



Appeal Decisions

Inquiry held on 8 and 9 February and 9 March 2022

Site visit made on 11 and 25 February 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal A Ref: APP/K1128/C/21/3268326 and

Appeal B Ref: APP/K1128/C/21/3268328

Gerston Point, West Alvington, Kingsbridge TQ7 3BA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Sean Thomas (Appeal A) and Mrs Suzanne Thomas (Appeal B) against an enforcement notice issued by South Hams District Council.
- The notice was issued on 18 December 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use for agriculture to garden domestic use together with associated engineering works for installation of a skate bowl, tennis court, carport and storage building for domestic use.
- The requirements of the notice are to:
 - (i) Cease the use of any part of the Land as a garden or for domestic purposes;
 - (ii) Remove the skate bowl and all resulting debris from the land;
 - (iii) Remove the tennis court and all resulting debris from the land;
 - (iv) Remove the car port and storage building, including foundations and adjacent hardstanding and all resulting debris from the Land;
 - (v) Reinstate the Land to agricultural use by removing the banked earthworks used to facilitate the garden use and reinstate the ground levels to the original sloping field levels;
- The periods for compliance with the requirements are:
 - (i) to cease the use of the Land for domestic use within 6 months of the date Notice takes effect;
 - (ii) to complete the works to remove the unauthorised works integral to the unauthorised use as specified in paragraphs 5 (ii)- (iv) within 6 months of the date this Notice takes effect;
 - (iii) to complete the works to reinstate the Land within 9 months of the date this Notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B brought by Mrs Suzanne Thomas (3268328) is also proceeding on the ground set out in section 174(2)(a) of the Act and an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

1. It is directed that the enforcement notice is corrected by:

The insertion within section 3 (the alleged breach of planning control) of the words "and the erection of a" after "tennis court"; and

Deleting the existing requirement (v) at section 5 of the notice and its replacement with "(v) reinstate the land to the levels prior to the construction

of the skate bowl, tennis court, carport and storage building which, for the benefit of any doubt, allows for the retention of the Devon hedge-bank along the south-west boundary of the site.”

2. Subject to the corrections Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land from use for agriculture to garden domestic use together with associated engineering works for installation of a skate bowl, tennis court, and the erection of a carport and storage building for domestic use at Gerston Point, West Alvington, Kingsbridge TQ7 3BA as shown on the plan attached to the notice and subject to the conditions set out in the schedule at the end of this decision.
3. Appeal A is dismissed.

Applications for costs

4. An application for costs was made by Mr Sean Thomas and Mrs Suzanne Thomas, against South Hams District Council. This application is the subject of a separate Decision.

Preliminary Matters

Procedures

5. The inquiry sat ‘virtually’ via ‘MS Teams’ for 3 days but I allowed for closing submissions and costs applications to be made in writing after the third day, subject to an agreed timetable. The Council made all documents available for public viewing on their website.
6. A proposed planning obligation was also discussed on the third day of the inquiry and it was agreed that some changes would be necessary if it was to be taken into consideration. The time-table was not adhered to but rather than proceed to a decision without it, given the reliance given to it by the appellants, I allowed further time for its completion. The planning obligation was not executed until 6 May. I closed the inquiry on 9 May.
7. I carried out 2 site visits. At the first I was not accompanied by anybody and looked at the site itself as well as viewing it from positions within the surrounding countryside. The second visit was undertaken from the river, on a boat with the assistance of the Harbourmaster and I was accompanied by representatives from both the Council and the appellants.
8. At the inquiry, all evidence was affirmed.

Wording of the notice

9. After the 2nd day of the inquiry, I issued 2 inquiry notes to the parties. The first related to site visit arrangements. The second raised some matters that concerned the form of the notice and how it should be interpreted.
10. My concerns about the notice relate to what appeared to be a change in stance by the Council regarding the allegation and what the notice requires. This followed the evidence that I heard from the Council’s witnesses.

