



Appeal Decision

Site visit made on 4 July 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2023

Appeal Ref: APP/N0410/C/22/3301780

Redbarn Farm, Beaconsfield Road, Amersham HP7 0JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Jen Axten against an enforcement notice issued by Buckinghamshire Council ('the Notice').
 - The enforcement notice, numbered EN/18/2042, was issued on 23 May 2022.
 - The breach of planning control as alleged in the notice is Without planning permission a material change of use of the Land to a sui generis mixed use (the "Unauthorised Use"), including Class E; and integral to the unauthorised use, the carrying out of operational development, comprising: a. the extension of and alterations to the existing building shown labelled B1 on the attached Plan; and b. the erection of new buildings shown labelled B2, B3, B4 on the attached Plan; c. the laying of hard-surfacing, in the approximate location shown hatched on the attached Plan; and d. the erection of gates and fencing, in the approximate location shown as dotted lines on the attached Plan.
 - The requirements of the notice are 1. Cease the Unauthorised Use of the Land for the said sui generis mixed use comprising of the Class E use; and 2. Demolish the extension to the existing building shown labelled B1 on Plan 2; and 3. Demolish the buildings shown labelled B2, B3 and B4 on Plan 2; 4. Rip up and remove the hard-surfacing, in the approximate location shown hatched of the on Plan 2; and 5. Remove the gates and fencing, in the approximate location shown as dotted lines on Plan 2; 6. Remove all, tables chairs, plant, machinery, tools, equipment and apparatus and other paraphernalia brought onto the Land and not related to the lawful use of the Land; 7. Remove all materials and debris resulting from compliance with Steps 1-6 of this Notice from the Land (shown edged in a thick black line on the attached plan).
 - The period for compliance with the requirements is 6 months.
 - The appeal 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 ('the 'Act').
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Decision

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

Omitting the words "Without planning permission a material change of use of the Land to a sui generis mixed use (the "Unauthorised Use"), including Class E;" from section 3 of the Notice 'The matters which appear to constitute a breach of planning control' and substitute the words "Without planning permission a material change of use of the Land to a sui generis mixed use (the "Unauthorised Use"), comprising agricultural and farm shop;"

and that the enforcement notice is varied by:

Omitting requirement 2 of section 5 of the Notice 'What you are required to do'

Omitting the words "B2," from requirement 3 of section 5 of the Notice 'What you are required to do'

Subject to the correction and variation, the appeal is allowed insofar as it relates to the material change of use of the Land to a sui generis mixed use (the "Unauthorised Use"), comprising agricultural and farm shop; the retention of Building B3; the laying of hard-surfacing; and the erection of gates and fencing and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended at Redbarn Farm, Beaconsfield Road, Amersham HP7 0JY.

The appeal is dismissed, and the enforcement notice is upheld as corrected and varied insofar as it relates to Building B4 at Redbarn Farm, Beaconsfield Road, Amersham HP7 0JY, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by Buckinghamshire Council against Mrs Jen Axten. This application is the subject of a separate Decision.

Procedural Matter

3. Following my site visit, the High Court has handed down its judgement in *Ian Caldwell and Timberstore Limited v SoSLUHC and Others* [2023] EWHC 2053 (Admin). As this concerned similar issues to those raised in the Appellant's Ground (d) case, I sought the views of the parties as to whether the judgement had any bearing on the appeal before me.
4. In an email dated 7 September, the Appellant stated that the decision supported the position she put forward in her earlier submissions. The Council, by email dated 8 September, stated that it had no comment to make. The court's decision and these responses are taken into account in my reasoning, below.

The Notice

5. I wrote to the parties expressing concern that the allegation in the Notice was ambiguous and this also had ramifications for its requirements. The Council suggested that the allegation could be corrected using my powers in s176(1) of the Act. They suggest that it would begin "Without planning permission a material change of use of the Land to a sui generis mixed use (the "Unauthorised Use"), comprising agricultural and farm shop" and then continue as per the original Notice. The requirement, it says, would need to be varied to require the cessation of the corrected unauthorised development.
6. This response was forwarded to the Appellant for comment, but none was received.
7. Correcting the Notice in the manner proposed by the Council would remove the ambiguity that I had identified, especially for future owners or occupiers of the land. It was clear from her submissions that the Appellant would not suffer injustice from the corrected material change of use ('mcu') alleged. In the circumstances, I can use my powers under s176(1) to correct and vary the terms of the Notice without prejudice to either party.

