



Appeal Decisions

Inquiry Held on 20,21,22,23,26 June 2023, and 10 July 2023

Site visits made on 20 and 27 June 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date 25 August 2023

Appeals A & B Refs: APP/H1705/C/20/3262226 and 3262297 Land at South of Berry Court Farm, Bramley Road, Little London, Hampshire

- 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 appeal is made by Mr David Snook against an enforcement notice issued by Basingstoke & Deane Borough Council.
- The enforcement notice was issued on 25 September 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the Land from agricultural use to use for the storage of caravans and motorhomes and associated operational development to facilitate the change of use including:
 - (i) The creation of an earth bund (with fence atop) as one continuous feature, together with 3.2 below.
 - (ii) The creation of a track together with gates and fencing.
 - (iii) The creation of hardstanding area.
 - (iv) The creation of an access through existing hedgerow together with gates
 - (v) The erection of 4 metre high CCTV poles together with fixtures and fittings.
 - (vi) The siting of a portable building being used as an office.
- The requirements of the notice are:
 - (i) Cease the unauthorised use of the Land for the storage of caravans and motorhomes.
 - (ii) Remove from the Land all caravans and motorhomes.
 - (iii) Remove from the Land the earth bund (and the fence atop) that has been created shown in its approximate position edged with a red line on the plan attached to the notice. Any imported materials used in the creation of the earth bund to be removed from the Land.
 - (iv) Remove from the Land the earth bund that has been created shown in its approximate position edged with a blue line on the plan attached to the notice. Any imported materials used in the creation of the earth bund to be removed from the Land
 - (v) Remove from the land the track together with the gates and fencing shown annotated on the plan attached to the notice. All resultant materials to be removed from the Land.
 - (vi) Remove from the Land the area of hardstanding that has been created fencing annotated on the plan attached to the notice. All resultant materials to be removed from the Land.
 - (vii) Remove from the Land the 4 metre high CCTV poles together with fixtures and fittings.
 - (viii) Remove from the Land the portable building being used as an office.
 - (ix) Restore the Land to its condition before the breaches took place. These works to include restoring the ground level, reseeding the land with grass seed, and the planting of a continuous native hedgerow between points X - X on the plan

attached to the notice.

- The period for compliance with the requirements is six months for steps (i) and (ii), and nine months for steps (iii) to (ix).
 - Appeal A is proceeding on the grounds set out in section 174(2) (a),(b),(c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/H1705/X/20/3262235

Land South of Berry Court Solar Farm, New Road, Little London RG26 5EZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Philip Snook against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 19/02924/LDEO, dated 21 October 2019, was refused by notice dated 2 July 2020.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described on the application form as, in summary, the formation of earth bunds around the perimeter of what was a paddock used for the keeping of horses.
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Summary Decisions

Appeals A & B are dismissed and the enforcement notice upheld with corrections and variations as set out in the Formal Decision below

Appeal C is dismissed

Applications for costs

1. At the Inquiry an application for costs was made by Basingstoke & Deane Borough Council against Mr David Snook and Mr Philip Snook. An application for costs was also made by Mr David Snook and Mr Philip Snook against Basingstoke & Deane Borough Council. These applications are the subject of separate Decisions.

Procedural Matters

2. Because an appeal was made on ground (d) and the appeal against the refusal of the LDC, evidence was given under oath by way of affirmation.
3. The storage of the caravans and motorhomes takes place in a broadly triangular shaped parcel of land, the base (southern boundary) of which fronts onto Bramley Road. This parcel of land was referred to as Area A by the Council and as Site A by the appellants. In the interests of consistency, I will adopt the nomenclature used by the Council throughout. The field adjoining Area A is used for agricultural purposes and this was referred to as Area C, the southern boundary of which extends for some distance along Bramley Road. To the north of Areas A and C, and separated from them by a track¹, is Area B. This is a solar farm granted planning permission in 2015. To the

¹ The same track that forms part of the alleged breach of planning control in the Enforcement Notice subject to Appeal A.

north of that is Area D, also being used for the storage of caravans and motorhomes but not within the area to which the Enforcement Notice subject to Appeal A relates. An estate road for the Berry Court Farm Business Park runs in a north-south direction from its junction with Bramley Road along on the eastern boundary of Area C, through Area B and on the eastern boundary of Area D.

The Enforcement Notice

4. The breach of planning alleged in paragraph 3 of the notice refers, in part, to the change of use from agricultural use to use for the storage of caravans and motorhomes. The meaning of development for the purposes of the Town and Country Planning Act 1990 (the 1990 Act) is defined at Section 55(1) of that Act as including the making of any *material* change in the use of any building or other land (my emphasis). It follows that the allegation in the notice of a change of use, without alleging that it constituted the making of a material change of use, would not constitute development for purposes of Section 55(1) of the 1990 Act. I will correct the notice accordingly.
5. The notice alleges at paragraph 3 that the (material) change of use of the Land from agricultural use to use for the storage of caravans and motorhomes has occurred within an area shown edged with a bold black line on the plan attached to the notice. It was agreed at the Inquiry that this was incorrect but could be remedied by the amendment of the description of the breach of planning control alleged to read '*material change of use of the land edged red to use for the storage of caravans....*'. I will correct the notice accordingly.
6. There was discussion at the Inquiry as to whether the requirements at paragraphs 5(iii) and 5(iv) of the notice could varied in the interests of protecting tree roots in that area. It was eventually agreed that the proposed variation of those requirements was not workable, other than in respect that no machine shall be allowed to track over the existing bund already created. I will vary the notice accordingly.
7. I am satisfied that the notice could be corrected and varied in all these respects without causing injustice.

Appeals A and B: the appeals on ground (b)

8. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
9. The appellant's appeal on this ground is in two parts: (i) the creation of a track and (ii) the creation of an access.

The creation of a track

10. It is apparent from the aerial photographs² that a hard, and hard-edged, track has been present on the northern side of the drain/ditch bordering Areas A and C (and south of Area B) from at least 2005. It is a narrow track that runs in a straight line along the northern edge of what are now referred to as Areas

² Core Documents B9 and C4

A and C, but which at that time were a single field. That track remains clearly visible in the aerial photographs taken in 2008 and in 2010³. By 2014, in a photograph taken from ground level, the track had the appearance of a twin-rutted track with grass between the ruts but was still clearly present⁴. There are no aerial photographs of the track in 2015, but a photograph taken at ground level in October of that year shows the track being largely (but not completely) overgrown with grass⁵. By August 2016, no surfaced track is visible but that is consistent with Mr Snook's evidence of having grassed the area in question⁶.

11. The existence of a track in this position is also referred to by the Council's Enforcement Officer in investigating a complaint in 2016 and indeed the Council does not dispute that there may have been an unsurfaced field access at some point. I am therefore satisfied on the evidence before me that there was a track of some description in this position prior to the alleged breach of planning control taking place, albeit completely covered in grass by then.
12. It is Mr Snook's evidence that he had, over some years, created the track from rubble, hardcore, and similar materials. That is consistent with the photographic evidence, in which those materials are visible in the surface of the track. However, in cross-examination Mr Snook accepted that different materials were used for the existing track. His evidence was that road planings were used for the existing track, which was different to what was there beforehand i.e "hoggin" (i.e rubble). That difference is readily apparent in a comparison of the photographs of the track created by Mr Snook at some point before 2005 with the track as it exists at this time.
13. Analysis of the various historic photographs available to the Inquiry does not show a surfaced track of the same dimensions and characteristics of the track that is now present. Setting aside the hardstanding at the western end, the existing track is notably wider than the track shown in the aerial photographs taken in 2005, 2008 and 2010, and in the photographs taken from ground level in 2014 and 2015.
14. The calculations of the surface area of the track set out in Ms Colebourn's evidence are also of assistance in this regard. The total area is stated there as being 1078m² and this clearly includes the hardstanding at the western end of the track. However, the hardstanding depicted in Map 1 attached to Ms Colebourn's Proof of Evidence (which is the source of the figure of 1078m²) is much wider than the narrow track shown in the aerial photographs dating to 2005, 2008 and 2010. The shape of the access is shown on Map 1 also bears no relation to the narrow and straight access track evident in those photographs, being a very shallow taper eastwards from the hardstanding at the western end, culminating in a splayed entrance onto the estate road for the Berry Court Farm Business Park. The access shown in Map 1 is also consistent with Ms Colebourn's evidence that the appellants had instructed her that "the track was widened" and "hard surface laid down". That evidence is in turn consistent with the photographic evidence.

