



Appeal Decisions

Site visit made on 6 July 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Appeal A Ref: APP/Q1153/C/22/3297462

Appeal B Ref: APP/Q1153/C/22/3297464

Land at Blackhill, Beaworthy, Devon EX21 5AA

The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

- Appeal A is made by Mrs Victoria Cook against an enforcement notice issued by West Devon Borough Council.
- Appeal B is made by Mr James Cook against an enforcement notice issued by West Devon Borough Council.
- The enforcement notice, numbered ENF/024051, was issued on 6 January 2022.
- The breach of planning control as alleged in the notice is without planning permission, material change of use of land from agriculture to a mixed use of agriculture, equestrian use, the keeping/breeding and sale of (racing) pigeons, siting of a mobile home unit (shown in photograph A) used for residential purposes and for the storage of a touring caravan (shown in photograph E) ("the development").
- The requirements of the notice are 1. Cease the residential use of the land, and remove the sheds, rotary clothesline and all domestic paraphernalia items from the land; 2. Remove the mobile home unit (shown in photograph A) and the touring caravan (shown in photograph E) from the land; 3. Cease the use of the land for the keeping/breeding and sale of pigeons; and 4. Cease the use of the land and timber framed building (shown in photograph B) for the keeping of horses.
- The period for compliance with the requirements is 12 months.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Appeal C Ref: APP/Q1153/C/22/3297456

Appeal D Ref: APP/Q1153/C/22/3297457

Land at Blackhill, Beaworthy, Devon EX21 5AA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C is made by Mrs Victoria Cook against an enforcement notice issued by West Devon Borough Council.
- Appeal D is made by Mr James Cook against an enforcement notice issued by West Devon Borough Council.
- The enforcement notice, numbered ENF/025041, was issued on 21 March 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a large stepped-down timber framed single storey building (shown in photograph C) in the approximate position marked X on the attached plan and the erection a smaller timber framed building (shown in photograph D) in the approximate position marked Y on the attached plan. ("the development").

- The requirements of the notice are 1. Demolish the building in the approximate position marked X on the plan (shown in photograph D) and remove the resulting materials and debris from the land; and 2. Demolish the building in the approximate position marked Y on the plan (shown in photograph D) and remove the resulting materials and debris from the land.
 - The period for compliance with the requirements is 12 months.
 - Appeal C is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
 - Appeal D is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. In respect of Appeals A and B: It is directed that the Notice is
 - the removal of the words "from agriculture" from between the words "...of use of land..." and the words "...to a mixed use..." in section 3 of the Notice, 'The matters which appear to constitute a breach of planning control'
 - the removal of the words "the sheds," between the words "...and remove" and the words "rotary clothes line..." from paragraph 1 of section 5 of the Notice, 'What you are required to do'
 - Delete paragraphs 3 and 4 of section 5 of the Notice in their entirety
2. Subject to the variations, the enforcement notice is upheld.
3. In respect of Appeals C and D: It is directed that the Notice is varied by
 - the removal of the words "(shown in photograph D)" from paragraphs 1 and 2 in section 5 of the Notice, "What you are required to do".
4. Subject to the variation the appeals are 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 erection of the stepped-down timber framed single storey building marked with an X on the Plan attached to the Notice and the smaller timber framed building marked with Y on that Plan at Land at Blackhill, Beaworthy, Devon EX21 5AA as shown on the Plan attached to the notice.

Procedural Matters

5. The appeals relate to two separate Notices that were issued in respect of developments on the same land at Beaworthy. The Appellants in both are the same. The Notice in Appeals A and B relates to an alleged material change of use of the land, ('the MCU Notice'). Appeals C and D relate to a Notice alleging operational development ('the Op Dev Notice'), namely the erection of buildings.

6. In the circumstances, it is logical to deal with the appeals in a single decision letter. However, the decisions on the MCU and Op Dev Notices are made separately.