The Appeal Site

8. Redbarn Farm lies adjacent to the A355, between Beaconsfield and Amersham. It lies in the open countryside that is part of an Area of Outstanding Natural Beauty ('AONB'). It is also within the Green Belt ('GB').
9. The part of the farm that is the subject of the Notice is a roughly rectangular area of land that has been formed from part of a larger grassed field. Within this are a number of buildings. Building B1 is a small brick building that has been extended, and is used as a shop. Building B2 is small and constructed of timber; it is used for the sale of drinks, as well as goods and produce from the shop in Building B1. Building B3 is a former cricket pavilion. The Appellant's Statement describes its use as "a periodic café and meeting room", though tables within it were being used in the growing of seedlings when I visited. It faces Building B4, a single storey block-built building, across the area of hardstanding referred to in the Notice. Half of this building is used for storage, with the remainder housing toilets.
10. To the south of these buildings the land is cultivated, with fruit cages and beds both at ground level and raised above it. This land is separated from the large field by a timber fence. Access to the field from the appeal site is via a gate in the fence on the southern boundary.

Ground (b)

11. An appeal made under Ground (b) is that the alleged breach of planning control has not occurred. This is a legal ground of appeal where the onus lies with the Appellant to make her case on the balance of probability.
12. Before assessing this ground, it is necessary to define the planning unit. Established case law sets out that this is usually the unit of occupation, unless a smaller area can be identified, and this is a matter of fact and degree. The concept of physical and functional separation is key in identifying the planning unit. Using this approach, I find that the planning unit is the land identified on Plans 1 and 2 attached to the Notice.
13. The Appellant's case in this Ground relates to what is roughly the southern half of the appeal site. She says that no material change of use ('mcu') has occurred on this area, which is, as a matter of fact, in agricultural use.
14. When I visited the site, I saw that the southern part of the site was being put to agricultural use through the growing of vegetables and fruit. I am told that it is also grazed by sheep at times. However, it is not a matter of whether the land is in the alleged use now, but whether it was being put to the alleged use at the time that the Notice was issued.
15. The Council's Officer report states that during the investigation of the proposed use, in 2018, the Appellant was "creating what looks like a play park for children in agricultural fields. Including sit on plastic cows etc..." It does not say that a play park was created nor, importantly, that the land was so used. No mention of this use of the land was made in the note of a subsequent visit to the land, on 10 March 2022.
16. The Appellant simply says that she has used the land in that way. She says a table tennis table was brought to the site, and the use of the land for some

days per year as a childrens' play area had been considered. It was not put to this use, however.

17. On the basis of the evidence before me, I find that, on the balance of probability, the land was not used as a play area.
18. However, I have found that the area of land identified in the Plans that were attached to the Notice identify the correct planning unit. The Notice alleges a mixed use of agriculture and farm shop, which is what the evidence, including that of the Appellant, shows to have taken place. In the light of this, the Ground (b) fails.

Ground (c)

19. An appeal made under Ground (c) is that the matters alleged in the Notice, if they occurred, do not constitute a breach of planning control. It is, again, for the Appellant to make her case on the balance of probability.
20. The Appellant's case is that, save for a section of metal fence, the development alleged in the Notice is not a breach of planning control. Further, she says that the use of Building B1 as a farm shop was permitted by the Council in 2013.
21. In respect of the fence, irrespective of whether the Council's reference to case law¹ was well-founded, the Appellant concedes that a small part of the fence exceeds 2m in height. Thus, it is higher than the permitted development ('pd') rights² for enclosures set out in the GPDO. This means that it is not pd, and planning permission is required for it. It is a breach of planning control.
22. In respect of the farm shop, the Appellant's case is that, by way of an email dated 4 December 2013, the Council confirmed that the use of Building B1 as a shop was permitted development under "Class R". This email was one of a chain of emails that the Appellant submitted in support of her case.
23. The reference to Class R is incorrect, as this came into force by way of the Town and Country (General Permitted Development) (England) Order 2015, as amended, ('GPDO'). At the time that the email was written, the terms of the Town and Country (General Development) Order 1995, as amended ('GDO') were in force. Its counterpart to the GPDO's Class R was its Class M. I wrote to the Appellant on this matter, and she confirmed³ that reference to Class R of the GPDO was an error and reference should have been made to Class M of the GDO.
24. Class M set out that 'Development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes), Class B1 (business), Class B8 (storage or distribution), Class C1 (hotels) or Class D2 (assembly and leisure) of the Schedule to the Use Classes Order' was permitted development. This is subject to a number of criteria and conditions, set out in M.1., M.2. and M.3. of the GDO. Guidance on the procedure to be followed by planning authorities and applicants in pursuing a Class M submission were set out in Class N of the GDO.