³ Core Document C4

⁴ Core Document C5

⁵ Core Document DA26

⁶ Core Document C14

15. The photographs showing the construction phase of the solar farm and Anesco's vehicles and stored materials on the track land are of little assistance⁷. The vehicles and stored materials shown on those photographs are clearly stood on bare earth (compacted or otherwise). It is evident from those photographs that the area covered by the bare earth greatly exceeds the width of a track, be that the track shown in photographs up until 2015 or the track as existing (as shown on Map 1 to Ms Colebourn's evidence). There is no evidence before the Inquiry as to what actually took place during the construction phase of the solar farm in terms of the creation of that area of bare earth. The photographs taken in 2016 following the completion of that development show the area returned to grass. Consequently, there is no evidence to suggest that what occurred during the construction phase of the solar farm has any direct correlation with the width or alignment of the track.
16. Taking into account the different materials from which the existing track is constructed and the increased width of that track compared to the one that existed previously, as a matter of fact and degree the works go beyond what may reasonably be described as the maintenance of the previously existing track. A new track has been created. I therefore consider that the breach of planning control alleged, specifically the creation of a track, has occurred.

The creation of an access

17. In giving his evidence, Mr Snook was adamant that there was an access to Site A. The conviction with which that evidence was given, under oath, was compelling. In addition, Mr Lasseter distinctly recalls feeding a horse over the gate which, given his long-standing involvement with the site, is equally compelling. Moreover, the presence of the field shelter in the corner of Site A (for which photographic evidence exists) would be entirely logical if there was an access at that point. The photographs provided by the Council are either unclear or taken at an oblique angle, and are not sufficient to refute the appellant's evidence in this respect. On the other hand, the same aerial image dated 2005 referred to above⁸ also shows evidence of an access at this point and helpfully pinpoints its position. I am therefore satisfied there was an access to site A before the alleged breach of planning control took place.
18. The question is therefore whether that existing access was widened and/or altered to the extent that a new access was created. In her written evidence, Ms Colebourn estimated that approximately 25m of hedge was removed to widen the gateway and make way for ornamental hedging.⁹ The extent of the hedging removed is depicted on Map 1 attached to her Proof of Evidence and extends practically across the full width of the northern boundary of Area A. It is reasonable to conclude that Ms Colebourn was instructed to that effect by the appellants.
19. I accept that the correction of the plans for the agricultural PD application and the later planning applications was, as Mr Lasseter explained, simply human error on the part of drafting the first plan. Nothing arises from that error. This leaves just Ms Colebourn's evidence of the widening of the gateway as the only real evidence relating to what may or may not have changed in

⁷ Core Document CC7

⁸ Core Documents B9

⁹ Colebourn Proof of Evidence, paragraph 2.5

relation to the access to Site A as a result of the breach of planning control alleged.

20. It is apparent from an inspection on site that the access to Site A was not widened to the full 25m indicated in Map 1. Nevertheless, if the formation of an access involves alterations to a gate, wall or fence, or in this case the removal of a substantial section of hedge, the scheme as a whole is likely to involve building and/or engineering operations. Consequently, works to alter an existing access, such as by widening a gateway, will be development if something is done which amounts as a matter of fact and degree to a building and/or engineering operation. The construction of the red-lined bund falls into the latter category. On the limited evidence before me, as a matter of fact and degree, that is what happened here.
21. In appeals on ground (b), the onus is on the appellant to demonstrate, on the balance of probability, that the breach of planning control alleged in the notice has not occurred. The appellant has not discharged that burden of proof, either in relation to the alleged creation of track or the alleged creation of an access. In relation to the latter, if anything the appellant's own evidence points in the other direction. Accordingly, the appeal on ground (b) fails.

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

22. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. In respect of Appeal C, the main issue is whether the Council's decision to refuse to grant the LDC was well founded, with the burden of proof again being on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
23. This ground of appeal only concerns the creation of the bunds. The Enforcement Notice alleges at paragraph 3.1 the creation of an earth bund (with fence atop) as one continuous feature together with the bund alleged at paragraph 3.2 of the notice. These were referred to at the Inquiry as the 'red-lined bund' and the 'blue-lined bund' respectively. The plan submitted with the LDC application to which Appeal B relates depicts an area equivalent to the red-lined bund. There is no dispute that the creation of either bund constitutes an engineering operation and therefore constitutes development for the purposes of Section 55(1) of the 1990 Act.
24. Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) provides that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development, subject to the limitations at Class A.1. The limitations at Class A.1 include that development is not permitted by Class A if the height of the gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed one metre above ground level, or would otherwise exceed 2 metres above ground level.
25. Assessment of the bund against the GPDO raises five main considerations:

- whether the bunds constitute a 'means of enclosure'
- whether the bunds are 'adjacent to a highway'
- if so, whether any part of bunds adjacent to highway exceeds 1m in height
- if not adjacent to a highway, whether the bunds exceed 2m in height at any point, and
- whether the bunds contravene requirements of either (or both) of condition 3 or 4 of the permission for the solar farm on Area B (Council Ref:15/03634/ROC) ('the Solar Farm Permission')

Whether the bunds constitute a 'means of enclosure'

26. The Oxford English Dictionary (OED) defines 'enclose' as to surround or close off on all sides, and 'enclosure' as an enclosed area. The red-lined bund completely surrounds Area A, such that Area A is closed off all sides (with exception of the entrance). Area A then becomes an enclosed area, and the red-lined bund a means of enclosure.
27. Not so the blue-lined bund. The blue-lined bund forms an elongated 'U' shape having three sides but not extending along the northern boundary of Area C. It follows that Area C is not closed off on all sides by the bund and is not completely surrounded by it. The blue-lined bund therefore does not form a means of enclosure, and as such is not permitted by Class A, Part 2, Schedule 2, Article 3 of the GPDO.
28. The Council contends that the words "*other means of enclosure*" in Class A should be construed in context and that the *eiusdem generis* rule of statutory interpretation should apply here: in other words, that, for the purposes of Part A "*other means of enclosure*" should be similar to a gate, fence, or wall. In that context, the Council relies on the judgment in *Ewen Developments Ltd v Secretary of State for the Environment* [1980] JPL 404 at 405.
29. In *Ewen*, the Inspector concluded that embankments were not *eiusdem generis* with the (then applicable) Schedule 1 Class II.1 of the 1977 General Development Order. The High Court held that such a finding was a matter of fact and degree for the Inspector. In this case, the red-lined bund performs exactly the same function as would a fence or wall around the same area: it completely surrounds Area A, such that Area A is closed off all sides and becomes an enclosed area. It matters not from what materials the bund is constructed. It is whether or not the bund 'encloses' that is relevant to the interpretation of the GPDO. The red-lined bund is just another method by which to enclose that parcel of land: to adopt the language of the GPDO, it is an 'other means of enclosure'.
30. The Council also questions the purpose of enclosing the land, but there is no substance to that point. In *Prengate Properties Ltd (and another) v. Secretary of State for the Environment (and others)* (1973) 25 P&CR 311, the High Court found that if it was clear that if a wall etc. in fact operates as a means of enclosure, then it does not lose permitted development status merely because it served some other function. Extrapolating that principle to this case, it matters not for what purpose the bund was intended.