11. The alleged unauthorised development as stated on the notice and in the header above, relates to a material change of use of the land to "garden domestic use". However, in evidence, consistent with reports of planning officers dealing with the previous planning applications and this enforcement case, the Council accepts that the use of the land for residential or domestic garden would be acceptable. It is the way in which this has been undertaken that the Council considers is problematic.
12. The Council proposed alternative wording. This is expressed as a material change of use of the land to "use as a skate bowl, tennis court and for a carport/storage building together with associated engineering works for their installation". That in my view would be problematic and raises new issues which neither main party has necessarily had an adequate opportunity to consider. The Council was not suggesting that this change was necessary, merely that it would be an alternative way for me to consider the allegation.
13. My concerns on this matter did not suggest a wholesale change to the way in which the allegation was worded, rather I requested clarification of the purpose of the notice and also its requirements. At the start of the inquiry the Council confirmed that with respect to s173(4)(a) of the Act, the purpose was to restore the land to its condition before the breach took place. The Council confirms that this remains the purpose.
14. The Council has also clarified that they consider the 'Devon bank' defining the south-western boundary of the appeal site was formed prior to the material change of use as alleged taking place. This is therefore consistent with the Council's argument that the change of use as alleged did not take place until after a period where the land had been used for mixed-use purposes as a depot of building materials and equipment as well as some domestic activity. In that context, the Council confirm that it is not and was not when they issued the notice, their intention for requirement (v) as set out above to seek the removal of the 'Devon Bank'. In this respect, they have suggested that I correct requirement at 5(v). Their suggestion is that I refer to the land levels that existed before 1 March 2015. The appellants also agree that it is necessary to clarify that the Devon Bank is not required to be removed.
15. There is no dispute that the land within the appeal site was part of the adjoining field and used for agriculture prior to the appellants taking ownership of the original dwelling at Gerston Point in April 2011. The Devon bank is constructed of earth that has been mounded and top-planted. This provides an enclosure of the boundary of the site that runs from the north-west down close to its southern tip of the roughly triangular shaped appeal site.
16. The evidence from the appellants in the form of photographs, with dates not disputed by the Council, show that work was undertaken to construct the Devon bank between February 2014 to May 2014. It is also not disputed that it was not until after the appellants' formal acquisition of the appeal site in March 2015 that any building work commenced towards the skate bowl, tennis court, carport and storage building. The photographs submitted in evidence, along with the previous planning application drawings, show the level of the land prior to their construction. This includes a cross-section. I therefore consider that a correction of the requirements to return the land to its condition prior to the construction of the skate bowl, tennis court, carport and storage building would be reasonable and sufficiently precise. Furthermore, it would be

more accurate to refer to the 'erection' of the carport and storage building as those elements of the allegation are buildings rather than engineering operations.

17. It is also agreed by the main parties, that the requirement to "reinstate the land to agriculture" at 5(v) is unnecessary. It would have the effect of positively requiring a use to take place whereas an enforcement notice can only require a use to cease. Furthermore, s57(4) of the Act confirms that planning permission is not required for use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out. Agricultural use also would not require planning permission by reason of s55(2)(e).
18. These corrections would not cause injustice to the Council or the appellants. I can therefore use my broad powers as allowed for by s176(1)(a) of the Act.

Other validity issues

19. The appellants argue that the notice should not have been issued in this form at all because they suggest that it is aimed at enforcing against operational development which is beyond the time limit for taking enforcement action as set out in s171B(1). The appellants submit that the circumstances of this case are such that I should consider a 4-year time limit with respect to the appeal under ground (d). However, it is well established that operational development that may, in its own right, have achieved immunity from enforcement by virtue of s171B(1) can be required to be removed where it is integral to and part and parcel of an unauthorised material change of use. I deal with further arguments made on this point under ground (d), but it is for the Council to decide what to take enforcement action against, subject to the test of expediency. This is not a matter for consideration by an Inspector in an appeal against an enforcement notice. Such arguments may also relate to the appeals under ground (f) because at that point it is necessary to consider whether the steps required by the notice exceed what is necessary to achieve its purpose. Given the decisions that I have made, it has been unnecessary to go further and consider ground (f).

The Appeals on ground (e)

20. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. Section 172(2) in particular requires that a copy of an enforcement notice shall be served: (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
21. The appellants' adult children were not served with copies of the notice and that is undisputed. However, when Mrs Thomas gave evidence, she confirmed that her children were aware of the notices and that the matter was discussed with them. Even if they did not themselves lodge appeals, the appellants' children could have appeared at the inquiry to put forward their own views about the implications if the notice is upheld like any other interested party. Furthermore, it is reasonable in my view to consider that the appellants as parents (who in turn have been professionally advised) would represent their children's best interests both in terms of explaining the implications of the

notice, explaining that they could engage with the process should they wish to do so and also in making representations on behalf of the whole family.