Applications for Costs

7. Applications for costs have been made by the Appellants against the Council in respect of both Notices. These are the subjects of a separate decision.

The MCU Notice

8. The Appellants question the MCU Notice, saying that it is a nullity. Their case is made both in terms of its alleged breach of planning control and its requirements.
9. S173(1)(a) of the Act states that a Notice must state the matters which appear to the local planning authority to constitute the breach of planning control and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. S173(2) sets out that compliance with s171 depends on any recipient knowing what the matters alleged are.
10. S173(3) states that "An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes". Briefly, the purposes in s174(4) are to remedy the breach or remedy any injury to amenity. Established case law¹ sets out that the recipient of a Notice is entitled to know, from within the four corners of the document, what he is required to do or abstain from doing.
11. As the Notice contains all of the information required by s173, it is not a nullity. However, this is different from an assessment of validity. Should a Notice be held to be invalid, it may be capable of correction or variation by the Secretary of State using the powers in s176. The proviso is that this can only be done where it does not cause injustice. Where a Notice is invalid and cannot be altered without injustice, it should be quashed.
12. Some of the case put forward by the Appellants in respect of the terms of the Notice is referred to in their various grounds of appeal and I shall address them there.
13. The Council acted correctly to include reference to agriculture in the mixture of uses that is alleged in the MCU Notice. Established case law sets out that all components of the mixed use that is alleged should be included, even if not all are required to cease.
14. The Council was correct to refer to policies from the development plan in its reasons for issuing the notice. Although it is said that the Council was aware that the appeal would largely revolve around a Ground (d) appeal, in which policies play no part, it could not be sure that this would be the case. In any event, there is a requirement to justify its reasons with reference to relevant development plan policies.
15. The Appellants say that the land had not been in agricultural use for some 20 years and that the Council has just assumed this to be the case before the

¹ Miller-Mead v MHLG [1963] 2 WLR 225

alleged change of use took place. Although it can be of assistance, there is no requirement for the existing use of land to be identified in a Notice. As such, the matter can be easily addressed through the deletion of the words "from agricultural use" from the alleged breach in section 3 of the Notice. This would not cause injustice to either party.

16. It is reasonable for the Council to include a requirement to remove items that facilitate the change of use that is alleged. However, in respect of the sheds in the first requirement, it is incumbent upon it to identify which sheds it refers to. This has not been done. However, this does not render the Notice a nullity. It is something that does, however, put the Appellants at a disadvantage. This is easily corrected through the removal of the sheds from the first requirement. In respect of the domestic paraphernalia, however, it would not be reasonable to expect the Council to identify each item individually and I will make no alteration there.

Reasons

17. The land that is the subject of all of the appeals lies in the open countryside. It is served by a minor lane that links the settlements of Beaworthy and Halwill Junction. It comprises a large, gently sloping field that is bounded by mature hedgerows. The field is accessed from the minor lane via a gateway at its northwest corner. The buildings and caravans referred to in the Notices are found close to this access.
18. When I visited, a touring caravan was parked just inside the gateway. Nearby, alongside the hedge onto the public road, was a timber building comprising a loose box at either end flanking a central access and storage area, a timber building housing pigeons and a metal shed. A short distance away from the hedge was a static caravan and other small sheds. Various domestic items, including a table and chairs and a trampoline were sited in close proximity to the static caravan.
19. A long, low timber building used to accommodate pigeons was alongside the hedge that forms the southwest border of the site. The remainder of the field is loosely separated from this development by a post and tape 'fence', beyond which horses were grazing.

Ground (c)

20. An appeal under ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. It is a legal ground of appeal where it is for the Appellants to prove their case on the balance of probability.
21. Part of the case put forward is that the temporary residential use of the land falls to be considered under Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO'). The permitted development (PD) in this Class is "The use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2."
22. The Appellants set out, in their Final Comments, that as the Council made no reference to the Ground (c) case in its submission, it is "effectively unchallenged". Be that as it may, I still have to assess the submissions and the onus lies with the Appellants to make their case.