31. Having regard to these considerations, as a matter of fact and degree I see no reason why the red-lined bund could not in principle constitute an 'other means of enclosure' for the purposes of Class A, Part 2, Schedule 2, Article 3 of the GPDO.

Whether the bunds are 'adjacent to a highway'

32. There is no definition of 'adjacent' in the GPDO itself. The OED defines 'adjacent' as being near or next to something else. There is nothing in the GPDO or the OED definition to support the view that provided a fence is positioned a minimum distance for the highway, it would cease to be regarded as being 'adjacent' to that highway for the purposes of the GPDO. Bramley Road is evidently a highway used by vehicular traffic. Immediately adjoining the highway is the highway verge, then a ditch and a bank of vegetation. The pertinent point in time for consideration of this matter is the point at which the bunds were created, not accounting for how any subsequent planting or vegetation growth may have acted to obscure any previous separation from the highway.
33. Between the bund and the highway surface is the highway verge, and a shallow ditch, and a bank of vegetation (albeit the latter would not have been present, or would have been less established, at time the bund was constructed). There are no built structures between the bund and the highway, and the ground is not raised to any extent. The ditch is at a lower level than the highway surface, such that there is therefore nothing between the surface of the highway and the bund. The red-lined bund (and for that matter the blue-lined bund) is both near to and next to the highway and, adopting the definition in the OED, is as a matter of fact and degree adjacent to it.
34. The appellants argue that the reason why there is a differential height requirement (2m versus 1m) when adjacent to a highway is to ensure that the means of enclosure does not create an obstruction to the view of persons using the highway as to be likely to cause a risk to highway safety. However, on a plain reading of the GPDO, there is in my view nothing to support that contention. Class A.1(a)(ii) simply says "*in any other case, 1 metre above ground level*". The red-lined bund falls into the category of "any other case" for purposes Class A.1(a)(ii). I see nothing in the wording of Class A.1(a)(ii) that requires any further assessment in relation to whether the means of enclosure constitutes a risk to highway safety to be imported into consideration of the height under that Class.
35. It is settled case law that if any limitation is exceeded in any element of the development, the whole development is unlawful, not just the element in excess of permitted development rights. Having reached the conclusion that the red-lined bund does not accord with the limitation at Class A.1(a)(ii), the whole of that bund (and for that matter the blue-lined bund with which it is contiguous) is unlawful. It is therefore not necessary for me to consider here whether the bunds exceed 2m in height at any point. Neither is it necessary for me to consider whether the bunds contravene requirements of either (or both) of condition 3 or 4 of the Solar Farm Permission.
36. I conclude that neither the red-lined bund nor the blue-lined bund constitute permitted development for the purposes of Class A, Part 2, Schedule 2, Article 3 of the GPDO. Section 57 of the 1990 Act provides that planning permission

is required for the carrying out of development. There is no planning permission in place, deemed or otherwise, for the development alleged in the notice. I therefore conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. For the same reasons, I conclude that the Council's decision to refuse to grant the LDC was well founded.

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

37. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In this case, this ground of appeal relates only to the bunds alleged at paragraphs 3.1 and 3.2 of the Notice. In order to succeed on this ground, the appellant must show that the development was substantially complete on the date four years before the notice was issued: the relevant date in this case is therefore 25 September 2016. The test in this regard is the balance of probability and the burden of proof is on the appellant.
38. The appellant relies in part upon a series of invoices which show plant and operator hire for the creation of the red-lined bund, and which the appellant suggests show the final day of working as 20 September 2016: the plant time sheet 150806, for the week ending 22 September 2016, shows the last working day as 9 hours on 20 September 2016¹⁰. The corresponding invoicing from John Stacey & Sons Ltd for the weeks ending 15 September and 22 September 2016 shows "360 + operator" and haulage off-site in that last week; and the FT Hire Group invoice dated 23 September 2016 shows delivery and collection of a drum roller to and from the site on 15th and 20th September 2016 (respectively). The appellant contends that these invoices are consistent with the account given by Mr Snook of substantial completion of the red-lined bund on 20 September 2016.
39. However, the photographic evidence tells a different story. The photographs taken by the Council's Enforcement Officer on the morning of 20 September 2016 show that bund then under construction terminates short of the ditch running along the northern boundary at Areas A and C. The northern section of the red-lined bund is clearly not in place at that time (the photograph taken at 10.43)¹¹. Furthermore, the photographs taken at 10.42 and 10.43 respectively clearly show that construction has not even started on the blue-lined bunds at that time¹².
40. Furthermore, the appellant's own photographs taken on the following day show exactly the same thing. In particular, three of the photographs taken at 09:51 on 21 September 2016 clearly show that the northern section of the red-lined bund was not in place at that time¹³. There are mounds of earth visible in those photographs, identical in appearance to the materials used in the construction of the bund up until that point, that also indicate that the construction of the red-lined bund was not complete at that time. These photographs put to the sword the appellant's evidence that the red-lined bund was substantially complete on 20 September 2016. It evidently was not.

¹⁰ Core Document F8

¹¹ Core Document DA28

¹² Core Document DA28

¹³ Core Document F7

41. I recognise that a skilled digger operator could, in theory, complete the northern section of the red-lined bund inside the remaining four days between when those photographs were taken and the relevant date of 25 September 2016. However, the invoices submitted by the appellant show the last working day as the 9 hours on 20 September 2016. That is consistent with their being no digger visible in the photographs taken on 21 September 2016, whereas a digger is clearly visible in the photographs taken by the Council's Enforcement Officer 20 September 2016. The invoices provided by the appellant do not go beyond 22 September 2016. Consequently, there is no evidence before me to show that a digger and operator were hired for those four days (one of which was a Saturday). Given that the photographs show that the northern section of the red-lined bund has not even been started 21 September 2016, there is no evidence to show that any work was carried out to complete the red-lined bund by 25 September 2016.
42. Moreover, even if the northern section of the red-lined bund could have been complete inside those four days, it is wholly implausible that the blue-lined bund could have completed in that time as well, given that a start had not even been made on it by 20 September 2016. On the other hand, an invoice from J French dated 14 November 2016 for the hire of a digger and driver for 12 days would be wholly consistent with the construction of the blue-edged bund at a later date¹⁴. Although the subject of separate allegations in the notice (paragraphs 3.1 and 3.2 respectively), the notice makes it clear that the two bunds are contiguous. I therefore consider it extremely unlikely (and there is no evidence to show) that the construction of the bunds was substantially complete by the relevant date of 25 September 2016.
43. Although I have found that the bunds were not substantially complete on the date four years before the notice, it is still necessary for me to go on to consider whether the fence atop the bund formed part of one continuous development associated with the material change of use alleged in the notice, as opposed to discrete operational development for some other purpose.
44. A series of photographs taken on 31 October 2016 show that chalk was in the process of being spread throughout Area A¹⁵. This is consistent with an invoice from G B Foot Ltd dated 31 August 2016 for reject chalk, and tends to indicate that works were ongoing at that time. I take the appellant's point that the importation of chalk substrate and road planings as a top dressing is consistent with the creation of the hardstanding associated with the portal frame agricultural building with three bays for agricultural permitted development was sought and granted in November 2016 (16/03922/AGPD)¹⁶. But that portal frame building was never erected and the application for that building was not made until 17 October 2016, some two months after the invoice for the reject chalk was received and even longer after the appellants ordered it. Moreover, the plan that accompanies the application shows the hardstanding to be confined to the northern part of the site, whereas the photographs taken on 31 October 2016 show chalk being spread over the entire site¹⁷. These factors tend to undermine the possibility that the importation of chalk substrate and road planings as a top dressing was intended for a hardstanding for the portal frame building.