¹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 and *Somak Travel v SSE & Brent LBC* [1987] JPL 630

² Section Class Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the 'GPDO')

³ Email dated 14 July 2023

25. The first two emails in the chain date from 2010; the former, dated 12 April, from the Appellant to the Council and the latter, dated 26 April, its response. They were written under the title 'Change of use-farm building-Red Barn Farm'. The former sets out the Appellant's intention to use a derelict building at the farm "for catering using farm produce but to incorporate a farm shop". The building was described, but not specified, and some details of opening hours were given along with a request for initial thoughts or assistance. The Council's response was that further information would be required for a more detailed response, but it did give some guidance, amongst other things referring to the site's location within the GB.
26. The next email I have dates from 16 July 2013, from the Appellant to the Council. This, and all of the others in the chain from this point on, is entitled "Enquiry-do I need change of use?". Again, some limited details of the proposed use of a farm building were given. The Council's response of 14 August 2013 refers to the Appellant's email as a "preliminary planning enquiry". It sets out an in-principle view that the use of the former hatchery building might be viewed favourably. It goes on to make reference to the recent changes in the GDO, including to Class M of which it gives a brief resumé. It ends with the caveat that "You will appreciate that this is the informal opinion of a Senior Planning Officer, given without the benefit of a site visit, and does not bind the Council to any course of action or decision".
27. From the Appellant's 3 December email, which refers to a telephone conversation with the Officer who had written the 14 August email, she took what had been said in the Council's email as "stating that I did not require planning permission for change of use for this building". This was not what it said.
28. Importantly, she informed the Council that the use of the building, which was identified in an annotated aerial photograph that I have not seen, had commenced. It had been open at weekends "since your last email", the evidence points to this being that of 14 August, with Friday openings for the 4 weeks prior to the 3 December. In response, on 4 December 2013, the Council thanked the Appellant for the additional information saying that this would be added to the previous correspondence to make the Council's record complete.
29. The final email I have been provided with is dated 12 January 2015. It was from the Appellant to the Council and is entitled "Additional hours". It seeks advice on whether and how the farm shop might be opened for longer from the beginning of March. I was not provided with a response, if there was one.
30. The Council's email of 4 December did not reiterate the requirements of Class M. I can see how the Appellant might read this as indicating that the use was "permitted by the Council...and is not, therefore, a breach of planning control", as she claims in her Grounds of Appeal. I am not party to what was said in the telephone conversation referred to by the Appellant, but, notwithstanding this, the evidence before me does not demonstrate that the farm shop was allowed under the terms of Class M and, therefore, that there has not been a breach of planning control.
31. None of the emails from the Appellant refer to their being a submission under Class M. They could not, therefore, be taken as being such a submission; indeed, the Council made it clear on 14 August that it considered what it had been provided with at that time with was a preliminary enquiry. After this, the

annotated photograph might have sufficed as a location plan, as required by M.3.(a)(iii), and some of the other information would have gone some way to fulfilling some of the other requirements of Class M. However, the essence of a Class M submission is that it must be made prior to the proposed use being commenced. This is clearly set out in M.3.(a)(i) which required details of "the date the site will begin to be used for any of the flexible uses" in Class M. When those details were given, on 3 December 2013, the use had commenced and the matter could no longer be considered under the terms of Class M.