22. The appellants have not adequately explained why the lack of service upon those individuals resulted in them suffering any prejudice let alone any substantial prejudice. As such, in accordance with s176(5) of the Act I disregard the lack of service on those individuals.

23. The appeal on ground (e) fails.

The Appeal on ground (d)

24. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development.

25. The appellants suggest that a 4 year time-limit is applicable. Their proposition for this relates to the interpretation of *William Newland v SOS and Waverley Borough Council* [2008] EWHC 3132 (Admin). I am therefore being asked to consider a 4 year period of immunity with respect to s171B(2) which was relevant in the *William Newland* case because it involved the change of use of a building to use as a single dwellinghouse. In the present case however, the erection of the new dwellinghouse benefitted from planning permission and did not involve a change of use of a building to use as a dwellinghouse.

26. Even if the appeal site is considered as being within the same curtilage of the dwellinghouse, the act of development involved was a material change in use and not the change of use of a building. Section 171B(2) cannot apply.

27. The allegation as set out relates to a material change of use of the land to "garden domestic use". As such, the time-limit for taking enforcement action as set out within s171B(3) is 10 years. The appellants had no interest in the adjoining dwelling or the appeal site until, at the earliest, April 2011 when according to Mrs Thomas the family began to use the house and adjoining land. The notice was issued on 18 December 2020 and therefore a material change of use of the land would have to have been commenced by 18 December 2010 for a claim of 10 years to succeed. On the basis of these facts, an appeal on this ground could not succeed.

28. The appeal on ground (d) therefore fails.

Appeal B on Ground (a) and the deemed planning application

29. Under this ground of appeal, planning permission is sought for what is alleged on the notice. The terms of the deemed application for planning permission are therefore limited to the breaches of planning control as corrected. I can consider whether the whole or any part of those matters are acceptable on their planning merits.

Main issue

30. At the start of the inquiry, I set out what I saw the main issues to be in relation to this ground of appeal. It was agreed that the first main issue is:

- The effect of the development upon the character and appearance of the countryside having particular regard to the natural beauty of South Devon Area of Outstanding Natural Beauty (AONB).

31. I had also identified a further possible main issue but in the light of my findings on the main issue above, that required no further consideration.

Reasons

32. The appeal site is a roughly triangular area of land which adjoins the long establish residential property of Gerston Point which is a large, detached, contemporary dwellinghouse on the western side of the Kingsbridge Estuary. The site is bounded by a planted bank along its south-western side and contains some areas for informal recreation as well as a more formalised and sculpted area containing the skate-board 'bowl' and a tennis court within a modern mesh fence. Just to the north of the tennis court is the substantial outbuilding used as a car-port and store.
33. This is a predominantly agricultural area in an attractive rural setting on the margin between open fields and the estuary. The modern, replacement dwelling is within a levelled part of the appellants' land which adjoins the appeal site and which then slopes down to the estuary. Towards the inter-tidal area there are mature trees as there are higher up including on the older bank that defined the original garden of the dwelling. A Tree Preservation Order (TPO) is in place relating to some of the trees. This mature landscaping helps to provide a backdrop to the dwelling which is nestled within this setting.
34. The AONB Management Plan as referred to within the appellants' Landscape and Visual Impact Appraisal (LVIA), refers to the area being a good example of the estuarine landscape character which contributed to the reason for the AONB designation. The South Devon Landscape Character Assessment (SDLCA) designates the site as being within the river valley slopes and combes. The description quoted within the LVIA from the SDLCA hits the nail on the head in terms of the characteristics of what I could see and what has been explained to me. This is: *"a pastoral landscape of fields defined by species-rich Devon hedges with more hedgerow trees on the lower slopes. It is a landscape of rounded hills and steep undulating slopes with deciduous and mixed woodland on the fringes of estuaries, emphasising the landform. Development is limited outside of settlements and what does exist is associated with agriculture and some tourism."* I would however add to this because as well as agriculture and tourism related developments, there are some individual scattered dwellings separate from farms and settlements albeit these are not commonplace.
35. Local Plan¹ (LP) Policy DEV25 relates to nationally protected landscapes including the South Devon AONB it requires great weight to be given to conserving landscape and scenic beauty in such protected landscapes. The area is also subject to another designation, 'undeveloped coast' to which LP Policy DEV24 applies. The AONB management plan also refers to the undeveloped coast part of the South Devon AONB as one of the special qualities that define the unique natural beauty for which the area is designated as a nationally important protected landscape.
36. There is a lot of agreement between the main parties' landscape experts who gave evidence to the inquiry. Mr Wadsworth for the Council agrees with the methodology of the appellants' landscape work contained within the LVIA and that it sufficiently complies with the Guidelines for Landscape and Visual

