The Planning Inspectorate

Appeal Decisions

Inquiry held on 14, 15 and 16 November 2023

Site visit made on 13 November 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal A Ref: APP/K1128/C/23/3326128
Appeal B Ref: APP/K1128/C/23/3326129
Land at Goodamoor Farm, Ledgate Lane, Sparkwell, Plymouth PL7 5FB

- These appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Steven Rendle and Appeal B is made by Ms Emma Hawkins against an enforcement notice issued by South Hams District Council.
- The notice was issued on 16 June 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Building from agricultural use to a mixed residential and agricultural use.
- The requirements of the notice are:
  - i) Cease the use of the Building for residential purposes; and
  - ii) Remove all domestic fixtures, fittings, and paraphernalia;
  - iii) Remove all external first floor windows so that the building reverts to the elevations as shown on the elevation plan submitted to this Council as part of the application giving prior notification of the erection of an agricultural building on the land (Council Reference: 49/1350/15/AG).
- The period for compliance with the requirements is 3 months.
- The appeals are 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.

Appeal C Ref: APP/K1128/X/22/3312314
Goodamoor Farm, Sparkwell, PLYMOUTH PL7 5FB

- 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 Steven Rendle against the decision of the South Hams District Council.
- The application Ref 3227/21/CLE, dated 16 August 2021, was refused by notice dated 12 August 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of agricultural building as a dwellinghouse.

Decisions

1. In Appeals A and B, it is directed that the enforcement notice is corrected by:

   The deletion of all the words in section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, and their substitution with the words "Without planning permission, the material change of use of the Building to a mixed use of residential, agriculture and the keeping of horses for leisure purposes."

Subject to the correction, Appeals A and B are dismissed, and the enforcement notice is upheld.

2. Appeal C is dismissed.

Preliminary Matters

3. I carried out a pre-inquiry site visit on 13 November 2023. I was accompanied by the appellants and Mr Peter Whitehead of South Hams District Council. The Inquiry sat for 3 days. Evidence at the Inquiry was taken on oath, except for that relating to the ground (g) appeals, which was dealt with by way of round table discussion. Given the grounds of appeal, an Inquiry site visit was not necessary and the appellant, Council and Drakelands Restoration Limited agreed to the appeals proceeding on this basis.

4. Drakelands Restoration Limited has Rule 6 status. Mr Neil Gawthorpe, Chief Executive Officer of Tungsten West PLC, provided a Proof of Evidence relating to the ground (g) appeals only. However, he was unable to attend the Inquiry. Instead, Mrs Marica Lyndon, Executive Assistant of Tungsten West PLC, gave evidence in respect of the ground (g) appeals to the Inquiry on his behalf.

5. A Statement of Common Ground (SoCG), signed on behalf of the appellants, the Council and Rule 6 party, was provided. This confirms that construction of the 'Mezzanine Area' began in September 2015. Further, that there has been continuous residential occupation of the 'Mezzanine Area' since, at the latest, January 2016. From the evidence before me and what I heard at the Inquiry; I see no reason to disagree with this agreed position.

6. During the course of the appeals the revised National Planning Policy Framework December 2023 (the revised Framework) was published. There are no substantive changes in the revised Framework relevant to the appeals before me.

Background

7. Several planning applications have been made for developments at Goodamoor Farm. These include applications for additional agricultural buildings to house livestock, an equestrian manége, and a temporary agricultural worker's dwelling. I saw that the building the subject of the enforcement notice (the Notice) and a livestock building have been erected and that a manége has been constructed. There have also been several prior notification applications for agricultural storage buildings.

8. In July 2015 the Council determined that prior approval was not required for the erection of an agricultural storage building for 'machinery/equipment and fodder'[1]. The Council's decision also confirmed that the appellants had to provide written confirmation within 7 days of the building's substantial completion. The building the subject of this application was, I am told, shown located in the approximate position of the building the subject of this appeal.

9. Mr Rendle confirmed to the Inquiry that construction of an agricultural storage building commenced in July 2015 and it was completed, with the assistance of

[1] Application reference: 49/1350/15/AG

various contractors, without delay. The external appearance of the erected building differed from the one that was the subject of the prior notification application in that it had 4 external walls, several roller shutter type openings and pedestrian access doors.