32. For the sake of completeness, I shall look at when the use probably commenced. Email correspondence between the Appellant, as she now is, and the predecessor local planning authority was attached to her Grounds of Appeal. This relates to the use of Building B1 as a farm shop. In an email to the Council dated 3 December 2013, the Appellant states "We have been open now since your last email at weekends. Saturday 8-6 and Sunday 10-4. In the last 4 weeks we have opened on a Friday, also 8-6".
33. The evidence shows, on the balance of probability, the retail use of Building B1 commenced prior to 3 December 2013. It could have been as early as 14 February 2013, according to the Appellant's Statement, though I have been given few details of the retail use at that time. Whatever the date, as the Appellant concedes, this does not provide the 10-years of continuous use required by s171B(3) of the Act. Therefore, the retail use did not achieve immunity from enforcement action.
34. The fence referred to by the Council was not permitted development when erected. The use of the land alleged in the Notice has occurred and is development, as defined in s55 of the Act. It required permission and, from the evidence before me, there is no authority for the Class E use referred to in the Notice either through Class M of the GDO or by a grant of planning permission. The Appellant has failed to demonstrate that there has not been a breach of planning control and, therefore, the Ground (c) appeal fails.

Ground (d)

35. An appeal made under Ground (d) is that, at the date the Notice was issued, no enforcement action could be taken in respect of any breach of planning control alleged in the Notice.
36. The Appellant's case does not relate to the immunity of the mixed-use of the land that is alleged. It is that the Notice cannot require the removal of: the extension to Building B1; Buildings B2 and B3; nor the hardstanding. The premise of the Appellant's position is that the extension and the two buildings were built for the farm shop and café. Legal advice received by the Appellant was submitted in support of this position, it states that the position taken by the Appellant is legally sound and goes on to say "that on the facts of this case the buildings were built before the change of use. As a result in this case with the particular operational development and the timing it is clear that the buildings have become immune from enforcement".
37. The *Caldwell* case related to a legal challenge against an Inspector's decision where an enforcement notice had been issued against a material change of use. The nub of the case revolved around the time limits after which differing types of development achieve immunity from enforcement action, in particular

- operational development associated with material change of use. Clearly, it has similarities with the case before me.
38. Section 171B of the Act sets out those time limits. Of relevance to this appeal are s171B(1) that sets out that the time limit for building operations is 4 years, and s171B(3) that states, amongst other things, that for a material change of use of the kind alleged in the Notice, the time limit is 10 years.
39. In the light of this and established case law, the Council's position in its Statement of Case is that the construction of the buildings and other operational development facilitated the unauthorised change of use of the land, and, as such, the 10-year time limit applies. It makes this case whilst acknowledging that buildings might have been on site for more than 4 years. It did not revise or add to its position in the light of the *Caldwell* decision.
40. The Appellant's position, in a legal opinion included in a response from her agent, is that *Caldwell* confirms that the position she set out in her original arguments is correct.
41. The *Caldwell* decision was reached after a comprehensive analysis of established case law, including that in *Murfitt*, *Somak Travel*, *Kestrel Hydro* and *Welwyn Hatfield*⁴. It provides a clarification of the reach of s171B, and its application to operational development where an enforcement notice attacks a material change of use.
42. It sets out that case law had given local planning authorities the power to require restoration of a site, involving the removal of operational development which could not be enforced against on its own, by reason of the 4-year time limit. Lieven J in *Caldwell* states that in all those cases the works that had been enforced against in this way had been secondary or ancillary in respect of the change of use. As she put it, they had "not been fundamental to or causative of the change of use". In her opinion, Lindblom LJ in *Kestrel Hydro* came closest to defining this where he wrote of the change of use entailing subsequent "physical works to facilitate and support it". However, Lieven J did not find that they have to be subsequent, but that they should be "facilitative" of the change of use.
43. Her judgement was that using an enforcement notice limited to attacking a material change of use to achieve removal of the principal operational development, because the operational development can no longer be directly enforced against, goes against the statutory provisions of the Act. Each case, she says, would be fact dependent.
44. It is, therefore, necessary to assess whether the operational development required to be removed by the Notice was facilitative of the change of use.
45. Building B1, including its extension and that feature's subsequent enclosure, have been used as the principal display area for goods retailed at the site. I refer to the extended building simply as Building B1. The smaller Building B2 has been used for the sale of drinks and for payment for goods kept in Building B1. The extension to Building B1 was added in 2015 and enclosed in 2017, both operations being undertaken more than 4 years before the Notice was issued. Building B2 has been in-situ since 2016, again more than 4 years since