23. Paragraph A.2 provides an interpretation of Class A. It sets out that the 'circumstances' in the Class are those specified in paragraphs 2-10 of Schedule 1 of the Caravan Sites and Development Act 1960 (the '1960 Act'). These are the circumstances where a caravan site licence, and by extension planning permission, is not required.
24. The Appellants do not specify which of the paragraphs they refer to. However, they do refer to temporary use and seasonal tasks, including "hay making, extensive work to fertilise the ground by hand, maintenance of the hedgerows and also lawful building and engineering works which have included those necessary for the maintenance of existing facilities on site, such as buildings and means of enclosure".
25. My reading of the Schedule is that the Appellants might only reasonably be referring to the exemptions in paragraphs 3, 7, 8 and 9 of the Schedule. All allow for temporary use of land for the siting of a caravan.
26. Paragraph 3 allows for the use of land for the stationing of a mobile home on the land if its use for the purposes of human habitation did not exceed 28 days in a 12-month period. It is for the Appellants to prove their case in this regard, and they have not presented evidence to make this case.
27. Paragraph 7 refers to agricultural workers, and some of the activities the Appellants refer to might well be described as being agricultural. However, as they categorically state that the land has not, and is not, being used for agriculture, this PD right cannot apply. Given that none of the activities that they refer to are, reasonably speaking, related to forestry, nor is it anywhere claimed that the land is used for this purpose, the PD right in paragraph 8 does not apply either.
28. Paragraph 9 relates to 'Building and engineering sites' and allows for the use of land as a caravan site which forms part of, or adjoins, land on which building or engineering operations are being carried out if that use is for the accommodation of a person or persons employed in connection with those operations. I have not been provided with evidence to show that the occupants of the caravan were involved in such operations.
29. Furthermore, the operations carried out on a building site, or an engineering site for that matter, are by their nature transitory and temporary. The Appellants refer only to building and engineering works "for the maintenance of existing facilities on site". Maintenance equates to on-going works, rather than for works that are discrete in place and time, which is what the Schedule of the 1960 Act allows. Thus, paragraph 9 rights cannot be relied on.
30. In their response to a Planning Contravention Notice (PCN) that was signed and dated 18 August 2021, the Appellants state that "we are still staying at the land". In an informative at the end of their PCN response, they say "We are preparing a planning application for...our residential presence on the land". Furthermore, in the section of their Statement of Case for the Op Dev appeal entitled 'Travel Statement' they state, with reference to the site that "the family are currently staying" there. To my mind, this is more than an incidental use of the mobile home. Thus, I find on the balance of probabilities that the allegation of the residential use of the mobile home was correct.

31. The Appellants have not made their case, on the balance of probability, and, for the reasons given, the Ground (c) fails.

Ground (d)

32. An appeal under this ground is that, at the date when the Notice was issued, no enforcement action could be taken in respect of the breach of planning control it alleges. This is another legal ground where the onus lies with the Appellants to make their case on the balance of probabilities.
33. The time limits to acquire immunity from enforcement action, are set out in s171B(3) of the Act. For the use alleged in the Notice, the period to be proven is ten years (the 'relevant period'). Therefore, it is incumbent on the Appellant to demonstrate that the use of the land commenced on or before 21 March 2012, (the 'relevant date'), and that this ran continuously for a ten-year period prior to the date that the Notice was issued and was not lost thereafter.
34. The evidence shows that the Appellants bought the land in 2001. Their position is that there has been no agricultural use on it for some 20 years; it has, they say, a lawful mixed use but not that which is set out in the Notice.
35. They do not, however, make a case in respect of the use of the land for the siting of the static caravan for residential purposes.
36. The principal piece of evidence brought forward by the Appellants to back up the claims in their Statement of Case (SoC) are sworn statements. There are two of these, one from each of the Appellants, and they are essentially identical. I attribute significant weight to these.