¹ Plymouth and South West Devon Joint Local Plan, 2014 - 2023

Assessment (3rd Edition)². The difference of agreement relates to the professional judgements made within the LVIA and therefore Mr Bunn's supporting evidence for the appellants.

37. I carried out extensive site visits both on land and from the estuary on a boat. I visited each of the viewpoints identified on the 'Zone of Theoretical Visibility' (ZTV) which was also agreed as extending to 2km from the appeal site. One of the viewpoints is outside of the ZTV. On my route around the surrounding countryside, I did also look at the site from other locations as one would when generally travelling around. I also experienced the general ambiance of the area more generally rather than simply the visual qualities. The area is visually attractive and generally peaceful. I did hear a gentle background hum of vehicles particularly as I travelled past the site, northwards towards Kingsbridge on the river but that is not an overriding or dominant interference with the gentle serenity of the area. Some of the activity on the river which was during a working day rather than a weekend did provide the occasional spike of sound when our boat was close to kayaker but none of this affected the overall calmness of the experience.
38. The physical changes on the site that have been subject to the material change of use as alleged has an urban or suburban appearance which from consideration of the photograph evidence, is clearly very different from the previous agricultural field. The activities in terms of using the skate-bowl, tennis court and large outbuilding may seem in some respects to be very different from the agricultural activity that went before but it is not disputed that they are domestic and ancillary to the use of the appellants' dwelling.
39. The physical changes within the site are substantial and obvious when viewed in the immediate vicinity. The LVIA and the counter-analysis by Mr Wadsworth has assessed the effects and significance of the changes in the broader landscape. The analysis does not concentrate on the impacts from close to the appeal site as it is not publicly accessible, but the site is seen by visitors to the house and the adjoining landowner and anybody involved in the adjoining agricultural use.
40. On approach from the west, along the track which serves the fields and Gerston Point itself, the ground levels of the site drop away substantially towards the estuary. The skate-bowl has the appearance of being dug into the ground due to the earth having been mounded around it and grassed-over and cannot be seen from the track. It is possible to see the top of the tennis court net from this direction although that is viewed against the backdrop of the dwelling as is much of the detached outbuilding which does not protrude significantly above the flat roof of the modern dwelling which is between it and the estuary. There are large trees to the immediate north-east of the outbuilding including a large Monterrey Pine shown on the TPO plan. This and other trees provide a backdrop to the building. The planting on top of the 'Devon bank' provides a foreground, breaking up the views of the site from the south and south-west. The solar panels on the roof of the building however are clearly seen from the west on approaching the site. The lack of public access and views from this direction limit the significance of any impacts.
41. The position of the site on land that slopes down generally to the estuary east or south-east does mean that, particularly with the addition of the Devon bank,

² As published by the Landscape Institute and Institute of Environmental Management and Assessment

the site is not prominently seen from the viewpoints to the east and south-east, within the ZTV. I also stopped at other points when I carried out my land-ward site visit and found the site was difficult to distinguish from the surrounding countryside when seen from this direction. The network of rolling hills with boundary features such as mature trees and hedgerows interrupt views towards the site even at a time of year when much of the deciduous tree and hedge landscape features were devoid of leaf-cover.