10. The application for the temporary agricultural worker's dwelling was submitted in August 2015. The date this application was withdrawn is not known.

11. A letter from Ms Hawkins to the Council, dated 21 November 2015, refers to the agricultural storage building having been substantially completed 'several weeks before'. This letter was not therefore provided within the 7-day notification period. Furthermore, Ms Hawkins told the Inquiry the building had been substantially completed well before 21 November 2015, but that she had not wanted to get in trouble for forgetting to notify the Council of the building's completion. Nevertheless, the Council does not dispute that the building was substantially completed more than 4 years before the enforcement notice was issued. The Rule 6 party does not necessarily agree with the Council's view on substantial completion. Hereafter I will refer to this building as the Barn.

12. The physical alterations to the Barn's interior are claimed to have occurred incrementally, following the Barn's substantial completion. While dates of when specific elements of the construction and use occurred are not agreed, taking the evidence in the round, it demonstrates that the Barn was substantially complete by July/August 2015, and a mezzanine floor, which was accessed via a ladder and used for storage, somewhere to make a hot drink and toilet facilities, was constructed in September/October 2015. The works to convert the mezzanine floor to residential accommodation were started after the break-in, which occurred on 8 December 2015. These works included replacing the ladder with a staircase and the enclosure of the mezzanine floor, hereafter referred to as the Mezzanine Area. These works were sufficiently complete to allow residential occupation to commence around the start of the school Christmas holiday, on approximately 20 December 2015.

13. An equestrian manége was the subject of 2 approvals: one in 2017 for provision of a manége, and one in 2020 for change of use of land and siting of manége for personal equestrian use[2] (the 2020 PP). There is nothing before me to show that the manége constructed is not that which was granted under the terms of the 2020 PP. The 2020 PP is conditioned that 'The manége and associated land for which change of use to equestrian use is hereby granted shall be used for private recreational use only and shall not be used for a livery business or any other commercial purposes'.

14. The appellants, Ms Hawkins' children and other family members live at or have resided at the property. Currently the residential accommodation is occupied by Mr Rendle, Ms Hawkins, Ms Hawkins' two daughters, and Ms Hawkins' cousin. The occupiers keep horses and several dogs. Two dogs are pets, which live mostly in the Mezzanine Area, two are working dogs which live on the Barn's ground floor. The nephew's working dogs are kennelled elsewhere in the Barn, beyond the red line shown on the plan attached to the enforcement notice (the enforcement plan).

[2] Application reference: 4107/20/FUL

15. In addition to the horses, pet dogs and working dogs, the appellants keep cattle and sheep. The Design and Access Statement that accompanied the temporary agricultural worker's dwelling application, indicated that Mr Rendle was full time employed in the farming activities taking place at Goodamoor Farm. The farming activities consisted of keeping 450 breeding ewes and 70 suckler cows. The document also indicated that Ms Hawkins was employed off the farm holding but helped on the farm in the evenings and at weekends. It also confirmed the landholding as 78 acres owned at Goodamoor Farm and 120 acres rented locally.

16. Evidence provided by Ms Hawkins to the Inquiry confirmed that the 120 acres rented locally has been given up because of these appeals. Ms Hawkins also advised that the 78 acres said to form the owned land at Goodamoor Farm was closer to 68 acres due to movement of field boundaries and more accurate mapping. As a result of these factors, the current livestock levels are 200 breeding ewes, some with followers, and 15 cattle. Ms Hawkins told the Inquiry that she had always been employed in the operation of the farming activities and had not been employed elsewhere. Mr Rendle's oral evidence confirmed that, other than while building the Barn, he has been full time employed in his ground works and plant hire business, but helps with the farm activities in the evenings and at weekends.

17. There are obvious advantages of the appellants living on the farm, in close proximity to the farm buildings and livestock. However, no essential agricultural need for the appellants to reside at Goodamoor Farm has been claimed or demonstrated in relation to the current appeals.

Appeals A and B on ground (b)

18. An appeal on this ground is that the matter alleged has not occurred. The onus of proof is on the appellants and the relevant test is the balance of probability. It is for the appellants to show, therefore, that a material change of use to a mixed residential and agricultural use has not occurred. The red lined area of the building identified on the enforcement plan encompasses approximately half of the Barn, including and extending beyond the Mezzanine Area.