Equestrian

37. The Appellants say that they first brought horses to the site some 20 years ago where they have been kept, exercised and ridden continuously since then. Associated with this use, the timber stable building was erected "circa 2004". This equestrian use, they say, has been undertaken by themselves, their family and friends.
38. In support of these contentions, a number of third-party comments have been submitted. Amongst these are letters from the Practice Manager of the North Park Veterinary Group Limited and a vet from Penbode Equine Vets. They say that their practices attended horses in the stables and field between 2005 and 2009, in the case of the former, and 2009 to the present, in the case of the latter.
39. Other third-party representations submitted seem to have originally been made in support of an application for a certificate of lawfulness for existing use of land as agricultural leisure/equestrian, a pigeon keeping business and for the storage of a touring caravan, (Council reference 0652/22/CLE – the 'certificate application'). To protect privacy, I shall refer to the authors of these pieces of correspondence by their initials.
40. PG first visited the site some 15 years ago when, he says, the stables were already erected. NM says that the land has been used for the recreational keeping and riding of horses since 2006. They say they have ridden there and

helped maintain the land since then, have made hay on the land for horse feed, and that the stables have always been there during that time.

41. DL is the Appellants' farrier. He has been caring for their horses for 17 years, visiting, on average, every 6 weeks. Mr and Mrs T say that Mrs Cook brought a horse to the land in 2004, where it was kept. Lastly, NT is a relative of the Appellants and says that the stable has been there since 2005 and horses have been kept and ridden on the land since they bought it in the early 2000s.
42. The Council has appended the Officer report into the certificate application to its SoC. It refers to 6 letters that were received from third parties who raised 'objections/comments' to the application. On the question of the equestrian use of the land, one said that this began in 2009, another said that none of the uses began until recent months, one that the use has been occurring for 9 years and the other that the stables and horses have been on the land for in excess of 10 years. I was not provided with copies of the original correspondence.
43. On this use, the Council found that there was sufficient evidence in relation to the erection of the stable building and on the keeping of horses on the land for the use and operational development to be lawful. Having assessed the evidence before me, I, too, find on the balance of probability that the land has been continuously used for equestrian purposes for a period in excess of ten years and was lawful at the time that the Notice was issued. The evidence shows that the stable building, too, was lawful at that time, having been erected for more than 4 years.

Agriculture

44. In their SoC, the Appellants state that the land has not been used for agriculture during their ownership. Whilst I recognise that it is for the Appellants to make their case, the Council does not provide any evidence on this matter.
45. Taking the evidence from the two appeals in its entirety, I find that on the balance of probability that the mixed use of the land does not include agriculture. Notwithstanding this, the use of the land for agriculture does not amount to development² and could be undertaken without planning permission.

Keeping, breeding and sale of pigeons

46. The Appellants state that the pigeon business has been running for around 40 years. This involves the keeping, breeding, racing and selling of carefully reared birds. The evidence shows that this business was previously undertaken from private homes, and that its growth led to the location of some of the activities on the land.
47. The Appellant's SoC states that the land has been used for elements of the business "for some 20 years" and that the smaller of the pigeon lofts on the site has been there for approximately 15 years at the time that the declaration was made, having been built in 2007. That the building has been there since that time has been corroborated in the third-party submissions of PG, NM and