¹⁴ Core Document C11

¹⁵ Core Document C5

¹⁶ Core Documents DA1, DA2 and DA3

¹⁷ Core Document C5

45. Although the portal frame agricultural building was never erected, the timeline for the submission of the application for prior notification of that building is relevant (17 October 2016). The erection of the portal frame agricultural building therefore appears to have been under consideration by Mr Philip Snook at that time: the application form refers to the 21 acres of the solar farm being grazed by sheep, together with 14 acres of pasture. The application form describes how the portal frame agricultural building was required to house three tractors plus various items of agricultural equipment, as well to store grain and hay. The clearly stated intention behind that application was to use Area A for purposes related to agriculture.
46. Reference was made by Mr David Snook to a conversation his son Philip had that took place when he was "*overseas in Prague, school friends in 2017*". No date or detail is provided about that discussion and the evidence given was both second-hand and vague: Mr Philip Snook did not give the evidence himself, such that the evidence could neither be expanded upon nor tested. For that reason, I afford that evidence only very limited weight.
47. I also have difficulty in reconciling that evidence with the evidence in third party representations relating to when the use first commenced. For example, Mr David Hale recounts that the site became operational in 2017 and Mr Simon Hollingberry confirms that he has been using the caravan and motorhome storage facility *since it opened* in 2017 (my emphasis). In giving his evidence to the Inquiry, Mr Andrew Granston also indicated that he had been storing his caravan on this site since 2017. The appellants provided no explanation as to how an idea that on their own evidence appears to have been first mooted at some point in 2017 was fully operational later that same year. On the other hand, that the use for the storage of caravans and motorhomes started in 2017 is entirely consistent with the spreading of chalk across the whole site in late October 2016.
48. Furthermore, the appellants' evidence is entirely inconsistent with the delivery to the appellants of a significant amount of green V-mex fencing from McVeigh Parker & Co. Limited in or around 20 October 2016, including end posts and corner posts¹⁸. The description of that fencing matches very closely the fencing that is in place at this time in connection with the storage of caravans and motorhomes. I fully recognise that the erection of a bund(s) could be necessary as a security measure to prevent vehicles accessing an area in which an agricultural barn was located. However, no convincing explanation was given as to why 2m high fence with screening material was necessary for security for a barn. On the other hand, the erection of fencing would be entirely consistent with screening of caravans and motorhomes, the tops of which would otherwise be visible above a 2m bund.
49. On the basis of this evidence, a picture begins to emerge that the storage of caravans and motorhomes was the intended use of Area A from the outset. The continuation of work on the bunds beyond September 2016, the spreading of chalk substrate across the whole of Area A in late October 2016, and the delivery of a significant quantity of fencing in October 2016 all form a logical sequence and timeline for works to facilitate the storage of caravans and motorhomes. The timeline also suggests that this took place as a single building operation.

¹⁸ Core Document C11

50. The anomaly in all of this is the submission of the application for prior notification for the portal frame agricultural building in October 2016. However, notwithstanding the clearly stated intention behind that application, the proposal was evidently not pursued. The reasons behind that are not clear and were not explained. Neither was any convincing evidence presented as to why the appellants embarked upon the trouble and expense (not to mention taking the risk) of constructing the red-lined bunds before the application for the portal frame agricultural building was even submitted, let alone granted. All of this tends to point to the bunds being constructed for some purpose other than to provide security for an agricultural building or in relation to the lawful use of the land for agriculture.
51. When looked at in the round, the evidence surrounding the portal frame agricultural building is not sufficiently precise and unambiguous to show that the appellants' intentions were to erect that building and to continue using Area A for agricultural purposes. On the evidence before me, it is more likely than not that the bunds and fencing were constructed and erected for the purposes of facilitating the use of Area A for the storage of caravans and motorhomes, and as such were part and parcel of that development. The erection of the portal frame agricultural building was obviously under serious consideration at some point thereafter, but I have no evidence to show that this was the original purpose for which the bund(s) and fencing were constructed and erected in the months before that application was made. Indeed, the evidence that is before me tends to point in the other direction.
52. I conclude that, on the balance of probability, on the date on which the notice was issued the Council was in a position to take enforcement action in respect of the breach of planning control constituted by those matters. Accordingly, the appeals on ground (d) fail.

Appeal A: the appeal on ground (a) and the deemed planning application

53. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. The development plan for this area comprises the Basingstoke and Deane Local Plan 2011-2029 (Local Plan).
54. The enforcement notice was issued for three substantive reasons, from the which the main issues raised are:
 - whether there is need for the use alleged in the notice to be in the countryside
 - the effect of the development on the landscape, and on the character and appearance of the area, including the effect on trees, and
 - the effect of the development on biodiversity

Whether there is need for the use alleged in the notice to be in the countryside
55. This issue arises because the first substantive reasons for issuing the notice identifies that, in the Council's view "*The development does not have a*

locational need to be in the countryside". Of the three policies cited in this reason for issuing the notice (EP4, EM1 and EM10 of the Local Plan), none explicitly require that development proposals in the countryside to prove a locational need to be in the countryside albeit the supporting text to Policy EP4 is relevant. I do not accept the appellant's proposition that "locational need" therefore cannot form a reason to refuse permission on the deemed planning application, and it remains something which is required to be established in evidence. However, because none of the policies in the development plan are directly applicable in that respect, this reason for issuing the notice determination of the deemed application cannot not benefit from the force provided by Section 38(6) of the 2004 Act, one way or the other.

56. The supporting text to Policy EP4 does state at paragraph 7.36 that the policy applies to B1, B2 and B8 uses and other proposal for rural economic development¹⁹. The use of the word 'other' in that supporting text suggests that B8 uses are considered by the Council to qualify as rural economic development. This was accepted by Ms Logie. The Council accepts that the storage of caravan and motorhomes falls within the B8 Use Class. It follows from the supporting text to Policy EP4 that the storage of caravans and motorhomes is a use of land that in principle would be considered acceptable in principle in the countryside by that policy.
57. The guidance in the Framework is a relevant material consideration in this respect. Paragraph 84 of the Framework indicates, amongst other things, that decisions should enable: a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; b) the development and diversification of agricultural and other land-based rural businesses. On my reading, there is nothing in paragraph 84 of the Framework to suggest that the storage of caravans would not be appropriate in the countryside as a matter of principle or that there is any requirement for development proposals to prove a locational need to be in the countryside. Indeed, the reference in that paragraph to "all types" of business in rural areas suggest quite the opposite.
58. It therefore appears to me that neither the development plan nor the Framework require development proposals in the countryside to prove a locational need to be in the countryside. The Council's reason for issuing the notice is therefore not well-founded in that respect. However, both Policy EP4 and paragraph 84 of the Framework are relevant in other respects.
59. Policy EP4 states that development proposals for economic uses in the countryside will be permitted subject to a total of nine criteria, of which criteria (d) and (e) are relevant in this case. The criteria are expressed as alternatives.
60. Criteria (d) states that proposals will be permitted where they enable the continuing sustainability or expansion of a business or enterprise, including development where it supports a farm diversification scheme and the main agricultural enterprise. Prior to use for the storage of caravans and motorhomes, Area A had been used for purposes relating to agriculture. The use of Area A for the storage of caravans and motorhomes therefore cannot constitute the continuing sustainability or expansion of a business or

¹⁹ Core Document G1

enterprise, given that it did not exist previously either on Site A or the Berry Court Farm Business Park. The use does not accord with criteria (d) of Policy EP4 in that respect.