19. There is no dispute that both agricultural and residential activities take place in the part of the Barn identified in the Notice. It is whether those activities are carried out separately from one another or as a mixed use that is in dispute.

20. Fundamental to determining whether a material change of use has occurred is identifying the extent of the original planning unit and the use(s) to which it has been put. Both the appellants and the Council agree that *Burdle*[3] is the leading authority on planning unit. Bridge J identified three criteria for determining the planning unit as follows:

    (a) Whenever it is possible to recognize a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. A single use planning unit.

[3] *Burdle v SSE* [1972] 1 WLR 1207 (Div Court)

(b) Even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered. A mixed-use planning unit.

(c) Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit. More than one planning unit.

21. Bridge J also said, *"It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally."* An appropriate starting point in identifying the planning unit is therefore the unit of occupation.

22. Goodamoor Farm is located off Ledgate Lane. The driveway leading from Ledgate Lane passes between fields in the appellants' ownership before opening out into a yard area (farmyard). I saw that the farmyard accommodates the Barn, a farm office and a livestock building as well as areas of hardstanding where vehicles, machinery and agricultural products are parked and stored. I also saw two storage containers, one used for equestrian storage, and one used in connection with Mr Rendle's groundworks and plant hire business. The manége is located at the far end of the farmyard and other fields in the appellants' ownership surround the farmyard. The fields are used for the grazing of the appellants' livestock and horses. While the fields and manége are separated from the farmyard by fences or hedgerows, the farmyard and surrounding fields making up Goodamoor Farm, form a single unit of occupation.

23. Having identified the unit of occupation, its use needs to be considered. The appellants keep cattle and sheep for agricultural purposes, in addition to grazing their own horses and producing hay. These activities fall within the definition of agriculture, which is a primary use.

24. The documentation provided with both applications relating to the manége confirm that the appellants only keep their own horses on the land and that the manége would only be used for exercising and training their own horses. The officer reports and decision notices relating to the manége applications confirm the keeping of horses for leisure purposes as part and parcel of those permissions is lawful. I saw that horses are stabled in part of the Barn located beyond the red line on the enforcement plan. I also saw and heard evidence that tack and other equestrian paraphernalia is kept within the red lined Barn and that the commercial sized washing machines are used to wash horse rugs. While some of this storage and the laundry activity could be incidental to the residential activity taking place, the keeping of horses for leisure purposes is not an incidental residential or agricultural activity. The keeping of horses for leisure purposes is therefore an additional primary use taking place within the unit of occupation as I have identified it.

25. In respect of Mr Rendle's ground works and plant hire business, he makes use of vehicles, machinery and tools that are also used in the operation of the farming activities taking place at Goodamoor Farm. His business storage container is taken from site to site where he is working, and is only

occasionally brought back to the farmyard, usually for short periods, if it cannot be taken straight to his next place of work. The Council is satisfied that the ground works and plant hire business does not constitute a primary use, being incidental to the agricultural use of the land. From what I saw and heard; I see no reason to disagree.

26. Turning now to the residential use and, in particular, the use of the part of the Barn red lined in the enforcement plan. It is a matter of fact that this part of the Barn contains a workshop, storage and utility areas and residential accommodation. The cooking, sleeping, living and personal washing facilities are all located in the Mezzanine Area. Whereas all the machinery, tools and associated agricultural products are located on the ground floor, within the workshop and storage areas.

27. The Mezzanine Area is accessed from an enclosed staircase located within the workshop. At the top of the staircase, a door to the left provides access to a hallway containing storage areas for clothing and other domestic items, and from which four bedrooms are accessed. The door to the right of the top of the staircase provides access into an open space living area containing kitchen units and appliances, such as American style fridge freezer and Aga style oven, along with dining table, chairs, sofas and television. A family shower room, containing a washing machine, and a separate study are accessed from this living space.

28. The study contains a monitor displaying CCTV footage from around the farm. It is not uncommon for such equipment to be contained in a dwelling to allow 'out of hours' supervision. As such, the presence of the CCTV monitor does not of itself demonstrate agricultural use of the Mezzanine Area.