² Section 55 of the 1990 Act

- DL. The former describes himself as a 'pigeon fancier' who visited the site several times.
48. The evidence shows that there has been a building on this part of the site for many years. Satellite images dating from 2010³, 2015, 2017, 2018, 2020 and 2021 show this to be the case. The Council say that the image from 2021 appears to show that the loft next to the hedge has either been relocated or extended. It is unclear whether either was the case. It gives no further evidence in this regard and this is denied by the Appellants.
49. The Council has, to a large degree, relied on the Officer report into the certificate application. It says that there was a lack of detail regarding the extent of the pigeon operations, both in geographic and business terms, and that both would have been very limited in scale.
50. In response, the Appellants say that the whole of the site has been used in respect of the pigeons. They exercise them across the whole of the land, and they are also fed across it. They state that the value of individual birds at the site can be up to £70,000 and that the business has a turnover of hundreds of thousands of pounds. No further financial evidence has been provided, however.
51. The sworn statements, in respect of the pigeon-related use of the land, are corroborated by third-party evidence. That and the further evidence set out in the Appellant's written submissions was precise and points, on the balance of probability, to this use of the land having been carried out for the relevant period. It probably became lawful in 2017 and was not thereafter lost, as evidenced by the recent erection of a further pigeon loft on the land.
52. It is clear that the use of the land for the keeping, breeding and sales of pigeons has grown with the erection of the larger loft building. However, on the basis of the evidence before me, the use was not *de minimis* before this was built. My finding is that the use of the land for the keeping, breeding and sales of pigeons has been carried out from the land for a period in excess of 10 years and is a lawful element of the mixed use of the land.

Touring caravan

53. It is claimed that a touring caravan has been on the land permanently since the Appellants bought the land in 2001. The only exceptions to this have been when it was towed off the land for family holidays, after which it was replaced on the land. It has, it is claimed, always been stored in the same place near the gate.
54. The Appellants set out, in their sworn statement, that "Many visitors and neighbours have been aware of our use of the land for the storage of the caravan over the last 21 years". I note that DL, NT and DC made reference to this in their submissions for the certificate of lawfulness application. None of them have said that the use has been continuous. This is unsurprising, given that they do not claim to have visited on a daily basis.

³ The month given for the 2010 image is almost certainly incorrect, given the dry nature of the land and that trees are in full leaf.

55. The satellite images that the Appellants rely on in their arguments for the pigeon loft are also of use in the assessment of this matter. Those taken in 2010⁴, 2015, 2017 and 2018 do not show the touring caravan on the land where it is said it has been stored. The image for 2021 is slightly blurred, but it does not appear to be in that image, either. The 2020 image from the Notice does not encompass the land on which it is said to have been stored.
56. It seems most unlikely to me that these images were taken at the time of each of those years when what have been termed “short breaks” were being taken by the Appellants. Its absence from the images has not been addressed by the Appellants.
57. Whilst I give significant weight to the sworn declarations, the satellite images, which I am asked to rely on by the Appellants in other arguments, cast considerable doubt on the Appellants’ claim of the continuous siting of the touring caravan. As this has not been addressed, and taking the evidence in the round, I find that it has not been demonstrated, on the balance of probability, that a touring caravan has been continuously stored on the land for the relevant period.

Ground (f)

58. Ground (f) is that that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
59. The Appellants’ case here relates solely to the mobile home that has been bought onto the site. Again, they set out, in their Final Comments, that as the Council made no reference to the Ground (f) case in its submission, it is “effectively unchallenged”. Notwithstanding this, my approach is the same as that which I take in the Ground (c) appeal.
60. Essentially, the Appellants’ case is that the mobile home was brought onto the land for purposes incidental to the use of the land and was thereafter used for a mix of incidental and residential purposes. Therefore, the Notice should be varied to require the cessation of the latter use, as permission would not be required for the siting of a caravan for incidental purposes.
61. The start point in my assessment is to identify the purpose of the Notice, which is to remedy the breach of planning control, as defined in s173(4)(a) of the Act. The removal of the caravan is integral to this. Where, as here, there is no Ground (a) appeal on the merits of the planning development, any lesser step that would not remedy the breach cannot be accepted through ground (f).
62. Thus, although the use of the land for the siting of a mobile home incidental to the lawful use of the land would be permitted, I cannot address it here. It is, however, a matter that the Appellants might explore with the Council during the period for compliance with the terms of the Notice.
63. For the above reasons, the Ground (f) fails.