⁴ *Murfitt v SSE* [1980] JPL 598; *Somak Travel v SSE* [1987] JPL 630; *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784; *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15.

the date that the Notice was issued. Assessed in the light of *Caldwell*, there is no doubt that both were used for purposes facilitative of the change of use and were fundamental to it. They are, therefore, immune from enforcement action.

46. It is not possible from the evidence to accurately date Building B3, a former cricket pavilion. It was bought in 2016 and a concrete base was created on which to site it in June 2016. A photograph taken on 1 May 2017 shows that it was not complete at that time, and Google Earth Images from 2017 and 2018 do not provide convincing evidence that it was complete when they were taken, as stated by the Appellant. Photographs 13-16 attached to her statement show the building to be complete, but no date is given for them. It is for the Appellant to make her case on the balance of probability in this legal ground. Although the Council has provided no evidence to the contrary, I find the evidence in this regard lacks precision. In the light of the above, the case for Building B3 having been substantially complete for more than 4 years has not been made. I do not, therefore, have to assess its facilitative credentials. It is not immune from enforcement action.
47. I find the same with Building B4, which the Appellant concedes was erected in the summer of 2018. It was not substantially complete for 4 years at the time the Notice was issued.
48. An aerial photograph from 2017 shows, on the balance of probability, that the hardstanding was laid at that time. Thus, it has been in-situ for more than 4 years. This falls into the category of an operation that is secondary, ancillary or associated with the material change of use. It is not fundamental to nor causative of it. I find that, for this reason, it is not immune from the terms of the Notice.
49. Thus, I find that the extension to Building B1 and the erection of Building B2 are immune from enforcement action and the Notice should be corrected by omitting the requirements to remove them. To this extent, the Ground (d) appeal succeeds.

Ground (a)

50. An appeal under Ground (a) is that planning permission ought to be granted for the alleged breach of planning control.
51. Given my findings in the Ground (d) appeal, above, that the extension to Building B1 and the erection of Building B2 are immune from enforcement action, I shall only address the question of their use here.
52. The main issues are:
- i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2021 ('the Framework') and any relevant development plan policies;
 - ii) The effect of the proposal on the openness of the Green Belt; and
 - iii) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Whether inappropriate development

53. Chapter 13 of the Framework sets out the Government's policy aims for GB land. It attaches great importance to it and its fundamental aim is to prevent urban sprawl by keeping land permanently open.
54. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. Paragraph 148 states that when considering any planning application, decision-makers should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
55. Paragraph 149 states that new buildings are inappropriate development in the GB. Similarly, paragraph 150 sets out that material changes in the use of land are not inappropriate in the GB, provided they preserve its openness and do not conflict with the purposes of including land within it. It also states that the re-use of buildings of permanent and substantial construction is also not inappropriate development in the GB. 'Saved' Policies GB1 and GB2 of the South Bucks District Local Plan, adopted March 1999 and consolidated in 2007 and 2011, (the 'LP'), are consistent with these terms of the Framework.
56. The Appellant's case is that, as the extension to Building B1 and Buildings B2 and B3 are immune from enforcement action, the proposal should be seen as their re-use in the GB and, therefore, not inappropriate development. Given my finding in respect of the buildings in the Ground (d) appeal, I am treating Building B3 as a new building in the GB. No case for immunity was made in respect of Building B4, and here the Appellant claims there are very special circumstances for its retention.
57. Therefore, Buildings B3 and B4 are new buildings that are not immune from enforcement action. As such, I do not consider them as being re-used in respect of GB policy. They are, therefore, inappropriate development in the GB.