29. I was told the desk and computer located within the study is primarily used by residents for ancillary domestic purposes. This would seem likely as there is a separate farm office, containing three desks and two computers, located in the farmyard. While the writing on the wall, above the desk in the study, relates to agricultural activities taking place elsewhere on the farm, I see no reason to doubt that its presence pre-dates the residential use of the Mezzanine Area. Even if it did not, the presence of a written record of a telephone conversation would not demonstrate agricultural use of the Mezzanine Area. Furthermore, the kitchen utensils, food and drink stored on the study's shelving demonstrates it is used as part and parcel of the residential accommodation.

30. Taking all these factors together, the Mezzanine Area provides the appellants and their family with facilities for day-to-day private domestic existence, such as cooking, washing and sleeping. There was however considerable debate as to whether all domestic facilities and ancillary or incidental residential activities were contained within the Mezzanine Area or whether they spill out into the rest of the Barn or even areas beyond it. Referring again to *Burdle*, it is necessary to determine whether the residential occupation of the Mezzanine Area is, in substance, a separate use both physically and functionally from the non-residential use of the rest of the Barn outlined in red on the enforcement plan.

31. Mr Rendle told the inquiry how he felt it necessary to reside at the farm following the break-in, to prevent it happening again. In particular, he felt a residential presence in the Barn would prevent any further substantial financial

loss of machinery and tools. The residential accommodation was therefore constructed as a means of providing added security at the farm, demonstrating a functional relationship between the residential and agricultural uses, at the least.

32. Unlike a traditional farmhouse, the residential accommodation is not contained in a separate building with its own defined curtilage. While it may have some similarities with a flat contained in a larger building, the occupation of such a flat would usually be in separate occupation, and sometimes ownership, to the remainder of the building within which it is located.

33. In this case, the only means of accessing the residential accommodation located in the Mezzanine Area is through the Barn itself. The Barn can be entered via the roller shutter door, or either of the pedestrian access doors; the one immediately next to the roller shutter, or the one located off the utility area and adjacent to the farm office. Once inside the Barn, an enclosed staircase gives access to the Mezzanine Area. However, to get to the staircase it is necessary to pass through the workshop, where access is available to all the tools, machinery and stored items contained therein.

34. There is a lockable door at the bottom of the staircase. Mr Rendle's oral evidence confirmed the steel door to the stairs is to prevent anyone other than the occupiers accessing the Mezzanine Area, unless invited. The signs fixed to the exterior of the Barn and to the metal side panel of the stairs serve to identify the presence of the residential accommodation within the Barn. The lockable door and signs do not functionally or physically separate the residential use of the Mezzanine Area from the rest of the building.

35. Much was made of the commercial sized washing machines on the ground floor and that they were used to wash horse rugs, dog blankets and dog beds. The washing of horse rugs could be incidental to the keeping of horses for leisure purposes. Regardless of whether the dog beds and blankets being washed are those used by the working dogs, doing laundry is not generally considered an agricultural activity. Generally, it would be considered a domestic activity, unless being carried out on a commercial basis.

36. Similarly, the storage of horse rugs, saddles and tack could be incidental to the keeping of horses for leisure purposes. However, Ms Hawkins' said that much of what was being stored in the utility area with the two commercial sized washing machines were items of sentimental value, which would be incidental to the residential use. While the mezzanine in this utility area was largely disused, the photographs show it containing a sewing machine and storage boxes, which Mr Rendle confirmed contained paperwork relating to the agricultural activities. This utility area is therefore used for a variety of activities, including uses incidental to the residential use.

37. The domestic boiler and gas tanks are located within the utility area below the open plan kitchen/lounge. While it may not be uncommon for these types of facilities to be located outside of a dwellinghouse, they would usually be located within its curtilage or, when serving a flat, such facilities may be communal and therefore located in a service area. A dwellinghouse's boiler and the fuel to power its cooking facilities would not normally be located somewhere that is functionally or physically separate from it. I also heard how

electricity, found in the Barn, is used to power the Mezzanine and the farm office and that a single broadband service serves the whole farm.