⁴ See Note 1

The Op Dev Notice - Validity

64. The Appellant claims that the Notice is defective, by reason of the Requirements set out in its section 5. Amongst its terms, Requirement 1 obliges the Appellants to demolish the building in the approximate position marked X on the plan, which it says is shown in photograph D. Requirement 2 is similar; it refers to the building in the approximate position marked Y on the plan and shown in photograph D. As the Appellants set out, photograph D only shows one building. This, they claim causes considerable confusion.
65. There is no doubt that the building in photograph D is that marked with a Y on the Plan that was attached to the Notice. Given the case that the Appellants have put forward, it is not apparent that the evident mistake in the Notice has caused confusion. It is a matter that is, in any event, easily addressed by varying the Notice through the omission of the references to photograph D in the Requirements. Correcting the Notice in this way would not be prejudicial to either party.

Ground (d)

66. The Appellants' case is made in respect of the smaller pigeon loft building, marked with a Y on the Plan attached to the Notice.
67. I have set out, in my reasoning on Appeals A and B, above, that the use of the land for the keeping, breeding and sales of pigeons is lawful on the balance of probability. The evidence I have discussed there showed that the small building had been on the land for a period in excess of four years and used for the pigeon business.
68. On the balance of probability, taking the evidence put forward in respect of all of the appeals, I find that the building marked with a Y on the Plan attached to the Notice had been in existence for a period of more than four years at the time that the Notice was served. It was, therefore, immune from enforcement action. As such, the Ground (d) appeal, inasmuch as it relates to this building, is allowed.

Ground (a)

Main Issues

69. The Main Issues in the appeal are:

- The effect of the development on the character and appearance of the area;
- Whether the development is in an appropriate, accessible and sustainable location; and
- The effect of the development on the natural environment by reason of effluent arising from the use of the buildings.

Character and Appearance

70. Given my finding on the smaller of the buildings, that marked with a Y on the Plan, my Ground (a) decision only relates to the larger of the two buildings. However, where pertinent I refer to the smaller of the buildings.

71. Before assessing the effects of the building marked with an 'X' on the Plan, I shall give a brief resumé of points put forward by the Appellants in support of the development. Their pigeon-related business has been run for some 40 years and is very successful. For a considerable part of that time, it has been demonstrated that the use has been carried out on this land. The use has outgrown its other locations as it is unsuited to a back garden or a location in close proximity to neighbouring properties. The business employs two people full-time, and it is planned to take on another person.
72. The birds require a safe, quiet and peaceful location to thrive. The building, they say, has been designed to keep and breed them in the required manner. Furthermore, the birds can make a noise at anti-social hours between October to April. Both are given as reasons to demonstrate the need for a rural location.
73. None of the points that I have paraphrased have been contested by the Council.
74. The Council's policies set out in the Plymouth and South West Devon Joint Local Plan 2014-2034 ('JLP') support the rural economy and do not rule out the erection of new buildings to serve rural enterprises.
75. JLP Policy DEV15 sets out that support will be given to proposals in suitable locations which seek to improve the balance of jobs within the rural areas and diversify the rural economy. Its provision 2 is key here; it provides general support for the development and expansion of small-scale businesses in rural areas where it is demonstrated that there would be no residual adverse impacts on neighbouring uses and the environment. Paragraph 6.59 of its supporting text sets out that the policy provides some flexibility to enable carefully selected development outside settlements where it can be demonstrated that this could be achieved sustainably.
76. The building is fairly long but does not have great width. This limited width, allied to its fairly low pitch roof, means that it is not a high building. The 'step' in its roofline, as it runs down the hillside, serves to break up its massing. I saw a number of buildings for rural businesses in the area that would be described as being large. This is not an adjective that I would use for this building, the size of which was appropriate to its location.
77. It is finished in timber boarding and a pressed steel roof, both of which are commonplace on rural buildings and are appropriate to the area. The aviaries that have been erected in front of part of the building are, again, reflective of the rural location and might commonly be seen on poultry buildings. A line of relatively high-level windows along the elevation facing into the field demonstrate a commercial use, and though the glazed door to the building facing towards the site entrance has something of a domestic appearance the overall design is one suited to a rural commercial enterprise. It is not incongruous by reason of its design, form or materials.
78. The siting of the building against the hedge mitigates its effect on the countryside, screening it from one direction and providing a green backdrop from another.
79. It is visible from the access onto the lane, but in this limited view it is not harmful to the area's character and appearance. Apart from this, I could not

find any public vantage points from which the building could be seen, nor did the Council draw my attention to any.

