedule

Land at Woodlands Farm North Littleton WR11 8QP delineated in red on Stansgate Planning drawing number 8850-100 rev B, 'Location Plan' dated 08/2019 at scale 1:2500 @ A4

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

APPEARANCES

FOR THE APPELLANTS

Scott Stemp, of Counsel	instructed by Keith Williams of Stansgate
He called:	
Christopher Albutt	
Daniel Albutt	
Natalie Jameson	
Stuart Homer	
Keith Williams DipTP DipProjMan MRTPI MRICS of Stansgate Planning	

FOR THE LOCAL PLANNING AUTHORITY

Christian Hawley, of Counsel	instructed by the District Solicitor
He called:	
Aaron Black BSc (Hons)	Planning Enforcement Officer
Gareth Jones ONC MIHE	Development Control Engineer (Worcs CC)
Gavin Greenhow BA MA MRTPI	Planning Officer

FOR THE RULE 6 PARTY

Basil Sawczuk Dip Arch

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Appellants' opening statement
2. Council's opening statement
3. Rule 6 party's opening statement
4. Letter from Rule 6 party to Council dated 11 July 2011 (submitted by appellants on 10 November 2021).
5. Rule 6 party's closing statement
6. Council's closing statement
7. Appellants' closing statement
8. Costs application by Rule 6 party
9. Appellants' response to costs application