38. Bringing domestic vehicles into the workshop to be unloaded or to have general maintenance carried out, on occasion, may not be dissimilar to a resident carrying out car maintenance of their own vehicle on their domestic driveway. However, in such instances it would be unusual for that resident to have such a large scale and well-equipped workshop. While the incidental residential activities within the workshop would not necessarily be sufficient to demonstrate a material change in the use of the workshop and ancillary stores, it is a further example of an incidental domestic activity taking place beyond the Mezzanine Area.

39. Storage of the family's wet weather gear and wellingtons in the utility area is an ancillary domestic activity rather than an agricultural activity. Furthermore, residents of the Mezzanine Area can and do make use of the farmyard and other farm buildings for incidental and ancillary residential purposes, such as accommodating their pet dogs to dry out, entertaining family and friends, leisure purposes (use of the inflatable swimming pool), etc.

40. Parking of residential vehicles generally takes place in the area opposite the roller shutter door, along with the parking of agricultural vehicles and machinery. There is no separate designated parking or amenity facilities assigned to the residential occupation of the Mezzanine Area.

41. Taking all these factors together, in my judgement, the Mezzanine Area is not the site of activities which amount in substance to a separate use, both physically or functionally, from the use of the rest of the Barn or the farm as a whole. I therefore cannot identify a unit of occupation smaller than the occupation of the farm.

42. Having regard to all the matters raised, for the reasons given above and as a matter of fact and degree, I find that the land and buildings forming Goodamoor Farm represents a single planning unit. Furthermore, in my judgement, this planning unit is being used for residential, agricultural and the keeping of horses for leisure purposes. These uses are not functionally or physically separate from one another and combine to form a mixed use of the planning unit.

43. The Notice alleges that a material change of use to a mixed use has occurred, with which I concur. However, the component uses set out in the Notice fail to include the keeping of horses for leisure purposes. This may be a result of the Notice being directed specifically at part of the Barn rather than the planning unit as a whole. Whatever the reason for its omission, the breach of planning control alleged in the Notice is incorrect.

44. Where an enforcement notice does not describe all the component parts of a mixed use, and the additional component parts are lawful, as is the case here, the Notice should be corrected, if possible. Correcting the notice is an option available to me, provided it would not cause injustice to either the appellants or the Council.

45. The appellants and Council's views have been sought on the matter of correcting the Notice. The Council has confirmed that, in their opinion, no

injustice would arise from the addition of the missing component part of the mixed use. The appellants have however directed me to several legal authorities: *Wealden DC v SSE* [1983] JPL 234 indicates that correcting or varying the allegation would, in most cases, be likely to cause injustice; *Ahmed v SSCLG* [2014] 2 EGLR 197, referring to paragraphs 31 and 32 of *SSETR v Wyatt Brothers (Oxford) Ltd* [2001] EWCA Civ 1560 identifies that powers are available to an Inspector to amend an enforcement notice so as to prevent it failing on a 'technicality' because of an error in the formulation of the notice as served. *Wyatt* goes on to say that this 'is not a power which can properly be used to attack the substance of an enforcement notice'. It is the appellants' contention that if the amendment of the allegation relates to the planning unit and the lawful uses, thereof, then it would go to the substance of the Notice, and not merely be a 'technical error'.

46. The allegation is that a material change of use of the Building 'from an agricultural use to a mixed residential and agricultural use' has occurred through the introduction of a residential use. The substance of that allegation is therefore that the introduction of the residential use has materially changed the lawful use of the land.

47. As previously identified, in determining whether a material change of use of land has occurred it is necessary to identify the former lawful use of the relevant planning unit. That former lawful use is not however required to be set out in the allegation. The appellants are best placed to know what the former lawful use of the land was before the alleged breach of planning control occurred. The words 'from an agricultural use' can therefore be deleted from the allegation without causing injustice.

48. There is no dispute that horses are kept for leisure purposes on the farm. As this missing component is lawful, planning permission having been granted for the use of land and siting of a manége for personal equestrian purposes, its inclusion as a component of the alleged mixed use would not require the steps set out in section 5 of the Notice to be varied. Furthermore, the prospect of planning permission being granted by virtue of s173(11) of the 1990 Act would be of no concern.