Openness

58. The buildings are located in an area that was previously free of development. Buildings B3 and B4, by reason of their size result in spatial and visual reduction in the openness of the GB.
59. The use of the lower part of the land for growing plants and animal grazing has no discernible effect on openness.
60. Given their lawful status, the effect on openness of Buildings B1 and B2 is immaterial. They lie in close proximity to large agricultural buildings and a large, detached dwelling at Redbarn Farm. Car parking associated with the use occurs in the area between these buildings and can be seen from the A355. The access to the farm shop, dwelling and large agricultural buildings is also through this area. I saw that the area of the car park was limited, as not only had access to be maintained to those other buildings but large agricultural vehicles and machinery were parked and manoeuvred there. There were also some small structures here, that did not amount to operational development, such as tables and chairs for farm shop customers.

61. Given that the parking area is of limited size, the shared nature of its use and the presence of large agricultural vehicles and machinery, I find that the parking of vehicles has a minor adverse effect on the openness of the GB. The structures that I refer to have no adverse effect, nor, given the comings and goings to the farm and dwelling, do deliveries.
62. The hardstanding is operational development that has an effect on the openness of the GB, though as it consists of a thin layer of gravel set onto existing land levels it has not involved the raising of the land to any discernible amount. The effect on openness is not material.
63. The fences and gates that have been erected, which are for the overwhelming part within permitted development limits, reduce the openness of the GB to a minimal degree.
64. I find, here, that Buildings B3 and B4 are developments that encroach into the countryside, which is at odds with purpose c) in paragraph 138 of the Framework. They are not covered by any of the exceptions to inappropriate development in the Framework. They adversely affect openness and are inappropriate development in the GB. Thus, their siting conflicts with the Framework and Policies GB1 and GB2 of the LP. Being inappropriate, it is by definition harmful, and I am to afford substantial weight to this harm.

Other Considerations in favour of the Development

65. As the farm shop is part of the farm and represents a diversification project gains support from that part of Chapter 6 of the Framework that relates to 'Supporting a prosperous economy'. Its aims are reflected amongst the terms of Chapter 3.4 'Maintaining Local Economic Prosperity' in the South Bucks Local Development Framework Core Strategy adopted February 2011. LP Policy GB9 also supports diversification projects. However, amongst its caveats is that "the proposal would not compromise the overriding aim or purposes of including the land in the Green Belt".
66. As Buildings B1 and B2 are immune from enforcement action, their re-use accords with GB policy, and the use that they are put to attracts the support from the Framework and local policies that I refer to, above.
67. The farm shop use provides employment, albeit this would be limited due to its size. Furthermore, 15% of its turnover, rising to 17% if lamb sales are taken into account, arises from produce from the farm. A further 46% arises from what are called 'local sales', which I take to mean sales of produce produced locally, with local defined as 15 miles. These are points that carry further weight in support of the development.
68. There is a large body of support locally for the farm shop. Third parties refer to the quality of service – especially during the pandemic, quality of goods sold, the need for the facility, the environmentally-friendly attitude of its owners, that the development causes no landscape harm and overall that it is a local asset to the local community that should be encouraged. I am also aware that the farm shop has been recognised as an important Local Community Use, within Use Class F2 of the Town and Country (Use Classes) Order 1995, as amended.
69. Taken as a whole, the above factors lead me to ascribe substantial weight in favour of the farm shop use of the land and Buildings B1 and B2. I find that

this clearly outweighs the minor harm to the GB arising from the use of the car park and the erection of fences and gates.

70. In terms of the other buildings, I find there is no overriding case for the retention of Building 4, which has been used for several purposes but was largely unused when I visited.
71. Building B4 is a fairly small single storey building of a form commonplace in rural settings. The case put forward for its retention is that it provides toilet facilities and a store for the farm shop use of the land that the Appellant submits is lawful. The use is not lawful, for the reasons that I give above. However, I have found that the limited harm that arises from the use is clearly outweighed by other considerations. Therefore, I address the case put forward for the retention of Building B4 on this basis.
72. When I visited, I saw that the storage area was well-used for purposes related to the farm shop use. I have no doubt that it is beneficial to the enterprise. Given that I do not support the retention of Building B3, it is likely that its value to the business will increase.
73. Given that there are employees at the site, that the farm shop attracts visitors and that they are served with drink and food, the provision of toilet facilities is important.
74. Although it affects openness, as Building B4 is not particularly large this effect is relatively limited. On balance, given that I find the farm shop use to be acceptable and that the facilities in the building are important to its running, I find that its retention clearly outweighs the harm that arises.