61. On my reading of Policy EP4, the provision within that policy to permit development where it supports a farm diversification is predicated on that development first being within the definition of the continuing sustainability or expansion of a business or enterprise (the word 'including' inextricably links the two). I have found that the use for the storage of caravans and motorhomes is neither the continuing sustainability nor the expansion of a business or enterprise. As such, it cannot as a matter of principle benefit from the provision with that policy to permit development where it supports a farm diversification.
62. In any event, the requirement in criteria (d) is in two parts: that it supports a farm diversification scheme and the main agricultural enterprise (emphasis added). It is clear that, as an as an arable enterprise, Berry Court Farm has diversified over several years into the Business Park and temporarily into the solar farm. I accept that, as a new business, the storage of caravans and motorhomes in Area A represents a further diversification of the farm.
63. However, once that solar farm use ceases, the lawful reversionary use is for agriculture. There is no evidence before me as to how the use of Area A for the storage and caravans and motorhomes supports the main agricultural enterprise that is Berry Court Farm, either now or when the land currently occupied by the solar farm reverts back to agriculture. If anything, the decision not to pursue the construction of the portal frame agricultural building on Area A in favour of the storage and caravans and motorhomes there appears to be a retrograde step in that direction. That part of criteria (d) has not been met.
64. In dismissing the appeal in November 2020 (APP/H1705/W/20/3248772), the Inspector found no evidence that the proposal then before him related to farm diversification. I have the benefit of more and better evidence in that regard and that enabled me to reach a different conclusion. However, in relation to the associated point as to whether the development supports the main agricultural enterprise at Berry Court Farm, I have no evidence that entitles me to reach a different inclusion to the previous Inspector.
65. Criteria (e) states that proposals will be permitted where they are for a small-scale new business, provided it is not in an isolated location. I consider that the use of Area A for the storage of caravans and motorhomes represents small scale new business. That part of Criteria (e) is met.
66. In dismissing the previous appeal, the Inspector was clearly aware of the presence of the solar farm: he describes it as being in "close proximity" to the appeal site, and yet patently considered that the solar farm was neither physically nor visually associated with the appeal site. The Inspector did find that the solar farm to be "physically and visually" separated Berry Court Business Park from the appeal site. I concur with the Inspector's analysis on both counts and can I see no reason to depart from the conclusion of the Inspector that the appeal site is in an isolated location due to the lack of nearby buildings together with the clear physical and visual separation from nearby development. Accordingly, I find that the development does not accord with Criteria (e) of Policy EP4 overall.

67. I conclude that whilst there is no requirement in policy for the use alleged in the notice to be in the countryside, the development conflicts with Policy EP4 of the Local Plan in other respects. I do not find any conflict with Policies EM1 and EM10 of the Local Plan in this respect, which are primarily concerned with landscape and design respectively.

The effect of the development on the landscape, and on the character and appearance of the area

68. At a National level, the site lies within National Character Area No 129: 'Thames Basin Heaths'. At a County Level, the site lies within the Landscape Character Area 2b: North Hampshire Lowland Mosaic, as defined in the Hampshire County Integrated Character Assessment. In broad terms, the landscape within this Character Area comprises an enclosed and generally tranquil landscape comprising a medium-small scale mosaic of farmland and woodland defined by a strong hedgerow structure.
69. At a local level, the appeal site falls within North Sherborne Character Area 4 and within the FW2 'Mixed farmland and woodland: large-scale' landscape type as defined in the Basingstoke and Deane Landscape Character Assessment. The key characteristics of this landscape include a gently undulating, subtle landform with a pattern of predominantly arable farmland and a low density of small-scale scattered settlement, enclosed within an established woodland and hedgerow structure with many hedgerow trees.
70. The appeal site and its surroundings display many of the key characteristics of both Landscape Character Area 2b: North Hampshire Lowland Mosaic and the FW2 'Mixed farmland and woodland: large-scale' landscape type. In particular, the landscape is enclosed within an established woodland and hedgerow structure with many hedgerow trees, including along Bramley Road. The established trees along Gypsy Lane and the F1 woodland fronting onto Bramley Road contribute to the landscape character, as do the larger areas of woodland to the south of Bramley Road and to north-west of the appeal site visible from Gypsy Lane. Views into this enclosed landscape are achieved over and through gaps in hedgerows, typically revealing arable fields surrounded by woodland. The views westwards from Gypsy Lane are typical in this respect, and historical photographs of the appeal site disclose that the appeal site was very much of the same character before the breach of planning control alleged in the notice took place.
71. The bunds have been constructed with steep side slopes, at an angle of about 45°, and a flat top. This gives the bunds a man-made and engineered appearance that is alien to and incongruous within this landscape. Moreover, the solid form of the bunds prevents views into the enclosed landscape beyond, which results in the loss of a key characteristic of this landscape type. Nowhere is this more apparent than along the Bramley Road frontage, where photographic evidence shows that views into the appeal site and the landscape beyond were previously available over the hedge or through gaps within it. The construction of the bund(s) has completely obscured those views and has resulted in a fundamental change in the landscape.
72. In current views from Bramley Road, the site is primarily experienced as views of the native vegetation on and in front of the steep-sided slope of the bund. Within that native vegetation are glimpses of the non-native, bright evergreen Cherry Laurel hedge. These plants are not unduly conspicuous

amongst the native vegetation and trees on the bund. Furthermore, those views would be predominantly experienced by drivers on Bramley Road and are unlikely even to be noticed by them. There are no views of the caravans or motorhomes stored within the site from Bramley Road or of the fencing on top of the earth bund from this frontage. Nevertheless, this does not outweigh the harm caused by the solid man-made appearance of the bund and the loss of views into the enclosed landscape beyond.

73. In views from Footpath 11 (Gypsy Lane), the fencing on the bund around the caravan and motorhome storage area is visible through the trees and understorey vegetation adjacent to this path. The Cherry Laurel along this boundary has not grown as densely as along the Bramley Road frontage, but is nonetheless more apparent than on the Bramley Road frontage. In her Proof of Evidence, Ms Marsh assesses the value of users' views from Footpath 11 as High/Medium and the sensitivity of the receptor as High. Given that Gypsy Lane is a public footpath and the quality of the environment from which these views are experienced, I agree with that assessment.
74. Even though the caravans or motorhomes stored within the site are not visible in these views, the fencing and the non-native Cherry Laurel hedge betray the presence of that use (or, at least, of a non-agricultural use), and introduce an urban character into this rural landscape. Moreover, the construction of the bund has obscured views of the enclosed landscape beyond. This is stark contrast to the views to the west from Gypsy Lane, which display many of the characteristics of this Landscape Character Area. In that sense, I consider that the breach of planning control alleged in the notice significantly harms the views from Footpath 11.
75. My attention was drawn to other bunds in the surrounding area, including in Area D on the appeal site itself. However, the presence of these other bunds is not a characteristic of this landscape type: if anything, the solid man-made and engineered appearance of these bunds is the very antithesis of this landscape type, in which views are obtained through gaps in hedgerows to an enclosed landscape beyond. That is simply not possible with the bunds in place.
76. I conclude that the development unacceptably harms the landscape, and the character and appearance of the area. I therefore conclude that the breach of planning control that has taken place is contrary to Policy EM1 of the Local Plan which, amongst other things, states that development will only be permitted where it can be demonstrated that the proposal are sympathetic to the character and visual quality of the area.