49. The appellants' cases are that there has been no material change of use to a mixed use as they have, in effect, created a self-contained dwellinghouse forming a separate planning unit. While the appellants suggest a differing approach could have been taken if the Notice identified a different parcel of land and/or included an additional component, they have offered no details of what that would have been. There is no obvious 'differing approach' that I can see.

50. Section 2 of the Notice and the enforcement plan only identify the Building to which the Notice relates. While I have found that the relevant planning unit is larger than that Building, there is no need for an enforcement notice to relate to the whole planning unit. The Notice can, as in this case, be directed specifically to where the alleged breach of planning control has occurred. There is therefore no need for the land to which the Notice relates or the enforcement plan to be corrected as a result of my findings in respect of the components of the mixed use.

51. For the reasons set out, correcting the allegation to include the keeping of horses for leisure purposes would not change the substance of the allegation or Notice, nor would it cause injustice to the appellant or local planning authority. In accordance with s176(1)(a) of the 1990 Act[4], I shall correct the Notice so that it includes all the component parts of the mixed use. The corrected allegation shall read, 'Without planning permission, the material change of use of the Building to a mixed use consisting of residential, agricultural and the keeping of horses for leisure purposes'.

52. Appeals A and B on ground (b) succeed to the limited extent that the allegation shall be corrected.

Appeals A and B: ground (c)

53. An appeal on this ground is that if the matter alleged has occurred, it does not constitute a breach of planning control. The appellants' ground (c) argument is that the use of the Mezzanine Area as a single dwellinghouse does not constitute a breach of planning control. That was not the original or the corrected allegation.

54. No substantiated evidence was put forward to demonstrate that either a material change of use to a mixed use of residential and agricultural or residential, agricultural, and keeping of horses for leisure purposes does not represent a breach of planning control. Mixed uses are sui generis uses and changing from one mixed use to another mixed use requires planning permission. No planning permission has been granted for the material change of use alleged as originally set out or as corrected. The appellants' have therefore failed to demonstrate, on the balance of probability, that the matter alleged does not constitute a breach of planning control.

55. Appeals A and B on ground (c) fail.

Appeals A and B: ground (d)

56. An appeal on this ground is that the period within which enforcement action can be taken had passed at the date the Notice was issued. As I have found that a material change of use to a mixed use of residential, agricultural and the keeping of horses for leisure purposes has occurred, s171B(3) of the 1990 Act applies. The relevant period to achieve immunity from enforcement action is therefore 10 years and the material date is 16 June 2013.

57. It is a matter of common ground that the residential component part of the mixed use commenced no later than January 2016. This is after the material date. Furthermore, the mixed use could not have commenced before the Barn was erected, which was in approximately July/August 2015. This again is after the material date. The appellants' have therefore failed to show, on the balance of probability, that the mixed use of residential, agricultural and the keeping of horses for leisure purposes has become lawful due to the passage of time.

58. Appeals A and B on ground (d) fail.

[4] Town and Country Planning Act 1990 as amended

Appeals A and B: ground (g)

59. An appeal on this ground is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. The appellants claim that 3 months is insufficient, and a period of 12 months is requested.

60. In support of extending the period to 12 months, the appellants argue:

- a need to be on site to oversee calving and lambing;
- proximity to Ms Hawkins' younger daughter's place of work for associated college course requirements; and
- difficulty in finding suitable alternative accommodation.

61. Ms Hawkins' evidence to the Inquiry confirmed that, prior to December 2015, calving and lambing was overseen from their former home located in Sparkwell. The Notice would not prevent them staying at the farm during periods of calving and lambing as required. The appellants' evidence demonstrates a personal preference rather than an essential need to be at the farm for animal welfare reasons.

62. I have some sympathy with the difficulties that moving away from the farm may cause in respect of Ms Hawkins' daughter's employment and higher education. However, that employment and higher education have no direct connection with the farm, or the lawful activities undertaken on it. This reason for being on the farm is again one of personal preference rather than essential need.

63. The appellants claim that there is currently a lack of properties that would meet their needs. However, the requirements of the Notice are to cease the residential use of the Barn. I see no reason why ceasing the residential use could not be achieved within the 3 months specified. I appreciate that looking for suitable alternative accommodation and securing that accommodation may take longer than 3 months.