80. For the above reasons, my finding on the issue is that the building does not cause harm to the character and appearance of the area. As such, it accords with the terms of JLP Policies SPT1, TTV2, TTV26, DEV2, DEV15 and its Strategic Objectives SO6 and SO10 that, between them, support the deliverance of sustainable development in rural areas where it results in, amongst other things, no harm to the character and appearance of the countryside.

Site Accessibility

81. A large part of the Council's aims to ensure that development in the countryside is limited to particular circumstances, is to avoid unnecessary travel. This is articulated through a suite of policies, including JLP Policies SPT1, SPT9 and TTV2.
82. The Council acknowledges that "defining what can be considered sustainable in rural areas is not a straightforward exercise, and often relies upon the balance of benefits and impacts presented by a planning proposal" in paragraph 5.15 of the supporting text to Policy TTV2. That is to say, that just because a business is in a rural location it should be refused planning permission as it is away from settlements or does not benefit from public transport links. This reflects the terms of paragraph 85 of the Government's National Planning Policy Framework ('the Framework').
83. The reasons given in support of the proposal by the Appellants provide adequate justification for allowing the larger pigeon loft building in this countryside location. Taking this into account, I find that the terms of the JLP and Framework I refer to are not against its erection and use but, rather, lend support.
84. Taking account of my decisions on the MCU appeals, the Appellants would regularly be travelling to the site in any event. It is most likely that they would undertake joint trips, rather than going to the site for one activity, leaving and returning again for another. Lastly, although narrow and unlit, the walk to buses and services at Halwill Junction is not long, difficult nor particularly dangerous. Nonetheless, I acknowledge that it might deter some pedestrians, even though a lit footway runs from the junction of the lane with the A3079 to the centre of Halwill Junction. The nature of the route would be unlikely to be a significant deterrent to persons cycling to the site.
85. For the reasons I have given, I find that the location of the building accords with the terms of JLP Policies SPT1, SPT9 and TTV2 and those of the Framework that mirror these policies.

Effluent from the use

86. Amongst its Reasons for Issuing the Notice, the Council states that "In addition [to the other matters I have addressed], the unregulated disposal of effluent produced by the keeping / breeding of pigeons in the buildings, has the potential to impact adversely on the natural environment". There is no further comment in this regard in the Council's submissions.

87. In response, the Appellants set out that the litter from the pigeons is used on site to enhance the biological activity and fertility of the appeal site's pasture. This is then turned into fodder, grown for grazing and harvest, providing an excellent example of sustainable biological agriculture with only environmental benefit and creating no harm.
88. Given the lack of evidence of harm, and that the Council does not dispute the Appellants' response, I find that there would be no harm to the natural environment from effluent arising from the use of the building. This accords with the terms of JLP Policies SPT1 and TTV26.

Conclusion on Ground (a)

89. Having found Building Y to be lawful, my decision here related solely to the larger loft – Building X. I find that this is in an appropriate location, it does not cause harm to either the character or appearance of the area and it does not cause harm to the natural environment by reason of effluent arising from the use of the buildings.

Overall Conclusion on Appeals C and D

90. For the reasons set out above, and taking into account all matters raised, I conclude that the appeal on Ground (d) should succeed in respect of the building marked with a Y on the Plan attached to the Notice. I also find that the Ground (a) appeal should succeed. I shall grant planning permission for the development as described in the notice as varied.

Roy Curnow

Inspector