Planning Balance

75. Inappropriate development in the GB should not be approved except in very special circumstances. I have found Buildings B1 and B2 to be lawful and their re-use is supported provided they preserve the openness of the GB. The use of the buildings *per se* accords with this, as does the 'agricultural' side of the enterprise. Limited harm arises to openness from the car parking and the enclosures associated with the use. This, however, is clearly outweighed by the benefits of the farm shop use to the local community and economy.
76. Building B4, too, affects openness. I find that the case put forward for its retention to be compelling, and the benefits arising from this to the business, which has policy support, clearly outweigh the GB harm.
77. In conclusion on this main issue, in respect of the use of the land as a farm shop and the retention of Building B4, I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case for them as a whole, I consider that very special circumstances exist which justify the development.
78. In reaching these findings, I have taken into account the decision of an Inspector in appeal APP/N0410/W/21/3276737 that was lodged against the Council's decision to refuse planning permission for the 'retention of a Farm Shop, Cabin selling hot/cold drinks and the associated conversion and use of a former kennel building as a kitchen' on the land. In that appeal, the Inspector did not have to determine the lawfulness of the buildings on the land. I did and, in doing so, found two of them to be lawful. Whilst the decision in that

appeal is a material consideration, my findings on lawfulness lead me to conclude differently for the reasons that I have given, above.

Conclusion on Ground (a)

79. For the above reasoning, I find that the mixed use of the land and buildings, and the retention of Building B4 for this use, accords with the terms of the Framework and LP Policies GB1 and GB2.
80. Conversely, as Building B3 is inappropriate development in the GB for which very special circumstances have not been shown to exist it is contrary to the terms of the Framework and LP Policies GB1 and GB2.

Conditions

81. The Council has not proposed any conditions to be attached in the event that planning permission is granted. In submissions, the Appellant says that she could clad Building B4 to reduce its effect on the appearance of the area. Notwithstanding that the site lies within an Area of Outstanding Natural Beauty, the Council's Notice did not refer to the effects of the development on the character and appearance of the surrounding area. Having visited the site and assessed those effects, I find that a condition requiring changes to the external finish to Building B4 is not required.
82. As the development has taken place, its effects on the environment are measurable. These must have been taken into account by the Council when it formulated its Notice and subsequent case at appeal. It did not require any controls to be attached and, having visited the site, I concur with this.

Ground (g)

83. As I have found against the retention of Building B3, I have to move to the Ground (g) case. An appeal under this ground is that the period for compliance with the requirements in the Notice fall short of what should reasonably be allowed.
84. The Appellant's case is that if the works were required to be carried out over the winter, it would be likely that this would be in muddy conditions and this would mean that there were poor conditions for restoration. She asks that the time for compliance is extended to nine months to enable the works to be programmed to periods of dry ground conditions.
85. The Council has not responded, so I use its reasons for issuing the Notice as the basis of its position.
86. Harm to the GB is a matter to which I have to attribute substantial weight and, therefore, it is a matter that should be addressed as soon as possible. The Appellant does not make the case that the use could not cease within 6 months; her case relates to the removal of buildings.
87. As this is now limited to the removal of Building B3 alone, I have no reason to find that this could not be carried out in 6 months. I understand how the weather might have an effect on how this might be carried out, but it is quite possible that the 6 months from the date of this decision would be dry enough to allow the works to be carried out without any problems. I will not extend the period for compliance, but would point to the powers that the Council has, under s173A(1)(b) of the Act, to relax requirements of the Notice.

88. The Ground (g) appeal fails.

Conclusion

89. For the reasons given above, I will grant planning permission for the material change of use of the Land to a sui generis mixed use, comprising agricultural and farm shop; the retention of Building B4; the laying of hard-surfacing; and the erection of gates and fencing', but otherwise I will uphold the notice with correction and variation and refuse to grant planning permission in respect of Building B3. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Roy Curnow

Inspector