64. The harms identified in the Notice represent the public interest, which I must weigh against the personal needs of the appellants and their family. In particular, the effect of extending the compliance period needs to be weighed against the progression of quarrying activities at Hemerdon Mine (the Mine).

65. Evidence provided in Neil Gowthorpe's Proof of Evidence and Mrs Lyndon's evidence to the Inquiry shows that the tungsten deposit at the Mine is of international significance. Restarting operations at the Mine will secure 250 jobs directly, with the potential to create/support 1200 jobs indirectly. The Mine has a 27-year life expectancy. With the permits that have already been secured, drilling and testwork is due to start in May 2024.

66. As the appellants' residential presence at the farm is unlawful, it had not been identified as a residential receptor in respect of noise and vibration impacts when making the licencing applications for the Mine. Drilling and testwork permitted and scheduled for May 2024 could not therefore go ahead while the appellants are living at the farm. New permits would have to be secured, which could cause significant delay to the Mine being brought back into active production or prevent its re-activation altogether. The appellants continued

residential occupation at Goodamoor Farm, even for a short period of time, therefore has significant implications for matters of international importance.

67. Extending the period of compliance to 12 months would compromise bringing the Mine back into active use as scheduled, this would not be in the public interest. Extending the compliance period as suggested would not therefore strike a reasonable balance between the public interests identified in the Notice and the private interests bound up with the Notice. I find that the public interest shall prevail.

68. For these reasons, the appeal on ground (g) fails.

Overall conclusion on Appeals A and B

69. For the reasons given above, I conclude that Appeals A and B shall not succeed, and I shall uphold the enforcement notice as corrected.

Appeal C

70. A lawful development certificate (LDC) appeal must be considered solely on the basis of fact and law, and irrespective of planning merits. As with the ground (b) appeals, the onus of proof is on the appellants and the relevant test is the balance of probability.

71. The appellant is seeking an LDC for use of an agricultural building as a dwellinghouse. For that use to be lawful, the relevant period of use, without significant interruption, is 4 years. Notwithstanding the area shown edged red on the location plan that accompanied the LDC application or the subsequently submitted plans, it is a matter of common ground that the LDC application relates to the Mezzanine Area located within the Barn. I shall hereafter refer to the 'agricultural building' referred to in Appeal C as the Mezzanine Area.

72. In my consideration of the ground (b) appeals, I have found that the relevant planning unit is the farm and that the use of that planning unit is a mixed use of residential, agricultural and the keeping of horses for leisure purposes. The residential use of the Mezzanine Area is not physically or functionally separate from the use of the rest of the farm. The Mezzanine Area does not therefore constitute some smaller unit of occupation to be a planning unit in its own right. As such, while the Mezzanine Area may contain all the facilities for day-to-day domestic existence, as a matter of fact and degree, it is not a single dwellinghouse.

73. For these reasons, the appellant has failed to show, on the balance of probability, that the Mezzanine Area (agricultural building) has been used as a dwellinghouse.

Conclusion on Appeal C

74. In light of my findings above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of an agricultural building as a dwellinghouse was well-founded and that Appeal C shall not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Gavin Collet of Counsel	He called:	
	Mr Steven Rendle	Appellant
	Miss Emma Hawkins	Appellant
	Mr Daniel Searle	Contractor
	Miss Jane Cartwright	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gwion Lewis KC	He called:
	Mr Steven Stroud

FOR THE RULE 6 PARTY:

Mr Alexander Greaves of Counsel

Mrs Marica Lyndon of Tungsten West PLC

DOCUMENTS

ID1	Opening Statement on behalf of the appellants
ID2	Opening Statement on behalf of the Council
ID3	Opening Statement on behalf of the rule 6 party
ID4	*Kwik Save Discount Group Ltd v SSW; Kwik Save Discount Group Ltd v SSE* (1981) 42 P. & C.R. 166
ID5	Bundle A Photographs – Appendix B of South Hams District Council Statement of Case
ID6	Bundle B Photographs – Appendix A to Steven Stroud's POE
ID7	Google Earth Image dated 8 August 2015
ID8	Closing submissions on behalf of the Council
ID9	Closing submissions on behalf of the Rule 6 party
ID10	Closing submissions on behalf of the appellants