42. When viewed from land to the south and in particular the public footpath that leads from the car-park serving Snapes Point (viewpoint 2, Mr Bunn's Appendix 3, 'figure document') I could see the outbuilding distinct from other development within the appeal site. From this direction, the new dwelling is partly obscured by various landscape features around it and on the intervening land. The southern elevation of the outbuilding and the roof however protrude above the landscape features. Even though I knew where the tennis court and skate-bowl are located, I could not distinguish them when I walked along this footpath. What can be seen is the regular shape and light-greyish/brown hue of the roof of the timber-clad building which is emphasised by the glistening solar panels. This is in particular contrast to the hedge along the crest of the hillside which together with large tree form a linear, dark feature graduating down to the east but which is interrupted by the roof of the outbuilding. The southern elevation of the building is also visible but with the timber appearing grey having weathered, is a similar hue to the tone of the surrounding trees that were not in leaf at the time of my visit. The outbuilding has intervened into the rural scene when seen from this direction with a degree of detachment from the dwelling.
43. On my first visit I viewed the site from the foreshore of the estuary at a time when the tide was out sufficiently for me to walk around to the south of the appeal site. From that position there was very little of the development that I could see. Similarly, it was difficult to see any aspects of the development from the north-east of the site when standing on the foreshore. Generally, from this position, the rising land and the surrounding trees within the site and around the margins of the site mean that the site is not at all prominent. Furthermore, the modern dwelling shields views relative to the appeal site.
44. When I viewed from the estuary, on the harbour-master's boat, I was higher than when viewing previously from the foreshore given level of the tidal water. From the south of the peninsula occupied of the dwelling, the outbuilding could be seen through the trees. This is also apparent in Mr Bunn's photographs from viewpoints 1c and 1d (Mr Bunn's Appendix 3, 'figure document') where the roofslope is also emphasised by the reflection from the solar panels. Some views of these positions may be transitory but it is from the perspective of people moving slowly on the river in pleasure craft or even those passing the site for other reasons are not moving as fast as, for example, vehicles would along a road. Some of the people within craft passing the site may be in the process of navigating but passengers or even those within kayaks and other similar pleasure craft will be moving slowly and soaking-up the general tranquillity and pleasantness of the rural scene.
45. From viewpoints considered within the LVIA to the north and north-east of the site (viewpoints 5 and 6, Mr Bunn's Appendix 3), the outbuilding can be seen as a general vague shape although not prominently, being interrupted by the hedge-line and trees and also from lower vantage points, with the background

of hillsides behind. From viewpoint 5 of Mr Bunn's appendix 3, I could just see the ridgeline and northern elevation of the building above the slope of the hillside of the peninsular. Having seen the outbuilding at close quarters, I could understand the context and what I was noticing from this direction were the upper part of the northern elevation of the building which is clad in timber which again is weathered and is of a grey-brown hue similar to surrounding trees.

46. The primarily sloping roof and solar panels on the outbuilding introduce technical elements, as expressed within the LVIA and the building has extended the domestic features into previously undeveloped countryside but this is only noticeable to a limited extent. From the south, the roof-slope stands out amongst the darker background of landscape features including the hedgeline that follows the crest of the hillside downward from west to the east and the large trees in the background. Otherwise, the building has a degree of utilitarian character being of simple design, constructed of timber. This is not in the context of a farmstead within a complex of buildings which is more typical within the surrounding area but the timber cladding has a subtle greyish tone which generally visually blends with the surrounding trees.
47. The tennis court as well as the fence around it and the skate-bowl are barely noticeable and in my view are not therefore harmful in landscape or in visual impact terms in their present form. From the evidence provided the activity of using the land as domestic garden connected with the adjoining single family dwellinghouse is unlikely to cause any significant visual impacts or impacts upon the tranquillity of the area. The building does have an adverse impact on the landscape and visual qualities of the area. This is limited however to its upper parts, in particular the roof with solar panels sloping towards the south.
48. At the inquiry, planning conditions were discussed to reduce the impact that the outbuilding currently causes. Paragraph 55 of the National Planning Policy Framework (Framework) advises that it is necessary to consider whether otherwise unacceptable development could be made acceptable through the imposition of planning conditions.
49. In my view, the removal of the stark, technical feature of the solar panels would substantially reduce the impact of the building. These are positioned on top of the corrugated roofing material which has a light-grey hue where it can currently be seen around the edges of the solar panels. As well as the removal of the solar panels a planning condition could also require the submission of a scheme to reduce the contrast of the roof against the darker landscape features so that it would more harmoniously blend with the linear feature of the hedge and large tree that provides a backdrop to the site. The conditions as suggested refer to the painting of the roof surface although by phrasing the condition more generally would allow for the Council and appellant to reach an agreement about the best way to achieve this toning down of the roof.
50. A planning condition regarding landscape management was also suggested although in order to manage landscaping, it would also be necessary to survey the existing landscaping features in detail. Although there was much discussion at the inquiry on further planting outside of the site (I return to this below when considering the planning obligation) I also consider that there is scope to consider supplemental planting within and on the boundary of the site itself which Mr Wadsworth has referred to. By protecting the existing planting