The effect of the development on biodiversity

77. Policy EM4 of the Local Plan provides, amongst other things, that development proposals will only be permitted if significant harm to biodiversity resulting from a development can be avoided or, if that is not possible, adequately mitigated. In his evidence, Mr Sibbett explained that for the purposes of Policy EM4 'key species' is an umbrella term that covers legally protected species, being those species given statutory protection for nature conservation reasons. Key habitats are defined in the Local Plan as including hedgerows and lowland mixed deciduous woodland.

78. The ecological baseline in this case is the position before the breach of planning control took place. This baseline included an intact hedge with trees along the northern boundary, with tussocky grassland on its north side. A hedge was also present along the southern boundary. There was improved grassland on the field itself, and a wooded area to the west of the field (known as Gypsy Lane).
79. There was considerable debate at the Inquiry as to the status of this area to west of the site. On behalf of the appellant, Ms Colebourn described it as a hedgerow with trees. I can see the logic in that, and indeed the UK Habitat Classification²⁰ includes the definition "190 – Hedgerow with trees", this being defined as a linear feature at least 20m long with a woody component less than 5m wide at its base, a shrub layer present, and with at least two tall trees that are less than 20m apart over most of its length. At first glance, Gypsy Lane would appear to fall within that definition.
80. It is likely that at one time Gypsy Lane was a drove with hedges with trees embedded on either side to prevent livestock straying on to adjoining land. However, I noted on my site visit that over time what was once the drove has become infilled with a mixture of some mature trees, young trees and vegetation. In some places, the woody component appears to be wider than 5m at its base and in others the woody component effectively spans the full width of the drove (aside from the footpath). In some places Gypsy Lane is wider than the width of the former drove. As such, the area now has the characteristics of a linear woodland. Despite having some of the characteristics of ancient woodland, this area has never been recorded as ancient woodland and I do not consider it to be so. Nevertheless, as a matter of fact and degree, it is in my view a woodland.
81. It is Mr Sibbett's evidence that the hedges had potential to support dormice, bats, badgers, reptiles and great crested newts for all or part of their respective lifecycles. The grassland had potential for occasional traverses by great crested newts and for badger foraging. He concurs with the assessment in the Biodiversity and Environmental Audit Overview produced by Pamber Parish Council that the likelihood of the presence of dormice in the hedgerows and nearby woodland is high²¹.
82. The construction of the bund does not encroach onto the woodland itself but does extent right up to it. I recognise that woodland margins typically experience penetration of sunlight at certain times of day and so support a greater diversity of ground flora than would the woodland interior. I therefore accept that there may be some harm to this habitat through artificial shade resulting from planting on the bund itself but, in a woodland environment where the ground plants are by their very nature shade-tolerant, I have no evidence to show that would have harmful effects on plant growth. I therefore consider that there had been no significant loss of habitat in the woodland itself or direct harm to key species there.
83. The principal harm result from the loss of hedge along the northern boundary of the site, together with the loss of the tussocky grassland on the north side of that hedge caused by the construction of the hardstanding. The loss of 75m of hedgerow would not only have destroyed a valuable habitat used by

²⁰ Core Document K14

²¹ Core Document I8

dormice for foraging, shelter and for connectivity, it may also have resulted in a direct reduction in the resident population. Similarly, the hedgerow would have formed places of shelter for terrestrial great crested newts from summer through to early spring, and may have resulted in the loss of hibernation sites underground or under logs. These impacts may have resulted in a direct reduction in the population of the great crested newts. The loss of the tussocky grassland would also have reduced the connectivity between habitats and the resulted in the loss of foraging for many species.

84. The loss of and/or reduction in the key habitats used by key species in my view constitutes a significant harm arising from the breach of planning control that has taken place. Given the key habitat and species concerned, the protection of nature conservation interests must in my view attract substantial weight in this case. The harm in that respect could have been entirely avoided by adjusting the area covered by the development in order to retain the hedgerows and to provide a buffer to the woodland. However, that opportunity has now been lost through the construction of the bund as existing. The development is contrary to Policy EM4 of the Local Plan in that respect.
85. Policy EM4 goes on to require that, if harm to biodiversity cannot be avoided (as in this case), permission will be granted if the harm can adequately mitigated and where it can be *clearly* demonstrated that there will be no adverse impact on (a) the conservation status of key species and (e) that there will be no loss or deterioration of a key habitat type (emphasis added). On my reading of that policy, the inclusion of the word 'and' is significant. I have found that there is significant harm to key habitats and key species resulting from the breach of planning control that has taken place. On my reading of the policy, this precludes the possibility of permission being granted even if the significant harm could be adequately mitigated. In any event, the mitigation put forward by the appellant, which principally comprised replacing the tussocky grassland on the bunds and the partial replacement of the Laurel hedges, falls a long way short of being adequate mitigation for the loss of a significant length of hedgerow, a key habitat for key species. The development therefore cannot comply with Policy EM4 in this respect either.
86. This then leaves compensation as the only option. In this scenario, Policy EM4 provides that development proposals will only be permitted if it has been clearly demonstrated that there is an overriding public need for the proposal and there is no satisfactory alternative with less or no harmful impacts. In such cases, Policy EM4 provides that as a last resort compensatory measures will be secured to ensure no net loss of biodiversity and, where possible, provide a net gain.
87. As the appellant points out, Policy EM4 of the Local Plan goes further than the guidance in the Framework insofar as it requires an overriding public need for the proposal, that there is no satisfactory alternative with less or no harmful impacts and to provide a net gain. All that paragraph 180 of the Framework requires is that compensation be a last resort should avoidance or mitigation not be possible. Nevertheless, the reality is that the harmful impacts that I have identified can no longer be avoided: they have already occurred. Neither have they been adequately mitigated. Consequently, notwithstanding the 'gatekeeping' requirements of Policy EM4, it seems to me that some form

of compensation ought to be considered pursuant to that policy and in accordance with paragraph 180 of the Framework.

88. In that context, the appellant proposes that the shrub layer in the woodland to the east of the main access (W1) could be coppiced. The appellant suggest that this would increase the potential of the ponds in that area to support breeding amphibians, including Great Crested Newts; increase the abundance of Hazel nuts, a major food item for Dormice; and increase the longevity of the coppice stools, a Dormouse hibernation habitat.
89. In response, Mr Sibbett was not convinced that the measures put forward by the appellant would be effective in securing the level of compensation required to offset the harm caused. I concur with Mr Sibbett in that respect. At the time of my site visit, the ponds within W1 were dry. I am not persuaded on the limited evidence before me that these would provide a suitable breeding habitat for Great Crested Newts. Similarly, I am not persuaded that coppicing an existing area of woodland would compensate for the loss of some 75m of hedgerow, with all the benefits in terms of connectivity between habitats and the capacity of hedgerows to support a wide range of species for all or part of their respective lifecycles.
90. The appellant maintains that the provision of compensation could, and should, be addressed through an 'enforcement-type' condition requiring details of a scheme to be submitted and approved. I accept entirely that there is no reason in principle why an enforcement-type condition would not work in this situation, should I find the development to be acceptable when considered in the round. However, should I conclude that the development is unacceptable on one or more grounds, the opportunity to impose such a condition would not be open to me. In that scenario, given the significant harm to biodiversity that results from the development, I conclude that the breach of planning control would be contrary to Policy EM4 of the Local Plan. For the same reasons, I conclude that the development would then fail to accord with paragraph 180 of the Framework, a material consideration to which I attach substantial weight in the view of the protected species involved and the loss of their habitat.

The effect on trees

91. There was also much debate at the Inquiry as to the applicability of the 20m buffer set out in the Council's Landscape and Biodiversity Supplementary Planning Document (SPD). The simple fact is that there is no buffer zone: the bund extends right up to the boundary with Gypsy Lane and, for that matter, Bramley Road. For that reason, the debate at the Inquiry around whether there should be a 15 metre or a 20 metre buffer zone, and the weight to be attached to the SPD, was entirely academic. The real issue is whether the construction of the bund has resulted in harm to the trees.
92. The evidence of Mr Harrison was clear. In his view, any manifestations of harms should be present by now if they are attributable to the bunds being present on roots. Moreover, as Mr Harrison points out, the two trees identified in the most recent Arboricultural Impact Assessment (AIA) as seemingly being in decline (T8 and T11) are not affected by the bunds. The obvious and inescapable conclusion is that there must be some other explanation than the bunds for the decline of the two trees on the Bramley Road frontage. None of

the trees in Gypsy Lane are affected at all (T18 to T32), even though it is likely that the bund encroaches over the root spread of some of those trees.

93. The previous AIA submitted with the proposals (2019) accepted that any harm to trees might take 20 years to manifest itself. No convincing explanation was provided by Mr Harrison to explain the change in position in the latest AIA as to why he now considered that six years was a sufficient period of time to expect any evidence of stress in the trees to appear.
94. In his evidence, Mr Polnik took a different view, and considered that neither AIA formed any basis to conclude that the development does not pose a risk to the trees in question through compaction. He drew a distinction between the severing of the roots of mature trees, which in his view is likely to result in the rapid onset of symptoms (for the example, in the next growing season or a few years), and the compaction of those roots. His view is based on the ability of tree roots to exploit the soil profile which, he explains, is reduced by the increased resistance to root penetration and imbalance between the availability of oxygen and carbon-dioxide within the compacted soil. His view was supported with reference to technical publications on that topic. For those reasons, Mr Polnik suggests that the onset of symptoms indicating a decline in the health of the trees cannot be effectively calculated nor a timeline produced. I found that technical evidence, which was not seriously challenged by the appellant, to be compelling.
95. In summary, there is no evidence before me to show that the bund has caused harm to any trees through soil compaction, or for any other reason, but the technical evidence would suggest that is too soon to reach any firm conclusions on this matter. The difficulty is that I do not have the luxury of waiting for 20 years to see if any harms to manifest themselves in due course. I will therefore adopt the precautionary principle. Accordingly, I find no conflict with Policy EM4 in this respect at this time but equally do not rule out that harm may manifest itself in due course should the bunds remain in situ. I will therefore treat this as a neutral consideration at this time.

Other considerations

96. A total of 52 letters of representation were received in relation to these appeals, all in support of the development. In very general terms, these representations consistently stressed the difficulty in finding suitable places to store their caravans and held in high regard the facility at the appeal site. Many of the representations explained that, should the facility have to close, the direct consequence would be that the caravan owners would have sell their caravans or motorhomes, and surrender their ability to enjoy their pastime.
97. The comments made in the representations were reinforced by those caravan owners who spoke at Inquiry. In giving his evidence, Mr Ian Belcher explained that the storage facility at the appeal site is providing a much-needed service to local residents, many of whom are struggling to find appropriate storage locations that are both secure and private. He estimated that the closure of this site would mean that over 100 local residents would have to find alternative storage. Mr Andrew Granston spoke in similar terms, and explained that planning restrictions prevent him from storing his caravan at home. He had investigated the availability of storage across Basingstoke and the surrounding area and found that there is little or no spaces available.

Mr Michael Styles indicated that he is aware of three other sites offering storage facilities, all of which are currently full. He explained that on average he takes his caravan away eight times per year, and on every occasion stocks up on food and other supplies in Bramley.

98. Although not a caravan owner himself, Mr Philip Kingston spoke as a local resident and a former Parish Councillor. He explained that the need for caravan storage facilities is an increasing issue which, in his view, is not adequately addressed by existing planning policies. He spoke to the need for secure storage for caravans and motorhomes, given their high value for insurance purposes, and explained that local businesses have benefitted from the facility.
99. I am struck by the support for the development expressed in the written representations and by those who spoke at the Inquiry. In particular, it is clear from the oral and written representations made that the closure of the storage facility at the appeal site would force many, or at least some, of the caravan owners to give up their pastime and forego their trips away from home. That would be harmful to their health and general well-being, contrary to paragraph 92 of the Framework, and is a material consideration to which I attach significant weight. In those cases where owners are able to store their caravans at home, I am also mindful of the consequences for the appearance of residential areas in and around Basingstoke of more caravans being stored on driveways and/or in rear gardens, including the displacement of other vehicles onto the road to ensure that caravans or motorhomes can be kept as securely as possible on a driveway. Nonetheless, I remain mindful that these benefits need to be balanced against the benefits of removing the caravan storage facility, including the positive effect for the long-term biodiversity and landscape character and visual impact of the area.
100. I also recognise that caravan storage facility supports economic growth and productivity, and in that sense accords with paragraph 81 of the Framework. However, paragraph 84(a) of the Framework indicates that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings. The caravan storage facility is neither of those and consequently does not benefit from support offered by that paragraph.
101. Paragraph 84(b) supports the development and diversification of agricultural and other land-based rural businesses. For the reasons, set out above I consider that the use of Area A for the storage of caravans and motorhomes does constitute the diversification of the agricultural business at Berry Court Farm. Consequently, the development accords with this paragraph of the Framework.
102. Paragraph 84(c) of the Framework relation to sustainable rural tourism and leisure developments. In that context, I recognise that the facility caters for caravans and motorhomes used by families for touring and holidaymaking. It affords them a place to safely keep their caravans/motorhomes when they are otherwise unable to do so: perhaps, for example, because they do not have driveways or because of covenants prohibiting the keeping of caravans. In other cases, owners are choosing to pay to securely store their caravans/motorhomes at the site, notwithstanding that they have perfectly serviceable and secure places to keep them at home. The caravan storage

facility therefore falls squarely within the types of development that, in principle, are supported paragraph by paragraph 84(c).

103. However, paragraph 84 (c) of the Framework relates to *sustainable* rural tourism and leisure developments (emphasis added). Having regard to the three overarching objectives of sustainability set out in para 8 of the Framework, for the reasons set out above I am satisfied that the development is sustainable in economic and social terms. But it is not sustainable in environmental terms. Overall, I conclude that the development therefore does not benefit from the support offered in paragraph 84 of the Framework due to the environmental harm that it causes.
104. The previous appeal decision relating to this site issued in November 2020 (APP/H1705/W/20/3248772) is a significant material consideration in this case. Consistency is an important element of decision making. Whilst more and better evidence has entitled me to reach a different conclusion on some particular points, overall there is nothing that leads me to reach a different conclusion to the Inspector in that case on the main issues.
105. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. However, those harms are intrinsic to the development and, with the possible exception of the harm to biodiversity, could not be overcome by the imposition of conditions.
106. Section 177(1)(a) of the 1990 Act provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole *or any part of those matters* or in relation to any part of the land to which the notice relates (emphasis added). I have considered whether I could grant planning permission for the bunds, the access or the hardstanding as discrete elements of operational development. However, the appellant's case was not advanced on that basis and, in any event, I have found harms relating to that operational development. I have therefore not pursued this further.