on the site, particularly that along the Devon bank along with some additional planting to the south and west of the large outbuilding, along with the changes to the building as set out above, the building would appear less obviously domestic and more akin to some of the more utilitarian farm buildings in the area. The residual effects of the development would then be reduced to such an extent as to be negligible in my view.

51. In terms of other experiential effects as a result of the development, the change of use of the land involves an integral connection of activity with the adjoining dwelling and will be heard in that context. Although the dwelling is rather out on a limb on the peninsular, there will be noise created from activity within the pre-existing garden and also from the use of the slipway leading down to the fore-shore which is part of the property owned by the appellants since before the unauthorised development took place. From the information provided, I consider that the use of the skate-bowl and tennis court for purposes ancillary to the wider use of the garden are unlikely to lead to any significant additional use or activities that would harm how the wider AONB is experienced.
52. In relation to the main issue, with these conditions, the development would not have a harmful effect upon the character and appearance of the countryside and would conserve the landscape and scenic beauty of AONB. This would therefore comply with LP Policy DEV25. Furthermore, this would respect the scenic quality of the area, maintaining the sense of place and would not have a detrimental effect on the undeveloped character or tranquillity of the coast. As such, LP Policies DEV23 and DEV24 as well as the advice in the Framework would also be complied with.

Conditions

53. I have considered the suggested conditions with respect to the tests as set out within paragraph 56 of the Framework.
54. Where details need to be submitted, I have imposed the condition in a form that ensures that all of the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. This is similar to the conditions suggested by the appellants although I have combined them and revised the wording to ensure compliance with the tests. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of those matters before the development takes place. This condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable. This relates to the requirement to remove the solar panels, the re-colouring of the roof of the outbuilding and landscaping details.
55. The ecological appraisal provided in relation to the outbuilding, dated March 2020, indicates that during the summer and autumn of 2019, Brown or Grey Long Eared Bats had been using the building. Birds also appear to use the building, possibly House Sparrows as well as Swallows which are both Birds of Conservation Concern. The appraisal provided indicates however that emergence surveys would be required during the late spring to early summer

to confirm whether the mezzanine area is a bat roost or not. The condition requiring the submission of details for the alterations to the roof of the outbuilding would allow for further studies to be factored into the time-table for implementation, to undertake any intrusive work outside of the bird nesting season and also for the possible requirement for licensing from Natural England if bat roosts are present and if they would be affected by the work.

56. The Council has suggested a planning condition to remove permitted development rights as set out in the GPDO³. As a matter of principle, it would only be reasonable to impose such a condition to the appeal site which defines the scope of the deemed planning application and which relates therefore to the development being permitted. In my view, the appeal site is a single planning unit with the dwelling at Gerston Point. The term 'curtilage' however is not the same as 'planning unit'. It has been generally held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel with the building. It is primarily a matter of fact and degree for the decision maker to decide what weight should be given to each of the relevant factors which are, (i) the physical layout of the building and land; (ii) ownership past and present; and (iii) use or function past and present. In my judgement, it is reasonable to consider that the appeal site which is closely related to the dwelling forming part and parcel with it, which was subject to a change of use for domestic purposes at around the time the building was being constructed and since which time it has been owned by the occupiers of the dwelling, is part of the curtilage of the dwellinghouse (along with the original garden). As such, permitted development rights could be utilised but the Framework at paragraph 54 states that conditions restricting such rights should not be used unless there is clear justification.
57. I agree that some developments that can normally be undertaken under permitted development rights within the curtilage of dwellinghouses, could be the cause of potential further harm with respects to the landscape and scenic beauty of the AONB. Those relating to the Schedule 2, Part 1, classes E of the GPDO, even though there are additional restrictions within Areas of Outstanding Natural Beauty, could enable the construction of further buildings and alterations. I agree therefore that it is necessary and reasonable to remove such permitted development rights apart from where it relates to the maintenance of such structures or the provision of domestic heating oil or liquid petroleum gas storage. I do not see any clear justification for removal of Part 1, class F rights which relates to hard-surfaces or those within Schedule 2, Part 2, Class A relating to minor operations such as gates, fences, walls other means of enclosure as was suggested. I do however agree with the Council's suggestion that no additional lighting within the area covered by the notice should be allowed without their agreement, because lighting would create impacts of the development within the AONB.
58. It is unnecessary to impose conditions to prevent business use of the land or the buildings. If a significant additional use for those purposes became noticeable to the extent that it altered the character of the appeal site, that would be likely to involve a material change of use requiring planning permission. As such the Council would be able to consider the expediency of taking enforcement action at that time without additional control being needed.

³ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – Article 3,

Planning obligation - landscape and ecological compensation

59. A planning obligation has been entered into by the appellants as well as the adjoining landowner. This was submitted out of choice by the appellants to cover the eventuality that I may have found landscape harm which would require further mitigation, utilising land outside of their control and also compensation for any harm which could not be mitigated.
60. Given my conclusions on the main issue, I have considered this with respect to the tests for planning obligations within paragraph 57 of the Framework. I have reached the conclusion that the development is acceptable subject to planning conditions and that there would be no impacts that would need broader mitigation or residual impacts that would need to be weighed in the balance with any compensatory measures. As such, the planning obligation is unnecessary and I have therefore not taken it into account.

Other matters

61. The solar panels may contribute to making the development and the site as a whole less reliant upon non-renewable energy sources. I do not have an overall energy statement to demonstrate the degree of benefit that this provides. The benefits of retaining the solar panels rather than removing them as I am requiring by a planning condition therefore have very little weight. The development has also resulted in a loss of agricultural land but I have no evidence about how critical this small area is for the adjoining farm.
62. These other matters do not outweigh my conclusion on the main issue and that the development subject, to the alterations and other requirements of the planning conditions I am imposing, would be in compliance with the development plan as a whole.

Conclusion

63. For the reasons given above, I conclude that whilst Appeal A is dismissed, Appeal B succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected. The success of Appeal B on this ground means that the enforcement notice will be quashed, hence no further consideration need be given to either appeal on grounds (f) and (g).

Andy Harwood
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Douglas Edwards QC
And
Mr Charles Streeten of Counsel

They called:

Mrs Suzanne Thomas	One of the appellants
Mr Mark Evans	Planning consultant
Mr Nigel Bunn	Landscape witness
Mr Tobias Paul Shaw	Solicitor for the appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gwion Lewis QC

They called:

Ms Cheryl Stansbury	Planning officer
Mr David Bate	Planning officer
Mr Stephen Wadsworth	Landscape witness

DOCUMENTS

1. Appellants' note in response to inspector's inquiry note 2
2. Council's note following inspector's inquiry note 2
3. Submissions by The South Hams Society
4. Legal authorities:
Regina (Hampshire County Council) v SOS Environment, Food and Rural Affairs, 2021;
Newland v SOS, 2008
5. Appellants suggested planning conditions
6. Council's suggested planning conditions
7. Plymouth and South West Devon, Joint Local Plan, 2014 – 2034 (Entire document)
8. Enforcement officer report (ref 014427)

Schedule of conditions:-

- 1) The use hereby permitted shall cease and all associated fixtures, structures and fittings shall be removed, within 30 days of the date of the failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within three months from the date of this decision, schemes setting out details of:
 - how the solar panels presently located on the land (on the carport and storage building) are to be removed and the resultant roof covering altered in colour and tone to reduce its landscape impact, including a timetable for its implementation; and
 - landscaping setting out all details of existing trees and hedgerows and any additional planting, including a timetable for its implementation and a schedule of landscape maintenance;shall have been submitted for written approval to the local planning authority.
 - ii) If within 11 months from the date of this decision, the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved schemes details shall be carried out and completed in accordance with the approved timetables.

Upon implementation of the approved details specified in this condition, they shall thereafter be retained and maintained in perpetuity in accordance with the above.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, classes E (or any order revoking and re-enacting that Order with or without modification), no buildings, enclosures, swimming or other pools shall be constructed, improved or altered within the area of land defined by the red-line on the enforcement notice plan.
- 3) No further external lighting shall be installed within the area of land defined by the red-line on the enforcement notice plan.