Conclusion on the appeal on ground (a)

107. For the reasons set out above, the proposed development is contrary to the development plan. Having weighed the factors in support of the development and all other relevant considerations, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Indeed, some material considerations point strongly in the other direction: for example, the overall conflict with paragraph 84 of the Framework. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice, in whole or in part.

Appeals A and B: the appeals on ground (g)

108. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months for steps (i) and (ii), and nine months for steps (iii) to (ix).

109. The individual plots for the storage of caravans/motorhomes are leased on the basis of annual contracts. The reason why owners are storing their caravans/motorhomes on the site here is, in most cases, because they have no suitable alternative accommodation available to them elsewhere. I heard first-hand evidence at the Inquiry that owners have searched for alternative sites but those sites which offer suitable storage facilities are already full. That evidence is reiterated in the large number of the written representations received. There are some 120 caravans/motorhomes stored on this site and I gather that there is a waiting list to get onto the site. It is clear from the evidence before me that there is not sufficient capacity in nearby facilities to accommodate the sudden exodus of that many caravans/motorhomes from the appeal site, in addition to those already on the waiting list and who will also need to find places elsewhere. Furthermore, as indicated above, I am mindful of the implications of caravans being stored on driveways or in rear gardens.
110. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must take into account that the use of the land subject to the enforcement notice for caravan/motorhome storage does cause the harm alleged in the reasons for issuing the notice. In that respect, since I am not in a position to impose a condition to compensate for the harm to biodiversity, I must factor that harm into the balance.
111. In weighing the balance between public and private interests, I consider that in this case the private interest in extending that period of compliance, specifically the need for owners to make alternative arrangements to store their caravan/motorhomes, outweighs the public interest in expeditious compliance with the requirements of the enforcement notice as set out notice. The harm to biodiversity, whilst significant in the short term, would be fully remedied in due course through compliance with the notice. I am therefore persuaded that there is need to extend the period for compliance with the notice.
112. I consider that a period of compliance of 12 months for cessation of the use and the removal of all caravans/motorhomes would ensure that even those caravan owners who have recently renewed their contracts will have the remainder of their contracted periods to try and find alternative sites. I fully recognise that the Council indicated in its Statement of Case that it would agree to a period of nine months for the cessation of the use but, for the reasons that I have set out, I do consider that to be sufficient. I therefore consider that a period of compliance of twelve months in relation to steps (i) and (ii) as stated in the notice is a justified and proportionate response to the breach of planning control that has occurred.
113. It follows that extending the period for compliance in relation to steps (i) and (ii) requires a commensurate variation in relation to steps (iii) to (ix). Following cessation of the use and removal of the caravans and motorhomes, the notice currently allows a period of three months for the completion of all remaining steps. The Council quite rightly seeks the careful removal materials used to construct the bunds from around the trees in order to avoid damage to the tree roots. I concur that it is important to ensure that such works are not rushed and that suitably experienced contractors should be

commissioned to undertake those works. It may also be prudent to secure an arboriculturist to supervise those works.

114. The period of compliance of three months does not allow for that careful programme of works and assumes that suitably skilled/specialist staff can be secured within a relatively narrow time window. Furthermore, such a short period of time does not factor in the possibility of inclement weather or other unforeseen matters. On behalf of the appellants, Mr Lasseter identified a period of six months for the removal of the operational development following on from the cessation of the use/removal of all the caravans and motorhomes. I consider that a period of six months would be necessary to ensure that no damage is caused to tree roots in complying with the notice, and as such would be justified and proportionate in the circumstances.
115. The appeals on ground (g) succeed to that extent and I will vary the notice accordingly.

Conclusion

116. For the reasons given above, I conclude that the Appeals A and B should not succeed. I shall uphold both enforcement notices with corrections and variations and, in relation to Appeal A, refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.
117. In relation to Appeal C, I conclude that the Council's reasons for refusing the LDC were well-founded and that the appeal should be dismissed.

Formal Decisions

Appeal A (APP/H1705/C/20/3262226) and Appeal B (APP/H1705/C/20/3262297)

118. It is directed that the notice is corrected by:
- in paragraph 3, inserting the word 'material' before the words 'change of use'
 - also in paragraph 3, deleting the words 'bold black line' and substituting there the words 'edged red'
119. It is directed that the notice is varied by:
- in paragraph 5(iii), after the words 'on the attached plan', adding the words 'No machine shall be allowed to track over the existing bund already created.'
 - in paragraph 5(iv), after the words 'on the attached plan', adding the words 'No machine shall be allowed to track over the existing bund already created.'
 - In paragraph 6, in relation to steps 5(i) and 5(ii), deleting 'six months' and substituting there 'twelve months'
 - In paragraph 6, in relation to steps 5(iii) and 5(ix), deleting 'nine months' and substituting there 'eighteen months'

120. Subject to those corrections and variations, the appeals are dismissed and the enforcement notice is upheld. In relation to Appeal A, I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

Appeal C (APP/H1705/X/20/3262235)

121. The appeal is dismissed.

Paul Freer

INSPECTOR

APPEARANCES

On behalf of the appellants

Mr Scott Stemp

Of Counsel

He called:

Mr David Snook

Appellant

Mr Mark Harrison MarborA NDarb

Director, Harrison
Arboriculture Ltd

Ms Karen Coloburn BSc (Hons) CBIol FCIEEM

Director, EPR Ltd

Mr Ian Lasseter BSc MRTPI

Managing Director,
Lasseter Downie
Planning

On behalf of the Local Planning Authority

Mr James Neill

Of Counsel

He called:

Ms Christine Marsh - BA (Hons), DipLA, CMLI

Associate Landscape
Architect, Hankinson
Duckett Associates

Mr Nicholas Sibbett BSc (Hons) MSc CEcol CEnv

Associate Director, The
Landscape Partnership

CMLI FCIEEM

Mr Jan Polnik Diploma in Forestry

Principal Tree Officer

Certificate in Arboriculture

Ms Patricia Logie BA BA (Hons) Diploma in Urban Design

Principal Planning Officer

Interested Persons

Mr Ian Belcher

Caravan owner

Mr Andrew Granston	Caravan owner
Mr Michael Styles	Caravan owner
Mr Philip Kingston	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Note on behalf of the appellants.
2. Opening Statement by the Local Planning Authority.
3. Statement of Common Ground.
4. Ecological Proof of Evidence by Karen Colebourn, with appendices.
5. Local Planning Authority Rebuttal Proof of Evidence on Ecology.
6. Local Planning Authority Rebuttal Proof of Evidence on Trees, with appendices.
7. Full copy of the High Court judgement in *In Prengate Properties Ltd (and another) v. Secretary of State for the Environment (and others)* (1973) 25 P&CR 311.
8. Draft wording for requirement in relation to removing earth from around the bunds.

DOCUMENTS SUBMITTED AFTER THE INQUIRY

(submitted electronically)

1. Closing submissions on behalf of the Local Planning Authority.
2. Closing submissions on behalf of the Appellants.
3. Application for costs on behalf of the Local Planning Authority.
4. Application for costs on behalf of the Appellants.
5. Response by the Appellants to the application for costs made by the Council.
6. Response by the Council to the application for costs made by the Appellants.
7. Final comments by the Council on its application for costs.
8. Final comments by the Appellants on their application for costs.